(1984) 07 GUJ CK 0010

In the Gujarat High Court

Nileshkumar Hargovindbhai APPELLANT

Vs

A.K. Pradhan and Others RESPONDENT

Date of Decision : 27-07-1984

Acts Referred:

Citation : (1985) 2 GLR 865

Hon'ble Judges : A.S. Qureshi, J

Bench : Single Bench

Judgement

A.S. Qureshi, J.—The petitioner herein challenges the order dated 20-1-1978 passed by the Secretary, Revenue Department, Government of Gujarat rejecting the revision application of the petitioner and confirming the order dated 21st May, 1977 passed by the Collector, Surendranagar whereby the sale in favour of the petitioner was set aside on the ground that the petitioner was not an agriculturist and the land in question being an agricultural land could not have been sold or transferred to him.

2. Mr. D. D. Vyas, the Learned Counsel for the petitioner has urged that the land in question is situated in Wadhwan city and that the permission was granted to its original owner one Bhikha Ranmal on 7th December, 1961 for non-agricultural use. A lay out plan was sanctioned on 4th November, 1966. Bhikha Ranmal sold the land in question to the present petitioner on 13th December, 1956. The Collector, Surendranagar issued a notice dated 30th October, 1976 and called upon the present petitioner to show cause why the sale in his favour by the original owner Bhikhabhai Ranmal be not set aside under the provisions of law. After the hearing of the parties, the Collector, Surendranagar passed the impugned order dated 21st May,]977 whereby he set aside the sale in favour of the petitioner on the ground that the land in question should be treated as agricultural land because the same was not put to the non-agricultural use as per the terms and conditions of granting permission for non-agricultural use. Mr. Vyas submits that the impugned order of the Collector is illegal inasmuch as it proceeds on the assumption that the permission for non-agricultural use is to be

treated as automatically cancelled on account of the alleged violation of the term in the grant of permission. Mr. Vyas submits that there is no legal basis for the assumption that there is an automatic cancellation of the grant and, therefore, according to him, the Collector was not justified in reating the land as agricultural land and cancelling the sale in favour of the petitioner on the ground that the land being agricultural land it could not be transferred to the present petitioner who is not an agriculturist.

3. Miss K. N. Valikarimwala, the learned Assistant Government Pleader admits that the permission for non-agricultural use of the said land was granted, but she urges that the permission was granted on condition that the land would be put to non-agricultural use and according to her, the contravention of this term would automatically result in the cancellation of the permission for non-agricultural use. This submission of Miss Valikarimwala cannot be accepted as there is no legal basis for holding that there is automatic cancellation of the permission for non-agricultural use because the same has not been built upon within the stipulated time. Mr. Vyas has pointed out that the lay out plan was already submitted by the previous owner and thus according to him the non-agricultural use has already commenced but the previous owner having sold the land, it is now for the purchaser, the present petitioner, to carry out the construction. Mr. Vyas also relies on the fact that non-agricultural assessment has been paid in respect of the said land and it being paid till now. according to him, there is absolutely no justification for the Collector to treat the land in question as agricultural land and to set aside the sale on the ground that the land in question should be treated as agricultural land and the same cannot legally be transferred to the petitioner who is not an agriculturist. This submission of Mr. Vyas is correct and the same must be accepted. No provision of Law is pointed out to support the theory of automatic cancellation of the permission to use the land in question for non-agricultural use. Moreover the sanctioning of lay out by the Panchayat for construction of houses should be regarded as the commencement of non-agricultural use of the land in question.

4. Hence, the Collector was not justified in passing the order setting aside the sale of the suit land on the ground that it was agricultural land and hence it could not be sold and transferred to a non-agriculturist. Again, the acceptance of non-agricultural assessment by the Revenue Authorities amounts to an implied acceptance that the land in question is put to non-agricultural use and hence, the revenue authorities are estopped from saying that the land in question should be treated as agricultural land.

5. In the result, the petition succeeds. The impugned order of the Special Secretary is quashed and set aside. The impugned order of the Collector, setting aside the sale is also quashed and set aside. Rule made absolute. In the circumstances of the case, there shall be no order as to costs.