

(2016) 07 GUJ CK 0021

GUJARAT HIGH COURT

Case No: Special Civil Application No. 2256 of 1999.

Rameshbhai Bhupatsinh Parmar
- Petitioner @HASH District
Collector Rajkot and 1 Another

APPELLANT

Vs

RESPONDENT

Date of Decision: July 12, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226, Article 227

Citation: (2017) 170 AIC 593 : (2016) 4 GLR 3011

Hon'ble Judges: Ms. Bela M. Trivedi, J.

Bench: Single Bench

Advocate: Mr. Viral K. Shah, Advocate, for the Petitioners No. 1; Mr. Venugopal Patel, AGP, for the Respondents No. 1-2

Final Decision: Dismissed

Judgement

Ms. Bela M. Trivedi, J. (Oral)—This petition is directed against the order dated 13.2.1995 passed by the respondent No. 1 Collector, Rajkot, whereby the respondent No. 1 has set aside the order dated 14.3.1990 and the order dated 23.3.1990 passed by the Deputy Collector, granting non-agricultural use permission in respect of the subject land.

2. As per the case of the petitioner, one Dharamshi Nanji Shiyani was the owner of the land bearing Survey No. 338, which was given Final Plot Nos. 208, 209 and 210. The said Dharamshi Nanji Shiyani had filled in the Form-A under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the ULC Act"). The said Form having been processed, the competent authority under the ULC Act, vide the order dated 8.11.1989 had declared the land admeasuring 801 sq. mtr., from Final Plot No. 208 as surplus vacant land. The said Dharamshi Nanji Shiyani having applied for N.A. Permission, the same was granted by the Deputy Collector vide the

order dated 14.3.1990 (Annexure-D), which order was modified by the order dated 23.3.1990 (Annexure E). It is further case of the petitioner that the said erstwhile owner Dharamshi Nanji Shiyani had divided the said Final Plot No. 208 into 21 sub-plots and the said sub-plots were also sold out with the permission of the competent authority as per the order dated 26.4.1990 (Annexure-B). The petitioner had purchased one of the said sub-plots i.e. sub-plot No. 21, which was forming part of the Final Plot No. 208, from the said Dharamshi Nanji Shiyani by executing a sale deed on 26.6.1990. It appears that thereafter the Collector, vide the order dated 13.2.1995 cancelled the N.A. Permission granted by the Deputy Collector, vide the order dated 14.3.1990 as amended vide the order 23.3.1990. According to the petitioner, the Collector had not issued any notice to him before passing the impugned order, and he came to know about the said order only when the petitioner approached the office of the respondent No. 2, City Survey Superintendent in the year 1999 to inquire as to why his name was not entered in the property card. At that time, he came to know that the Collector in exercise of the powers conferred under Section 211 of the Civil Procedure Code (hereinafter referred to as "the Code") had passed the impugned order. He, therefore, filed the present petition.

3. The petition is resisted by the respondents by filing reply contending, inter alia, that the original owner Dharamshi Nanji Shiyani had obtained N.A. Permission suppressing the material fact that the land admeasuring 801 sq. mtr., out of Final Plot No. 208 was declared surplus vacant land. It is further contended that the said original owner Dharamshi Nanji Shiyani having not challenged the impugned order passed by the Collector, the petitioner could not file the present petition.

4. It is sought to be submitted by the learned Counsel Mr. Viral Shah for the petitioner that the impugned order passed by the respondent No. 1 Collector was in violation of the principles of natural justice, inasmuch as the petitioner was not given any opportunity of hearing. He also submitted that the respondent Collector had revised the order of Deputy Collector after a long delay of four years, which is not permissible. He further submitted that the petitioner being bona fide purchaser of the plot, for value without notice, he should not be made to suffer for the wrong committed by the original owner.

5. The learned AGP Mr. Venugopal Patel, supporting the impugned order passed by the Collector, submitted that the petitioner having filed the petition about four years after the impugned order was passed, the same deserves to be dismissed on the ground of delay only. He also submitted that the original owner or the other plot-holders having not challenged the impugned order, the present petition at the instance of the petitioner was not maintainable.

6. At the outset, it is required to be noted that the petition has been filed by the petitioner, challenging the order passed by the respondent No. 1 Collector, whereby the N.A. Permission granted by the Deputy Collector in respect of the entire Final

Plot No. 208 has been cancelled. Apart from the fact that the said plot was subdivided into 21 plots and the petitioner had purchased one of the sub-plots i.e. sub-plot No. 21, neither the original owner nor the other plot-holders have come forward to challenge the impugned order. The petitioner has not even joined the original owner Dharamshi Nanji Shiyani as party respondent in the original petition. There is no explanation coming forth from the petitioner as to why he had not made any inquiry since the purchase of the sub-plot No. 21 in 1990 till the filing of the petition in 1999 as to why his name was not entered into property card in the office of the City survey Superintendent. The petitioner is also conveniently silent as to why he did not approach the original owner from whom he had purchased the sub-plot No. 21 and whose N.A. permission for the entire Final Plot No. 208 was set aside by the Collector vide the impugned order.

7. From the impugned order passed by the Collector, it appears that the original owner had suppressed the material fact, while obtaining the N.A. Permission from the Deputy Collector and while getting the lay-out plans sanctioned that part of the land bearing Final Plot No. 208 for which N.A. Permission was being asked for, had already vested in the Government in the proceedings under ULC Act. It is needless to say that fraud vitiates all proceedings, and the orders obtained by suppressing material facts or committing fraud could be set aside by the higher authority, when it comes to know about the same. The Collector, therefore, has rightly set aside the order passed by the Deputy Collector granting N.A. Permission, on having come to know that the mischief was played by the original owner while obtaining the N.A. Permission from the Deputy Collector. The Court, therefore, does not find any illegality in the impugned order passed by the Collector. It is also not clear as to whether the said sub-plot No. 21 purchased by the petitioner was falling within the area, which was declared as surplus vacant land out of Final Plot No. 208. Hence, the impugned order having been challenged at the instance of the petitioner, who was only one of the sub-plot holders, out of the 21 sub-plots divided from Final Plot No. 208 and not by the owner and other sub-plot holders, could not be entertained, more particularly when there is no clarity as to whether the said sub-plot was falling within the area declared as surplus vacant land by the competent authority in the ULC proceedings. The petition containing vague or inaccurate statements cannot be entertained and deserves to be dismissed. However, it would be open for the petitioner to approach the appropriate authority to get clarification in respect of his sub-plot and get his title cleared, as may be permissible in law.

8. Subject to the aforesaid observations, the petition stands dismissed. Rule is discharged. Interim relief, if any, stands vacated.