

(1993) 06 GUJ CK 0012
In the Gujarat High Court

Dinkerrai Kantilal Trivedi

APPELLANT

Vs

G.P. Mehta

RESPONDENT

Date of Decision : 07-06-1993

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 26(1), 26(2)

Citation : (1994) 1 GLR 402

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—Both these petitions arise from refusal to register the sale deeds. The refusal is on the ground that the petitioners, while giving notice to the Government u/s 26(1) of the Urban Land (Ceiling & Regulation) Act, 1976, had indicated different names of the intending purchasers. Thereafter the competent authority decided not to exercise the first option to purchase the land on behalf of the" State Government.

2. In the first petition, the intimation u/s 26(1) was in the name of Mistry Bhimji Anand and Hansraj Anand whereas in the sale deed, name of a third person, namely, Anand Jiva in addition to other two persons was also mentioned as the purchaser. In the second petition, intimation u/s 26(1) mentioned the name of intending purchaser as Samatbhai Nanjibhai whereas in the sale deed, the name of the purchaser was Ambalal Vajeshanker Joshi. As far as the property and the consideration are concerned, there is no change.

3. When these documents were presented for registration, the registering authority had refused to register the same only on the ground that in the notice u/s 26(1), the names of the intending purchasers were different than the names mentioned in the sale deeds.

3.1. Section 26(1) provides that no person holding vacant land within the ceiling limit shall transfer such land except after giving notice in writing of the intended transfer to the competent authority. Section 26(2) provides that where such

notice is given, the competent authority shall have the first option to purchase such land on behalf of the State Government and if such option is not exercised within a period of 60 days from the date of the notice, it shall be presumed that the competent authority has no intention to purchase such land on behalf of the State Government and it shall be lawful for such a person to transfer the land to whomsoever he may like. The competent authority took a conscious and express decision not to exercise the option and purchase the land on behalf of the State Government. It is, thus, clear that the petitioners are entitled to transfer such land to whomsoever they may like and registration of such document cannot be refused on the ground that it is in favour of a person different from the one mentioned in the notice u/s 26(1). It is not the case that there are any material changes in the amount of consideration or in respect of the property which may have bearing on the decision of the competent authority to exercise the first option to purchase the land on behalf of the State Government. In view of the express provision in Section 26(2) that it shall be lawful for the holder of the land to transfer the land to whomsoever he may like, the registering authority was clearly in an error in refusing to register the documents on the ground that the sale deeds are in favour of persons other than persons named in the notice u/s 26(1).

4. Hence, the petitions succeed and the orders of the registering authority refusing to register the documents are quashed and set aside and the registering authority is directed not to refuse registration of the documents on the ground that the sale deeds are in favour of persons different from the persons mentioned in the notice u/s 26(1). The petitioners and intending purchasers shall comply with other requirements of registration by filling in forms and declaration and on completion of these formalities the registering authority shall register the documents in accordance with law.

Rule made absolute accordingly with no order as to costs.