

(1976) 09 GUJ CK 0001
In the Gujarat High Court

Kalidas Motiram Patel

APPELLANT

Vs

Makibai Rustomji Vimadalal and Others

RESPONDENT

Date of Decision : 30-09-1976

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 7, 7(1)
Constitution of India, 1950 — Article 227

Citation : (1977) 18 GLR 910

Hon'ble Judges : M.P. Thakkar, J

Bench : Single Bench

Judgement

M.P. Thakkar, J.—The question regarding the import and true meaning of the expression "a contiguous survey number" occurring in Sub-section (1) of Section 7 of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947? (Bombay Act No. LXII of 1947) (hereafter referred to as "the Act") has surfaced in this petition by an agriculturist who purchased land comprised in a survey number which was so situated that it was adjoining to his own land except and save for the fact that a narrow approach road separated the two boundaries

2. In village Gandevi, there was an agricultural field admeasuring 12 Bighas and 4 Vasas comprised in Survey No. 259. In the year 1913, 5 Bighas and 3 Vasas of survey No. 259 were placed under acquisition for a public purpose, viz. Bilimora-Sara road. Some time later, 13 Vasas of land were placed under acquisition for a public purpose, viz. for construction of an approach road from Gandevi Kasba to Gandevi Station. The result of the latter acquisition was that the land came to be divided into two parts separated by the approach road which was constructed in pursuance to the acquisition proceedings. The portion falling towards the west of the approach road was re-numbered as Survey No. 394. The portion towards the east of the approach road retained its original survey number, viz. Survey No. 259. The petitioner was a tenant in respect of the western portion of original survey No. 259 which was subsequently re-numbered as Survey No. 394 and

under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 became a statutory owner by deemed purchase of the said land. Some 20 years later, on April 20, 1972, he purchased the eastern portion of original Survey No. 259 which portion continued to retain its old number, viz. S. No. 259. It appears that, meanwhile, the aforesaid eastern portion comprised in Survey No. 259 came to be entered as a fragment u/s 6 of the Act. In view of this circumstance, Survey No. 259 which was entered as a fragment could not have been sold to any one except to the owner of the contiguous survey number having regard to the provision embodied in Section 7 of the Act, which is in the following terms:

7. (1) No person shall transfer any fragment in respect of which a notice has been given under Sub-section (2) of Section 6 except to the owner of a contiguous survey number or recognised sub-division of a survey number:

xx xx xx xx.

3. On October 1, 1973, the Deputy Collector of Navsari issued a show cause notice and called upon the petitioner to explain why the transaction of purchase made by him on April 12, 1972 in respect of Survey No. 259 should not be invalidated on the ground that it was in contravention of Section 7 of the Act. On February 28, 1974 the Deputy Collector, Navsari, passed order, Annexure "A", declaring that the transaction under which the petitioner had purchased the land was in contravention of Section 7 of the Act and declared u/s 9 of the Act that the transaction was void and levied a penalty of Rs. 100/-. He also directed that the petitioner should be evicted from the land. The petitioner approached the State of Gujarat by way of a revisional application which was numbered as SS. RD. CON. 51/74. The revisional application was heard by the Deputy Secretary of the Revenue Department who, by his impugned order, annexure "B" dated February 6, 1975 confirmed the view taken by the Deputy Collector and rejected the revision. Thereupon the petitioner has invoked the powers of this Court under Article 227 of the Constitution of India and has challenged the legality and validity of the impugned order (Annexure "A") passed by the Deputy Collector as confirmed by Annexure "B" passed by the State Government.

4. Now, the preamble of the Act shows that the Act has been enacted in order to prevent fragmentation of agricultural holdings and as it was considered expedient to provide for the consolidation of agricultural holdings for the purpose of the better cultivation thereof. The intent and the purpose of the legislation is thus clear. If there are small fragments owned by individual land-owners or cultivators, the small parcels cannot be economically and efficiently cultivated. It was in order to prevent fragments and further in order to encourage consolidation of agricultural holdings that Section 7 appears to have been enacted so that, in case a fragment is to be sold, it must be sold to the owner of an adjoining property which is contiguous to the fragment. The obvious purpose is that when the owner of agricultural land purchases an adjoining small fragment, he would be able to cultivate it more economically and efficiently. If, however, the fragment was permitted to be purchased by one who did not own a

contiguous or adjoining land, the fragment could not be economically or efficiently cultivated. The Act has two ends: first, to discourage fragments, and, second, that if there are fragments, they come into the ownership of the person who owns contiguous lands so that the fragments are consolidated and they can be more efficiently and economically cultivated. It is from this stand-point that the expression "contiguous" employed by the Legislature in Section 7 has to be interpreted in the context of the fact situation where an owner of a land purchases the immediately adjoining land just across the approach road. If the owner of such a land is not permitted to purchase the fragment, the fragment will continue to be owned by some one who cannot economically cultivate it.

5. The evident purpose of the Act, and particularly of Section 7, is that the "fragment" must pass into the hands of the owner of an adjoining land who can economically and efficiently cultivate it, because, in any case, he would be cultivating his own land and he would be able to devote personal attention to the cultivation of the fragment by virtue of its immediate proximity. From this stand-point, the mere fact that an approach road separates the fragment from the land owned by the purchaser cannot come in the way of a transaction of this nature in the facts and circumstances of the case. Section 7, when interpreted in the context of such a situation, is capable of being interpreted in such a manner that "contiguous" means just across the narrow road, particularly when there is no other land which immediately adjoins or touches the land in question. Under the circumstances, the transaction cannot be voided as being violative of Section 7 of the Act.

6. The petition, therefore, succeeds. The impugned order, Annexure "A", as confirmed by Annexure "8" is quashed and set aside. Rule is made absolute. There will be no order regarding costs.