

(2012) 03 GUJ CK 0062

In the Gujarat High Court

Case No : Letters Patent Appeal No. 559 of 2012 in Special Civil Application No. 3520 of 2010 and Civil Application No. 2939 of 2012 in Letters Patent Appeal No. 559 of 2012

State of Gujarat and 2

APPELLANT

Vs

Alasur Hathiyabhai Charan

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211

Citation : (2012) 03 GUJ CK 0062

Hon'ble Judges : V.M. Sahai, J;A.J. Desai, J

Bench : Division Bench

Advocate : N.J. Shah, Assistant Government Pleader, for the Appellant; Mitesh L. Rangras, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice A.J. Desai

1. By way of this Appeal, the State of Gujarat has challenged the judgment and order dated 24.12.2010 passed by the learned Single Judge in Special Civil Application No. 3520 of 2010, by which the learned Single Judge the authorities are directed to fix the premium as on the date of the application which were made by the respondent-original petitioner on 24.1.1996 for non-agricultural use of the land. The learned Single Judge has further directed to adjust the amount which has already been paid by the respondent and the authorities are directed to complete the exercise as expeditiously as possible, within a period of 10 weeks from the date of receipt of the order. Brief facts emerging from the case are that pursuant to an application submitted by the appellant on 30.12.1995, the Collector, Jamnagar accepted the application of the respondent-original petitioner to convert land into non-agricultural use and amount of premium was fixed at Rs. 2,11,098/- by order dated 24.1.1996. By a detailed order dated 5.2.1996, the District Collector permitted the respondent to use the land for non-

agricultural purpose on certain conditions. It was also observed that the respondent had paid 50% of the amount which was fixed by the Collector by his order dated 24.1.1996.

2. The same Collector who has passed the order dated 5.2.1996 by which NA permission was granted, reviewed the said order and cancelled his earlier order which was passed in favour of the respondents.

3. The respondent filed Revision application before the State of Gujarat u/s 211 of the Bombay Land Revenue Code, 1879 by way of filing Revision Application No. 17 of 1996. The Secretary, by his order dated 12.3.1996 partly allowed the Review Application and quashed the order passed by the Collector on 21.6.1996 by which earlier orders were cancelled. As per the order in Revision dated 5.3.1997, the Collector was directed to decide the application of the respondent in accordance with law and considering different resolutions passed by the Revenue Department.

4. Though direction was issued by the Secretary, Revenue department, no action was taken by the authorities and particularly the Collector and therefore, the respondent approached this Court by way of filing Special Civil Application No. 8938 of 2001 and prayed for a direction to decide his case as early as possible. By way of oral order dated 5.10.2001, this Court directed to decide the case of the respondent within two weeks from the date of receipt of the representation which shall be made by the petitioner to the authorities.

5. The respondent made a representation to decide his case, but instead of deciding his case on merits, a communication dated 16.12.2009 was sent to the respondent and he was informed that since the petitioner was not ready and willing to pay the premium at the prevailing market rate, his case cannot be considered. This communication dated 16.12.2009 was challenged by the respondent by way of filing the captioned petition. After hearing the learned counsel appearing for the parties, the learned Single Judge has allowed the petition by quoting certain paragraphs of the earlier order which was passed in Special Civil Application No. 8938 of 2001 and as well as the affidavit filed in the petition and particularly para-7 of the affidavit-in-reply.

6. We have heard Mr. N.J. Shah, learned counsel appearing for the appellants and Mr. Mitesh L. Rangras, learned counsel appearing for the respondent. Mr. Shah, learned Assistant Government Pleader submitted that as per the decision dated 3.5.2011 of the Division Bench of this Court in case of Patel Kamalbhai Sharadbhai v. State of Gujarat and others in Special Civil Application No. 10548 of 2008 and allied matters, the determination of the premium would be decided on the date on which permission is granted by the Collector for non-agriculture use and not from the date of application. We are in agreement with the ratio laid down by the Division Bench, but it appears that the order of the Collector dated 21.6.1996 by which the NA permission was cancelled was quashed way back in the year 1997. The Collector was bound to decide the application, but he did not

decide the case for number of years. Even after receiving the order passed by the High Court in the year 2001, the authorities did not decide the case upto 2009 and without deciding the case of the respondent, the communication was sent to the respondent which was to the extent that the respondent had to pay premium at the prevailing market rate. We are of the opinion that instead of following direction issued by the superior authorities as well as by the High Court, the authorities have not decided the case and because of their own fault, they cannot ask the respondent to pay the premium at the prevailing market rate. Considering the overall facts, the ratio laid down in case of Patel Kamalbhai Sharadbhai would not be applicable in this case. In view of what is stated above, we do not find any infirming in the judgment of the learned Single Judge and accordingly, the Appeal is dismissed with no order as to costs. As a consequence, Civil Application is also dismissed.