

(2006) 06 GUJ CK 0017

In the Gujarat High Court

Case No : Special Civil Application No. 10026 of 2006

Rubamin Limited

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 19-06-2006

Acts Referred:

Citation : (2006) 06 GUJ CK 0017

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : AJ Patel, for Petitioners 1, for the Appellant; MR Mengdey, AGP for Respondent(s) 1 and UM Shastri, for Respondent(s) 2, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Mengdey, learned AGP waives notice of Rule for respondent Nos. 1 & 3 and Mr. Shastri, waives notice of rule for respondent No. 2.

2. With consent of learned Counsel appearing for the parties, the matter is finally heard today.

3. The short facts of the case are that the petitioner has purchased the property which includes land bearing Survey No. 153 of village Pratappura. It appears that the land prior to the purchase by the petitioner was held by the agriculturist viz. Chimanbhai Becharbhai, who applied for NA Permission, which came to be granted on 07.04.1982. After the permission for NA, on 12.04.1982, one Mr. Sunil Thakorlal Sheth and others purchased the land in question and thereafter, the second sale was effected to one Kalyanji Morarji on 20.02.1984 and the mutation entries were also certified. Thereafter, it appears that the State Government had passed the order on 24.08.1988 for cancellation of NA Permission on the ground that the land was new tenure and the same was converted into NA without payment of premium. It appears that the matter was carried before this Court by preferring Special Civil Application No. 8601 of 1989 and as per the Judgment dated 23.12.2004, this Court quashed the order for

cancellation of NA on the ground that the revisional powers were exercised after the period of about 4 1/2 years by the State Government.

4. It appears that the petitioner applied for No Objection Certificate to the District Magistrate, Panchmahal as required under the Petroleum Rules for its business purposes and the District Magistrate issued the No Objection Certificate but on the condition that the petitioner shall pay the pending premium for conversion of the land bearing Block No. 113 & 114 of village Pratappura in accordance with the provisions of the Land Revenue Code and Rules and as per the guidelines of the State Government within a period of six months, otherwise, NOC will automatically stand cancelled. It is under these circumstances, the petitioner has approached to this Court by preferring the present petition.

5. It may be recorded that on 05.05.2006, when this Court (Coram : M.R. Shah, J.) considered the matter for the first time, the following order was passed:

Under the circumstance, ad interim relief in terms of para 15(B) on condition that the petitioner should deposit an amount of Rs. 7.50 lacs without prejudice to the rights and contentions of the parties i.e. petitioner as well as the respondents and the Collector, Panchmahals is directed to accept the same without prejudice to their rights and contentions. Petitioner should deposit the said amount on or before 9th June, 2006.

2. Mr. Patel, learned Counsel appearing for the petitioner declared before the Court that accordingly, the petitioner has deposited the amount of Rs. 7.50 Lacs vide cheque dated 05.06.2005. Mr. Patel, learned Counsel appearing for the petitioner further declared before the Court that the petitioner is agreeable to pay the premium as on the date when first transaction of sale took place and the reasonable interest @ 12% P.A. from that date till the actual payment. He submitted that though the petitioner is a bonafide purchaser who acted upon the NA Permission order and the sale thereafter, with a view to avoid the clog on the title of the petitioner, the petitioner is agreeable to pay the aforesaid amount.

3. As such, it appears from the record that after the NA order in the year 1982, the land is continued for non agricultural purpose and the cancellation of NA Permission which was ordered by the State Government is also quashed by this Court vide Judgment dated 23.12.2004 in Special Civil Application No. 8601 of 1989. As a consequence thereof, the land is continued to be used as NA for industrial purpose. It may be recorded that in the said matter, since the revisional powers were exercised by the State Government after a period of about 4 1/2 years, this Court having found that the power is exercised beyond reasonable period, decision of the authority was quashed and at the relevant point of time, the question as to whether the status of the land was new tenure or old tenure was not examined.

4. It may also be recorded that if the aspect is examined strictly on the question of delay, then it might operate against the Government, inasmuch as, after the purchase of the property by the petitioner in the year 1984, the objection for the

status of the land as new tenure land is raised. At the same time, if the land which as per the Government was new tenure land and is transferred without proper permission of the authority, the transactions may not only be rendered illegal but, it may result into loss to the public revenue on the aspects of payment of premium to the Government because even if the Government was to grant permission, for the same, necessary premium is required to be paid to Government as per the policy prevailing at the relevant point of time. Since the transaction of sale for the first time was entered on 12.04.1982 and the period of about more than 20 years has passed by now and the land is being used for non agricultural purpose with a view to see that the public revenue may not suffer, appropriate direction deserves to be issued, more particularly, in view of the bonafide declaration made on behalf of the petitioner to pay up the premium as may be assessed with the reasonable rate of interest. In my view, such would be rather for balancing the situation and to put an end to the litigation. I find that no further discussion would be required in this regard when the petitioner has made declaration before this Court to pay up the premium and the reasonable rate of interest. Since such declaration is made on behalf of the petitioner and the issue can be resolved by giving suitable directions in this regard, it may not be required for this Court to conclude on the aspects of effect of sale of new tenure land without proper permission or without payment of premium and also the exercise of powers after the sale is effected and the question of limitation too, and all such questions shall remain open.

5. In view of the aforesaid and considering the facts and circumstances, I find that the following directions shall meet with the ends of justice.

1. The District Collector, Panchmahal shall either himself or through competent officer get the assessment of the value of the land if required after getting opinion from the Valuation Committee on the date when the land was sold for the first time on 12.04.1982 to Sunil Thakorlal Sheth.

2. The aforesaid exercise shall be completed within a period of five months from the receipt of the order of this Court.

3. After the value of the land is decided, the premium shall be ascertained as per prevailing policy of the Government at the relevant point of time and the amount shall be ascertained and interest @ 12% from that date, i.e. from 1982 till 2005, shall also be added and the petitioner will be intimated by the District Collector to pay the said amount within the period of 2 weeks from such intimation.

4. After the intimation is received by the petitioner, the petitioner would be entitled to the credit of the of Rs. 7.50 Lacs, which is paid pending the petition and shall pay the remaining amount, if any, within the aforesaid stipulated period to the authority.

5. If such and amount is paid by the petitioner, the direction given in Clause No. 1 of the impugned order dated 22/28-11-2005, so far as it relates to payment of requisite premium as per the Bombay Land Revenue Code for the land in

question shall stand complied with. However, upon failure, the legal consequences upon No Objection Certificate shall follow.

2. The petition is allowed in terms of the aforesaid direction only. Rule made absolute to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs. Direct service is permitted.