

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14205 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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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

HARSHADRAI GAJSUKUMAR MEHTA

Versus

STATE OF GUJARAAT

Appearance:

1. Special Civil Application No. 14205 of 2004
MR KV SHELAT for Petitioner No. 1-2
MR PR ABICHANDANI ASST GOVT PLEADER for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 28/02/2005

ORAL JUDGEMENT

Rule. Shri P.R.Abichandani, the learned AGP waives service of Rule on behalf of the respondents - State Authority.

With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Secretary Revenue Department, (Appeals), State of Gujarat dated 31.3.2004 / 30.9.2004 passed in Revision Application No. 49 of 1998 dismissing the same and confirming the order passed by the Collector, Gandhinagar dated 20.4.1998 in forfeiting the land/property in question to the State Government, more particularly, the property no. 191/B of plot no. 191/B of situated at Sector 29, Gandhinagar.

3. It appears from the record that the petitioner was granted the property/land in question on certain conditions, more particularly, to use the property in question only for the residential purpose and in spite of that the petitioner used ground floor of the said property for the purpose of commercial use by running "Anand Motors" and has started the illegal use of the said property and therefore, proceeding came to be initiated by the Collector, Gandhinagar and the petitioner was required to show cause as to why the property in question should not be forfeited to the State Government, as there is a breach of conditions nos. 1, 2 and 8 of the grant and there is a breach of condition no 2 and 3 of the Kabulatnama. The Collector, Gandhinagar by order dated 20.4.1998 passed an order forfeited the land/property in question to the State Government by holding that there is a breach of conditions nos. 1, 2 and 8 of the grant as well as no. 2 and 3 of the Kabulatnama, as property in question was used by the petitioner for commercial purpose i.e. other than residential purpose.

4. Being aggrieved and dissatisfied with the order passed by the Collector, Gandhinagar dated 20.4.1998, petitioner preferred the revision application no. 49 of 1998 before the Secretary (Appeals), Revenue Department, State of Gujarat which came to be dismissed by the order dated 31.3.2004 /30.9.2004 which has given rise to filing of the present Special Civil Application under Articles 226/227 of the Constitution of India.

5. Shri K.V.Shelat, learned advocate appearing for the petitioner has shown his willingness to remove the illegal construction voluntarily as well as not to use the property in question for the purpose other than the

residential purpose and therefore, the matter was adjourned to enable him to remove the illegal construction and to stop the use for commercial purpose i.e. other than residential purpose and it is reported that the illegal construction has already been removed on 24.2.2005. A report to that effect from the office of the Collector, Gandhinagar is produced on record, which is directed kept on record.

6. Shri K.V.Shelat, learned advocate for the petitioner has also further submitted that the petitioner will not use the property in question for the purpose other than residential purpose before obtaining any appropriate permission from the Competent Authority and will use only for residential purpose. In that view of the matter, by modifying the order passed by both the authorities below and in view of the fact that illegal construction is already removed by the petitioner himself and petitioner is already stopped using the property in question for commercial purpose and has given an undertaking to this court that he will use the property in question only for residential purpose, the Collector, Gandhinagar is directed to reconsider his decision to allow the petitioner to retain the land/ property in question of imposing certain penalty not less than Rs. 10,000/-. As the petitioner is ready and willing to the pay penalty of Rs. 10,000 as a condition for allowing the petitioner to retain the property in question. Such an exercise is required to be done by the Collector, within a period of three months from the date of receipt of copy of this order. The Collector, Gandhinagar is directed to pass appropriate order considering the aforesaid facts and circumstances of the case and without, in any way, being influenced by its own order as well as judgment and order passed by the Secretary (Appeals) dated 31.3.2004 / 30.9.2004.

Rule is made absolute to the aforesaid extent with no order as to cost.

Date : 28.2.2005 [M.R.Shah, J.]

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