

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 3317 of 2021**

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TARAMATI HASMUKHRAI UPADHYAY

Versus

STATE OF GUJARAT

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Appearance:

MR. BHARGAV K MEHTA(7094) for the Petitioner(s) No. 1

MS JYOTI BHATT AGP (99) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE A.G.URAIZEE

Date : 26/02/2021

ORAL ORDER

1. The petitioner has preferred the present petition under Article 226 of the Constitution of India for the following substantive relief:

“B. That this Hon'ble Court may be pleased to issue writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction to quash and set aside the order dated 5.12.2020 through Kramank: JMN/102020/V.M. (129)662R-1 passed by the respondent No.2, The Road and Building Department, Gnadhinagar at Annexure-A and direct the respondent authorities to reconsider the application dated 03.11.2020 for disposal/transfer Plot No.462/1 Sector-8, District-Gandhinagar, admeasuring 135 Square Meter of the petitioner on merits in the interest of justice.

2. I have heard the learned advocate for the petitioner and the learned AGP for the respondents.

3. The learned advocate for the petitioner has drawn attention of this court to various orders passed by this court in the similar petitions wherein the authorities are directed to reconsider the application for permission to transfer the land. He, therefore, urges that the similar order may be passed in this petition.

4. Ms.Jyoti Bhatt, learned AGP has opposed this petition. She submits that Special Civil Application No.13550 of 2000 is summoned by the Supreme Court and accordingly, it has been transferred to the Supreme Court. She, therefore, submits that this court now cannot entertain this petition for grant of permission to sell the subject plot along with superstructure. She also invited the attention of this court to the order dated 28.12.2017 passed in Civil Application No.16552 of 2017, to submit that in identical fact situation the Division Bench of this court has declined to interfere and grant permission. She submits that a coordinate Bench of this court has dismissed Special Civil Application No.12476 of 2020 against which Letter Patent Appeal No.896 of 2020 is preferred. She submits that LPA is pending with liberty in favour of the appellant to move an appropriate application for disposal of the appeal after the Supreme Court decides the pending matters. She has also relied upon the orders of coordinate Benches whereunder the prayer for direction to the authorities to reconsider the application for sell is declined. She also submits that the orders of the coordinate Benches whereunder the direction is issued to the authorities to consider/reconsider the application for permission to sell cannot be considered as precedence as they are only orders.

5. So far as the order of Division Bench dated 18.9.2017 passed in Civil Application No.12209 of 2017 in Special Civil Application No.13550 of 2000 is concerned, the learned advocate for the petitioner submits that the Division Bench has dismissed the application as it was

preferred in special civil application which had already stood transferred to the Supreme Court. It is his submission that the petitioner has preferred a present independent petition for direction to the authorities to reconsider the application for sell of the plot with superstructure. It is his further submission that pursuant to the orders passed in similar set of facts, the authorities have considered the application and have passed the order granting permission to sell. He, therefore, reiterates that this court may direct the authorities to reconsider the application of the petitioner.

6. I have considered the rival submissions.

7. It is eminently clear that the petitioner is not seeking permission of this court to sell the plot along with the superstructure. The only prayer which is made in this petition is for direction to the authorities to reconsider the application of the petitioner for permission to sell the subject property as per the prevailing policy of the Government.

8. A coordinate Bench of this court by order dated 4.2.2020 passed in Special Civil Application No.20758 of 2019 has after considering the similar submissions of the learned AGP has observed in paragraph 8 as under:

“8. The Court having considered the decision of the Co-ordinate Bench in cases mentioned in preceding paras and facts therein and after considering all the contentions in a bunch of such petitions, orders are passed to reconsider the applications. The submission of learned Assistant Government Pleader regarding the authority no having power to grant permission but the High Court itself has to grant permission in view of the order of Hon'ble Apex Court cannot be accepted as in the order of the Hon'ble Apex Court, the words used are “would be granted without the leave of the High

Courts”. Therefore, the application has to be considered by the authority with the leave of this Court.”

9. In view of the above, I am of the opinion that it would be apposite to issue the following directions:-

10. The concerned respondent authority is hereby directed to reconsider the application of the petitioner for permission to sell and transfer the subject property in accordance with law and prevailing policy as expeditiously as possible after giving an opportunity of hearing to the petitioner.

11. With the aforesaid direction, the present petition stands disposed of.

(A.G.URAIZEE, J)

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