

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.17991 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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JORSINGBHAI MEGHAJIBHAI LEGAL HEIRS OF  
Versus  
STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 17991 of 2003  
MR VH DESAI for Petitioner No. 1  
MR NAGESH SOOD, AGP for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 30/07/2004

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner has challenged the judgment and order passed by the revisional authority i.e. Secretary (Appeals) Revenue Department dated 30-06-2003/29-07-2003 in Revision Application No.3 of 1998 whereby dismissing the said revision application and

confirming the order passed by the Dy. Collector, Mahuva dated 15-01-1998 by setting aside the sale transaction under the provisions of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947 (for short 'the Act').

2. The brief facts of the case are that one Velubhai Kasyabhai was the owner of the land bearing Survey No.15 paiki admeasuring 1 Acre 26 Gunthas at Village Kathava Taluka Talaja, District Bhavnagar. The petitioner purchased the said land in question by a registered Sale Deed. Necessary Entry to that effect was also made in the Record of Rights vide Entry No.206 on 06-05-1963. However, the Dy. Collector, Mahuva was of the opinion that the transaction in question was hit by the Act, proceedings under the provisions of the Act for setting aside the said transaction was initiated. A notice came to be issued and hearing was fixed by the Dy. Collector, Mahuva and by judgment and order dated 29-07-1991 set aside the sale transaction in question by holding that there was a breach of the provisions of the Act. It seems that earlier the proceedings were initiated in the year 1982 and by judgment and order dated 29-07-1991 the Dy. Collector, Mahuva passed an order under Sections 8 and 9 of the Act and declared the sale transaction null and void and directed to restore the land prior to the sale transaction. Against the said order, the petitioner preferred Revision Application No.1 of 1994 before the revisional authority. The revisional authority by its order dated 22/26-11-1996 partly allowed the said revision application and quashed and set aside the order dated 29-07-1991 passed by the Dy. Collector, Mahuva in Case No.49 of 1982 and remanded the matter to the Dy. Collector, Mahuva for its fresh decision.

3. On remand again the Dy. Collector by order dated 15-01-1998 quashed and set aside the sale transaction by holding that there was a breach of the provisions of the Act and imposed penalty of Rs.250/- and directed to restore the position of the land which was prevailing prior to the sale transaction. It seems that the petitioner was communicated only the operative portion of the order which is at Page 19 of the compilation but the reasoned order was not served upon the petitioner. Against the order dated 15-01-1998 passed by the Dy. Collector, Mahuva declaring the said transaction as invalid under the provisions of the Act, a Revision Application No.3 of 1998 was filed before the revisional authority, which was dismissed vide order dated 30-06-2003/29-07-2003 and confirmed the order dated 15-01-1998 passed by the Dy. Collector, Mahuva. The said order is under challenge in this petition.

4. Ms.Sejal Sutaria, learned advocate appearing for Mr.V.H.Desai, learned advocate for the petitioner, has vehemently submitted that initially exercise of power by the Dy. Collector itself was after unreasonable period and, therefore, the Dy. Collector could not have exercised the power after a period of 19 years. She has submitted that in view of the judgment of this Court in the case of Sarvagna Navinchandra Godiawala Vs. State of Gujarat & Ors., 2003(1) GLH 426 the Dy. Collector could not have exercised the powers after a period of 19 years i.e. after unreasonable period. She has submitted that this point with regard to not exercising of power by the Dy. Collector within a reasonable time was canvassed before the revisional authority but, unfortunately, the revisional authority has not dealt with the same.

5. Mr.Nagesh Sood, learned AGP, has submitted that it was found that the sale transaction was invalid under the provisions of the Act and, therefore, the revisional authority is just and proper and in accordance with law.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. The sale transaction took place in the year 1963. Entry was mutated in the Village Form and Record Rights vide Entry No.206 dated 06-05-1963. The said entry was also certified. It seems that for the first time the proceedings were initiated in the year 1982 though in the order impugned it is stated that proceedings were initiated by the Dy. Collector, Mahuva on 08-07-1991. Even if we take it that the proceedings were initiated in the year 1982, as the first order which was passed by the Dy. Collector, Mahuva dated 29-07-1991 in case No.49 of 1982 then also the Dy. Collector has exercised the powers after a period of 19 years of the sale transaction.

8. As held by this Court in the case of Sarvagna Navinchandra Godiawala Vs. State of Gujarat & Ors., 2003(1) GLH 426 initiation of proceedings after a period of 17 years was considered to be exercise of powers after unreasonable time was held to be illegal. Even considering the fact that assuming that the transaction was void ab initio then it is held a void order also required to be challenged and set aside within a period of reasonable time. Considering the same this Court in the aforesaid judgment set aside the order passed by the Collector by which the sale was set aside on the ground that there is a breach by the provision of the another

Act after a period of 17 years by further holding that initiation of the proceedings, after such a long time, cannot be permitted.

9. Considering the judgment and order passed in the aforesaid case, taking the case in hand, as the proceedings are initiated after a period of 19 years of sale transaction, the respondent cannot be permitted to initiate the proceedings after unreasonable period and under the circumstances, the original order passed by the Dy. Collector, Mahuva dated 15-01-1998 cannot be permitted to be stand and the same is required to be quashed and set aside by holding that the Dy. Collector could not have exercised the power after a period of 19 years i.e. after reasonable period. Consequently, the judgment and order dated 30-06-2003/29-07-2003 passed by the revisional authority in confirming the order passed by the Dy. Collector dated 15-01-1998 is also requires to be quashed and set aside.

10. For the reasons stated above, the petition succeeds. The judgment and order passed by the revisional authority dated 30-06-2003/29-07-2003 passed in Revision Application No.3 of 1998 as well as the order of the the Dy. Collector dated 15-01-1998 are quashed and set aside.

11. Rule made absolute to the aforesaid extent. No order as to costs.

Sd/-

[ M.R.SHAH, J ]

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