

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5278 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

Whether this case involves a substantial question
of law as to the interpretation of the
4 constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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MELABHAI LAKHABHAI & 3 - Petitioner(s)
Versus
COLLECTOR & 2 - Respondent(s)

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Appearance :

MR PM BHATT for Petitioner(s) : 1 - 4.
Ms.Archana Raval, AGP for Respondent(s) : 1 - 3.
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 05/05/2006

CAV JUDGMENT

1. The petitioners who were holders of agricultural land bearing Survey no.469/1-Part admeasuring 36 acres and 42 guntas of village Sherkhi, Taluka, District Vadodara, wanted to transfer and effect

sale of the said lands to Mr. Chandravadanbhai Keshavlal Shah, and therefore, they had applied to the Collector , Vadodara, for obtaining prior sanction as required under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 since the said lands were shown in the Government record as new tenure lands. Thereupon, the Collector after holding local inquiry passed an order dated 23-9-1993 (produced at Annexure A to the petition) directing the petitioners to deposit an amount of Rs.90,767-50 into the Government Treasury and also to produce the original challan after which necessary further orders regarding permission would be passed. The petitioners being aggrieved by and dissatisfied with the said order preferred a Revision Application no.770/93 under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 before the Gujarat Revenue Tribunal who by his order dated 21st February, 1997 (produced at Annexure C to the petition) dismissed the said Revision Application and confirmed the order passed by the Collector, Vadodara. The aforesaid two orders are the subject matter of challenge in the present petition filed under Article 226 of the

Constitution of India.

2. Heard learned Advocate Mr. P.M.Bhatt for the petitioners and learned A.G.P. Ms. Archana Raval for the respondents.

2.1 Learned Counsel for the petitioners Mr. P.M.Bhatt has argued that there is no statutory rule framed under Section 82 of the Bombay Tenancy and Agricultural Lands Act, 1948 for determining the premium amount and that the Collector has determined a very exorbitant amount of premium for the lands in question in an arbitrary manner. The learned Counsel has next argued that in absence of any statutory provisions under the Act or the Rules, the Collector ought to have followed Rule 25(c) of the Bombay Tenancy and Agricultural Lands Rules, 1956 which spells out that the premium is to be calculated at 40 times the assessment of the land. The learned Counsel also submitted that the said procedure of applying Rule 25(c) of the Bombay Tenancy and Agricultural Land Rules, 1956 has been adopted the by State of Maharashtra by framing such rules in respect of new tenure lands.

According to the learned Counsel, therefore, in absence of any rules having been framed by the State of Gujarat, the said procedure ought to have been adopted by the Collector while determining the premium amount in respect of new tenure lands. Learned Counsel has next argued that no opportunity of hearing had been afforded to the petitioners before passing the impugned order. Learned Counsel for the petitioners finally came forward with an alternative submission to the effect that the petitioners are ready and willing to pay the amount of Rs.90,767-50 as ordered by the Collector and that this Honourable Court may issue directions to the Collector for grant of permission under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948.

3. Learned A.G.P. Ms. Archana Raval on the other hand submitted that the Collector was perfectly justified in passing the impugned order by taking into consideration the Government Resolutions/circulars/guidelines which were in force at the relevant time and that the order of the Collector is quite legal and proper which does not require any interference by this Court.

4. I have gone through the entire record of the case and have also considered the submissions advanced before me by the Counsel for the respective parties. It is true that no rules have been framed by the State of Gujarat for determining the premium amount in case of transfer of new tenure lands from one person to another. However, for this purpose, the State Government has from time to time issued circulars and resolutions and has also provided guidelines. It is also borne out from the records that the Collector before passing the order had held local inquiry, taken into consideration various circulars, namely , (1) bearing no.NSJ/1081/2023/Z dated 13-7-1983, (2) bearing no.Tenancy-1080-Sankalan-4-Z dated 20-5-1980 and (3) bearing no.NRJ-1081-2023-Z dated 2-12-1983. and also considered circulars issued by Revenue department : (1) bearing no.Tenancy-1082-16043-Z dated 8-3-1993 and (2) bearing no.NSJ-1087-773-Z dated 25-3-1987. Apart from this, the Collector after having been satisfied on going through the revenue records for the period from 1951-52 to 1992-93, the relevant entries, the abstract of 7/12 of the revenue records and

all other materials placed before him, determined the amount of premium of Rs.90,767-50 keeping in mind the provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act, and therefore, by no stretch of imagination, it can be said that the Collector has acted in an arbitrary manner since the Collector has fixed the premium on the basis of half the market value of the land. It is pertinent to note that the guidelines, circulars and resolutions which were in force at the relevant time had been considered by the Collector and there is also no question of adopting the procedure followed by the State of Maharashtra as urged by the learned Counsel for the petitioner. The submission of learned Counsel for the petitioners to the effect that they have not been afforded opportunity of hearing before passing of the impugned order also cannot be accepted for the simple reason that the record shows that the statements of the petitioners have been recorded before the Circle Inspector on May 28, 1995 wherein they have clearly stated that they will pay the premium amount as may be fixed by the Government.

5. Coming now to the alternative submission put forward by the learned Counsel for the petitioners that they are prepared to pay the amount of premium of Rs.90,767-50 as ordered by the Collector, it is important to note that there is no interim stay against the operation, execution and implementation of the orders under challenge and it does not lie in the mouth of the petitioners to now contend so and take advantage of his own wrong. The learned Counsel for the petitioners has failed to point out anything from the record to show that there was substantial defect in following the procedure provided by the Act which has resulted in miscarriage of justice or that the order of the Collector was contrary to law.

6. Thus, in the opinion of this Court the authorities below have not committed any error much less a manifest error which will warrant this Court to interfere with the orders of the authorities below while exercising its under Article 227 of the Constitution. The present is not the case wherein interference is called for while exercising jurisdiction under Article 227 of the Constitution and as such the petition is required to be dismissed.

7. In view of the aforesaid discussion, the present petition is dismissed. Rule is discharged.

(M.D.Shah,J.)

8. At this juncture, learned Counsel for the petitioner makes a request to stay the execution, operation and implementation of this order for a period of three weeks from today. However, looking to the peculiar facts and circumstances of this case, the prayer is rejected.

(M.D.Shah,J.)