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**(1989) 03 GUJ CK 0005**  
**In the Gujarat High Court**

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| Mulubha Bachubha Rathod     | Vs | APPELLANT  |
| State of Gujarat and Others |    | RESPONDENT |

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**Date of Decision :** 15-03-1989

**Acts Referred:**

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —  
Section 2(2), 35, 35  
Constitution of India, 1950 — Article 226

**Citation :** (1989) 2 GLR 1025

**Hon'ble Judges :** M.B. Shah, J

**Bench :** Single Bench

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## Judgement

M.B. Shah, J.—Being aggrieved and dissatisfied by the judgment and order dated 11th January, 1988 passed by the Deputy Secretary, Revenue Department (Appeal), Gujarat State, in revision u/s 35 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, hereinafter referred to as the "Fragmentation Act", the petitioner-Purchaser of the land has filed this Special Civil Application under Article 226 of the Constitution of India.

2. The short question which is required to be considered in this petition is whether the transfer of land admeasuring 1 acre 25 gunthas out of Block No. 189 of village Kudasan, Taluka/District Gandhinagar is illegal and void under the provisions of the Fragmentation Act.

3. Respondent No. 3 - Natverbhal Atmaram was the owner of Block No. 189 admeasuring Hectare 1, Are 31, Sq. Mt. 99 of land of village Kudasan, Taluka/District Gandhinagar. By a registered sale-deed dated 9th June, 1981 half of the land was transferred to the petitioner-Mulubha B. Rathod for a consideration of Rs. 48,000/-. As the transfer was against the provisions of the Fragmentation Act, notice u/s 9 of the Act was issued by the Deputy Collector, Gandhinagar, on 5-6-1984.

4. After hearing the parties in Fragmentation Case No. 162 of 1982 the Prant Officer, Gandhinagar, by his judgment and order dated 27th May, 1985 declared

that the transfer of one-half of the land of Block No. 189 in favour of the petitioner was void as it divided the block into two parts without prior permission from the Collector and, therefore, there was breach of Section 31 (1Kb) of the Fragmentation Act. He declared the sale to be illegal and void and passed an order u/s 9(2) levying fine of Rs. 100/- on the transferor and directed that the transferee should be evicted from the land.

5. Against that judgment and order, the petitioner preferred Revision Application No. SRD/Com./93/85 before the Special Secretary, Revenue Department u/s 35 of the Fragmentation Act. Before the Special Secretary the only contention which was raised was that the provisions of Section 31(1)(b) of the Act were not applicable in the present case because the land was purchased by the Co-operative Housing Society. After considering the relevant resolution that contention was rejected by the Special Secretary. He, therefore, dismissed the revision application.

6. At the time of hearing of this petition learned Advocate for the petitioner vehemently submitted that the provisions of Section 31 were not applicable in the present case because Block No. 189 was not allotted to respondent No. 3 i.e., the original owner under the provisions of the fragmentation Act. He relied upon the judgment of this Court in the case of Ramjibhai Barjulbhai Vs. Bhaglabhai Jeshlabhai and Others, and also the decision of the Bombay High Court in the case of Putalabai Lakhu Pawar and Others Vs. Shiva Dhondi Pawar and Others, .

7. In my view, there is no substance in this contention. Section 31 provides that notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act, nor any part thereof, shall be transferred, whether by way of sale (including sale in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue) or by way of gift, exchange, or lease, or otherwise, except in accordance with such conditions as may be prescribed. Therefore, the question would be, what is the meaning of the phrase "holding allotted under this Act". For gathering the meaning of the phrase "holding allotted under this Act", it would be necessary to refer to various sections and the Rules. Section 2(2) provides that "consolidation of holdings" means the amalgamation and where necessary the re-distribution of holdings or portions of holdings in any village, mahal or taluka or any part thereof so as to reduce the number of plots in holdings.

8. Section 15A(1) provides for preparation of scheme and principles to be followed in its preparation. Sub-section (2) provides that while preparing the scheme the Consolidation Officer shall have regard to the procedure which the State Government may from time to time prescribe in regard to the number of blocks in which the village lands are to be grouped, the manner of allotting new plots to each owner, the recommendations of the village committee and such other matters as may be prescribed. Therefore, u/s 15A of the Fragmentation Act all the lands in the village to which consolidation scheme is made applicable are

required to be grouped together, are to be divided into different blocks and the manner of allotting new plots to each owner is to be determined after taking into consideration the recommendation of the village committee. Rule 9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Rules, 1959 provides what the scheme prepared for consolidation of holdings u/s 15A(1) of the Act shall contain. Clause (i) of Rule 9 provides for a map of the village showing all the existing survey numbers and their subdivisions and recognised roads, cart-track; and foot-paths and areas assigned for public purposes such as burial or cremation grounds, gracing areas or threshing floor. Clause (ii) provides for another map as to That extent the aforesaid areas will be altered after the consolidation scheme becomes operative. Clause (iv) provides for a state-ment showing the name of the owners to whom the nonconsolidated holdings are allotted with particulars including Survey No., Hissa No. Rule 10 provides That in preparing a scheme for consolidation of holdings u/s 15A. the Consolidation Officer shall divide the lands of a village in such, number of blocks as he may deem appropriate after taking into consideration the crops grown in the said village, the quality of the soil, irrigational facility and proximity to village site or other residential area in the village or hamlet of it Rule 11 provides for the manner of allotment of new plots to owners. It prescribes that the Consolidation Officer shall allot new plots to each owner in the manner prescribed therein. Rule 11 is as under:

11. The Consolidation Officer shall allot new plots to each owner in the following manner, namely:

(a) The owners who mutually agree to exchange their lands with a view to consolidating their holdings may be allotted the lands agreed to be exchanged provided such agreement is given to the Consilidation Officer, in consultation with the Village Committee is satisfied that no coercion of any kind has been brought on the owners concerned to secure such agreement;

(b) Every owner shall as far as may be feasible be allotted land in the blocks where he:

(i) holds the largest and principal part of his holdings; or

(ii) has his residential house; or

(iii) holds land in which he has made improvement of a permanent nature.

(c) In allotting new plot of land to any owner in lieu of a plot of land taken away from him, the Consolidation Offcer shall, as far as may be feasible, allot land of a similar kind as the one which is taken away from him.

From this Rule it is apparent that each owner of the Survey number in the village is to be allotted new plots as prescribed in the said Rule. Sub-rule (c) in terms provides that the Consolidation Officer shall, as far as may be feasible, allot land of a similar kind as the one which is taken away from the owner. Therefore, if some land is allotted to the owner, that would also mean "holding allotted under

this Act". Once the consolidation scheme comes into operation, the land is required to be re-allotted as per the scheme. Allotment of the land may be of the same plot, yet it would be allotment under the Act. Section 16 provides that the scheme prepared by the Consolidation Officer shall provide for the payment of compensation to any owner who is allotted a holding of less market value than that of his original holding and for the recovery of compensation from any owner who is allotted a holding of greater market value than that of his original holding. Section 19 provides for publication of a draft scheme. After consideration of the draft scheme u/s 20 the Settlement Commissioner is required to confirm the scheme. Section 21 provides that upon the confirmation of the scheme under Sub-sections (1), (3) or (4) of Section 20, a notification stating that the scheme has been confirmed is required to be published. It further provides that if two-thirds or more of the owners affected by such scheme agree to enter into possession of the holdings allotted to them thereunder, the Consolidation Officer may allow all the owners to enter into such possession forthwith or from such date as may be specified by him. Sub-section (2) provides that if two-thirds or more of such owners do not agree to enter into possession under Sub-section (1), all the owners shall be entitled to possession of the holdings allotted to them under the scheme from the commencement of the agricultural year next following the date of publication of the notification in the Official Gazette under Sub-section (1). Section 22 provides that as soon as the persons entitled to possession of holdings under the Act have entered into possession of the holdings respectively allotted to them, the scheme shall be deemed to have come into force. Section 24(1) provides for grant of certificate by the Consolidation Officer to every owner to whom a holding has been allotted in pursuance of a scheme of consolidation. Therefore, looking to the aforesaid provisions it is abundantly clear that as soon as consolidation of the holdings under the Act is effected and the land is re-distributed as per the provisions of the Act, then it would mean that the "holding is allotted under the Act". Allotment of the holding may be of the same land on same area; may be of different land and different area; in some cases same land but less area; in some cases it may be same land plus additional area. Therefore the phrase "holding allotted under the Act" would mean any land allotted under the consolidation scheme. Hence once the consolidation scheme is prepared and subsequently the blocks are allotted to the holders, it would mean that the land is allotted under the Act. In this view of the matter, there is no substance in the aforesaid contention.

9. Further, reliance placed upon the judgment of this Court in *Ramjibhai's* case (*supra*) is of no assistance to the petitioner because in that case the Court considered the provision of Section 7 of the Act which prohibits the transfer of any fragment in respect of which notice has been given under Sub-section (2) of Section 6 except to the owner of contiguous survey number or recognised subdivision of a survey number. The Court arrived at the conclusion that the transfer of fragment was in favour of owner of a contiguous survey number and would, therefore, not be hit by Section 7 of the Act. The Court further held that by

transfer of interest by the co-sharer in the land no fragment was created, on the contrary the move was in the direction of consolidation. The Court further observed that it was not a case of violation of Section 31 because it was not shown that the holding was allotted to the owner and his brothers under the provisions of the Act. Therefore, in that case there was no evidence that consolidation scheme was implemented in that village. This would be clear from the fact that the Court considered that the land bearing Survey No. 303/2 admeasuring 18 gunthas was involved in that case meaning thereby no block number was given to that survey number. The same is the position in Putalabai's case (supra) decided by the Bombay High Court.

Hence there is no substance in this petition and it is, therefore, Notice discharged. Ad interim relief stands vacated. However, at the request of the learned Advocate for the petitioner ad interim relief to continue for a period of two months from today.