

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**LETTERS PATENT APPEAL NO. 1693 of 2010****In SPECIAL CIVIL APPLICATION NO. 4195 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE A.G.URAIZEE**

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

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SHANTABEN GANDAJI THAKORE, SINCE DECEASED THROUGH HER
HERIS & 1....Appellant(s)

Versus

STATE OF GUJARAT & 2....Respondent(s)

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Appearance:

MR A J PATEL, ADVOCATE for the Appellant(s) No. 1 - 1.2 , 2

MR PRAKASH JANI, ADDITIONAL ADVOCATE GENERAL WITH MR

RAKESH PATEL, ASST GOVERNMENT PLEADER for the Respondent(s) No.

1 - 3

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 31/03/2015

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. We have heard Mr. P.K. Jani, learned Additional Advocate General appearing with Mr. Rakesh Patel, learned AGP for the respondents and Mr. A.J. Patel, learned advocate appearing for the appellants.

2. This intra-court Letters Patent Appeal has been filed challenging the judgement and order dated 23.04.201 passed by the learned Single Judge in Special Civil Application No. 4195 of 2010 and order dated 04.02.2010 passed by SSRD (Appeals), Ahmedabad in Revision Application No. 17 of 1998. The appellants have also assailed order dated 22.12.1997 passed by the Collector, Ahmedabad in Case No. cb/Ind/1/k/4715 and further direct the collector to fix and accept the premium amount in respect of FP allotted under TP scheme belongs to appellant.

3. The facts in brief as per the appellants are set out as under:

3.1 Land bearing Survey No.424, admeasuring 5808 square metres, situated at Village: Gota, Taluka: Dascroi, District: Ahmedabad, is new tenure land, and is shown to be in the occupation of the predecessors-in-interest of the appellants,

as per revenue records. The appellants Nos.1/1 and 1/2 are the heirs and legal representatives of deceased Shantaben Gandaji Thakore. The said land has been granted for agriculture use, with certain conditions. It appears that without taking the prior permission of the State Government or paying the requisite amount of premium, the appellants started using the said land for non-agricultural purposes, in contravention of the conditions of grant.

3.2 On the basis of the report of the Deputy Collector, Viramgam Prant, the Collector, Ahmedabad, initiated proceedings against the appellants for breach of conditions of grant. By order dated 22.12.1997, the Collector, Ahmedabad, came to the conclusion that there was a breach of conditions of grant, and directed the land to be forfeited to the State Government.

3.3 Aggrieved by the above-mentioned order of the Collector, the appellants approached the State Government by filing the above-mentioned revision application, which has been dismissed by passing the impugned order. In the above circumstances, the appellants had filed the writ petition. The learned Single Judge after hearing the parties, dismissed the same.

4. Mr. A.J. Desai, learned advocate appearing for the appellants submitted that as per the circular issued by the State Government, if a person violates any condition, the land is liable to be vested in the State Government and the concerned person is liable to be summarily evicted under Section 66 of the Code. He submitted that as per the provisions of Article 300A, no property of anybody can be

taken away by a law enacted either by the Parliament or by the State Government or the statutory rules by the Parliament and/or the State Government. He submitted that therefore vesting of a land by circular in the State Government is in straight violation of Article 300 A and thus the land could not be vested. In this regard he has relied upon a decision of the Apex Court in the case of **Jilubhai Nanbhai Khachar vs. State of Gujarat and Another reported in AIR 1995 SC 142** wherein it is held that the word 'law' used in Article 300A must be an Act of Parliament or of State Legislature, a rule or statutory order having force of law.

4.1 Mr. Patel submitted that the panchnama drawn on 23.09.2014 is completely wrong and imaginary. He submitted that the panchnama was made in the absence of appellants or any person on behalf of the appellants.

5. Mr. P.K. Jani, learned Additional Advocate General appearing for the respondent State submitted that right from the inception of the said land, it is a 'Government Vested Land' and that the land was original granted to Shantaben Gandaji Thakor for personal cultivation subject to certain terms and conditions. He submitted that the said land was to be treated as 'New Tenure' land and one of the conditions was that the said land cannot be transferred or subjected to non agricultural use without taking prior permission of the State Government or without paying requisite amount of premium. He submitted that the original allottee, however, subjected the said agricultural land to non agricultural use and thereby committed breach of conditions of grant without taking any prior permission from the State Government or paying any

requisite amount of premium.

5.1 Mr. Jani submitted that the say of the appellants that the said land being situated in Light Industrial Zone and in view of the provision contained in Section 28 of the Gujarat Town Planning and Urban Development Act and therefore there is no violation whatsoever of the Act is totally incorrect and misconceived inasmuch as mere introduction of the Town Planning Scheme ipsofacto does not take over or remove the restriction which are already imposed over the said land at the time of original order of grant.

5.2 Mr. Jani submitted that the contention with regard to Article 300A was not pressed into service before the learned Single Judge and therefore the same may not be entertained. He submitted that even otherwise the land in question is a government vested land and was never of the absolute ownership of either the original allottee, their heirs and legal representative or the power of attorney. He submitted that in the decision of the Apex Court relied upon by the learned advocate for the appellant it is specifically held that Article 300A does not give any absolute right to hold property and the right guaranteed thereunder is subject to restriction authorised by law.

6. We have gone through the orders passed by the learned Single Judge as well as the authorities below. The learned Single Judge in para 9 to 13 has observed as under:

“9. A submission has been advanced by the learned counsel for the petitioners that under the provisions of Section 67 of the Code, the Collector is empowered to grant permission on such terms

and conditions as may be prescribed. In order to deal with the said submission, it would be necessary to look into the relevant provisions of law, which are reproduced hereinbelow, for ready reference:

65. Use to which occupant of land for purposes of agriculture may put his land

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1. Any occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents or other legal representatives, to erect farm-building, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid.

Procedure if occupant wishes to apply his land to any other purpose -- But, if any occupant wishes to use his holding or any part thereof for any other purpose the Collector's permission shall in the first place be applied for by the occupant. The Collector, on receipt of such application,

(a) shall send to the applicant a written acknowledgment of its receipt, and

(b) may, after due inquiry, either grant or refuse the permission applied for:

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application.

Unless the Collector shall in particular

instances otherwise direct, no such application shall be recognised except it be made by the occupant.

(2) Notwithstanding anything contained in sub-section (1) but subject to any terms and conditions laid down by the State Government in this behalf where an occupant has his holding in an area comprising a gram and such area is not within an urban agglomeration or within a radius of five kilometres from the limits of a municipal borough or notified area or industrial estate and such occupant wishes to use his holding or a part thereof only for the residential purpose, it shall not be necessary for him to obtain permission of the Collector under sub-section (1)....

65A. Procedure if occupant wishes to apply his land from one non-agricultural purpose to another non-agricultural purpose *Where the occupant of any land assessed or held for any non-agricultural purpose wishes to use such land or part thereof for any other non-agricultural purpose, the Collector's permission shall in the first place be applied for by him and the provisions of section 65 shall, so far as may be, apply to such application....*

66. Penalty for using land without permission *If any land referred to in section 65 or section 65A be used for any purpose other than the purpose for which such land is assessed or held without the permission of the collector being first obtained, or before the expiry of three months referred to in section 65 or despite refusal of permission during the said period of three months, then, without prejudice to the occupant's liability to pay the new assessment leviable under section 48 or the conversion tax leviable under section 67A --*

(a) the occupant and any tenant or other

person holding under or through him shall be liable to be summarily evicted by the Collector from the land so used and from the entire survey number or sub-division of the survey number of which it may form part; and

(b) the occupant shall also be liable to pay for the period during which the said land has been so used, such fine as the Collector may, subject to the general orders of the State Government, direct.

Any tenant of any occupant or any other person holding under or through an occupant, who shall without the occupant's consent use any such land for any such purpose, and thereby render the said occupant liable to the penalty aforesaid, shall be responsible to the said occupant in damages.

67. Permission may be granted on terms
Nothing in sections 65, 65A and 66 shall prevent the granting of the permission aforesaid on such terms or conditions as may be prescribed by the Collector, subject to any rules made in this behalf by the State Government.

10. Sections 65 and 65A, of the Bombay Land Revenue Code detail the uses to which the recipient of land for the purpose of agricultural may put the said land to, and the procedure required to be followed on an application being made by the occupant if he wishes to apply the land for any other purposes. Section 66 provides for penalty for using the land without permission. Section 67 enumerates the terms on which the Collector may grant permission. A conjoint reading of the above provisions of law would go to show that if the occupant wishes to use the granted land for any purpose, other than agricultural use, then it is incumbent upon him to obtain the permission of the Collector in the first instance. Section 67 empowers the Collector to grant permission as provided in the said provision, subject to rules made in this regard by the State Government. For

the provisions of Section 67 to come into play, it is necessary that the occupant of the land (in this case, the petitioners) make an application as required in Section 65 of the Code, for permission to apply the land for any other purpose. It is only on an application being made that the powers under Section 67 can be exercised. It is an admitted position that such an application has not been made at all by the petitioners or their predecessors-in-interest. In the above circumstances, the provisions of Section 67 cannot be pressed into service as permission can only be granted if it is prayed for by way of an application, as provided by the above-mentioned provision of law. As no permission has been sought by the petitioners, appropriate proceedings have been initiated against them, leading to the passing of the impugned orders. After passing of the order of forfeiture of the land by the Collector, as confirmed by the State Government in revision, it is not open to the petitioners at this belated stage to submit, that the Collector should be directed to consider the case of the petitioners for grant of permission under Section 67 of the Code, without ever having applied for permission.

11. Regarding the second submission advanced by the learned counsel for the petitioners, to the effect that no opportunity of hearing has been granted to them by the Collector, the same is stated to be rejected. The impugned order of the State Government meticulously enumerates the various dates on which adjournment was sought by the petitioners. It is mentioned therein that notice regarding initiation of proceedings for breach of condition by the occupants of land was issued on 20.12.1995. The petitioners appeared on 02.01.1996 before the Collector and requested for time. Thereafter, on 25.01.1996, 16.02.1996, 30.07.1996, 10.09.1996, 23.04.1996 and 13.05.1997, the petitioners themselves, and their advocate, have prayed for adjournment. In the above circumstances, it is clear that the petitioners have been given ample opportunity to plead their case, and the submission to the contrary by the learned counsel for the petitioners is not supported

by the record. Nor is it borne out from the record, as contended on behalf of the petitioners, that their learned advocate did not represent their case.

12. It has been repeatedly submitted by the learned counsel for the petitioners that the petitioners are ready and willing to pay the full amount of premium at the prevailing rate, as of today, therefore, this Court should direct the concerned authorities to accept the same. This submission cannot be accepted in view of the reasons stated hereinabove. It was open to the petitioners to have made an application as provided by law, to the Competent Authority, at the relevant period of time, which has not been done, therefore, directions such as those sought by the petitioners cannot be issued by this Court. The impugned order does not suffer from any illegality or infirmity, so as to warrant interference."

6.1 The Collector passed order on 22.12.1997 and ordered the land to be confiscated in the Government. The Secretary (Appeals) confirmed the order passed by the Collector. In view of the concurrent findings by the authorities below and the learned Single Judge, this Court has limited jurisdiction. We do not find any infirmity in the orders assailed by the appellants. The contention with regard to Article 300A was not pressed into service before the learned Single Judge during the course of argument as it appears from the order passed by the learned Single Judge and therefore the same is being raised for the first time in this appeal and was not argued before the learned Single Judge. Even though the said contention has been included in the appeal memo by way of amendment, since the same was not argued before the learned Single Judge during the course of final hearing, we have thought it fit not to consider the said contention as the same has been raised at a belated stage.

6.2 It is required to be noted that if the State Government is to give concession for regularization of the subject matter of land, then in that case, the State Government authorities are required to follow the procedure and provision of the Government Resolution dated 08.01.1980 passed by the Revenue Department, State of Gujarat. As per Clause 6(3) of the said resolution, in a case where the land has been vested because of breach of condition, then for the regularization of that land, the appellant is required to pay 2.5 times of the market value. It was open to the appellants to make an application as provided by law, to the Competent Authority, at the relevant period of time, which was not done as the appellants want to have the land at a throwaway price.

6.3 Moreover, the land in question was granted to the original allottee for personal cultivation and the same was made subject to certain terms and conditions. Before subjecting the said land for non agricultural use, prior permission of the State Government was required to be taken which is not done. The appellants have committed breach by trying to convert agricultural land into non agricultural one without seeking permission and the same has been established by the documents produced on record by the respondent Government.

7. The learned Single Judge has reproduced Sections 65, 65A, 66 & 67 of the Bombay Land Revenue Code and going by the said provisions, it is clear that the appellant has not made any application under Section 65 of the Code and therefore the said sections cannot be pressed into service. The learned Single Judge has vividly taken into consideration all these

aspects and passed the impugned order which does not suffer from any infirmity. We are in complete agreement with the reasonings adopted by the authorities below as well as the learned Single Judge and do not see any reason for interference.

8. In the premises aforesaid, appeal is dismissed. The orders impugned in the present appeal are hereby confirmed. We hope that the possession shall be taken by the respondent authorities in accordance with law.

9. At this stage, Mr. Patel, learned advocate for the appellants has requested to continue the interim relief which was operating till date for some further time. In our view, such a request cannot be accepted looking to the fact that litigation is pending since 1997 and the appellants have been using the land in question without paying any premium. Therefore, this Court is not in consonance with continuing the illegality which was being committed by the appellants and hence the request is not accepted.

(K.S.JHAVERI, J.)

(A.G.URAIZEE, J)

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