

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7896 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE DR. JUSTICE A. P. THAKER

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

LALITKUMAR BHIMSEN HEMRAJANI
 Versus
 DISTRICT COLLECTOR

Appearance:

MR YN RAVANI(718) for the Petitioner(s) No. 1,2,3,4

MS DHWANI TRIPATHI, AGP for the Respondent(s) No. 1,2

CORAM: HONOURABLE DR. JUSTICE A. P. THAKER

Date : 09/06/2022

ORAL JUDGMENT

1. Being aggrieved and dissatisfied with the order dated 04.04.2018 passed by the learned Collector Banaskantha, the petitioner has preferred this petition under article 226 of the Constitution of India for the following reliefs.

“A) Your Lordships may be pleased to admit and allow this petition.

B) Your Lordships may be pleased to issue a writ of certiorari and/or any other appropriate writ, order or direction in the nature of certiorari quashing and setting aside the order dated 04.04.2018 (Annexure- A) passed by respondent No.1 herein District Collector, Banaskantha.

C) Pending admission, hearing and/or final disposal of this petition, Your Lordships may be pleased to stay the execution, operation and implementation of order dated 04.04.20118 (Annexure-A) passed by respondent No. 1 - District Collector, Banaskantha

D) Such other and further orders as Your Lordships may deem just, fit and expedient be passed in favour of the petitioners.

(E) Your Lordships may be pleased to issue a writ of certiorari and/or any other appropriate writ, order or direction in the nature of certiorari quashing and setting aside the opinion of the District Collector, Banaskantha dated 23.01.2018 (Annexure-P) of not granting the revision of plan from Marble Cottage Industries to Commercial Purpose and in turn be pleased to quash and set-aside the order of the District Panchayat, Banaskantha dated 07.02.2018 (Annexure-Q) permitting to revise the plan from Marble Cottage Industries to that of Commercial use, to

the petitioner.”

2. The brief facts giving rise to the present petition are as under.

2.1. The land bearing survey number 7/1 admeasuring 6475 square metres of Village Koteshwar, Taluka Danta, District Banaskantha was originally owned by Kikat Bhima Somabhai. In the year 2015, Shri Bhima Bhai approached Collector Banaskantha for granting permission under section 73AA of the Gujarat Land Revenue Code for selling his land to M/s. Nirmal Marble for carrying out the activities of Marble Cottage Industry, the same was granted with certain conditions.

2.2. After obtaining such permission, Bhimabhai applied for grant of permission under section 63 of the Bombay Tenancy and Agriculture Lands Act to the Deputy Collector, Danta which was granted on 19/09/2015 with certain conditions. Pursuant to the said permission, Bhimabhai sold the said land to M/s. Nirmal Marbles, through its proprietor Manish Kantilal Patel, vide registered sale deed dated 07/10/2015. Thereafter,

necessary construction permission was obtained from the Town Planning Officer, Palanpur in January, 2016.

2.3.M/s. Nirmal Marbles, through its proprietor Manish Patel, applied to the Collector Banaskantha for grant of permission to use the land for NA purposes for marble cottage industries, which was came to be granted on 26.04.2016 with certain conditions.

2.4. Thereafter, M/s Nirmal Marbles through its proprietor Manish Patel applied for sanction of revised plan on the land in question which was granted subject to payment of premium.

2.5. Thereafter, on 03.09.2016 the land in question was sold to Madhav Infrastructure by M/s. Nirmal Marbles through its proprietor Manish Patel vide registered sale deed.

2.6. Thereafter, the petitioner applied to Kumbharia Group Gram Panchayat on 21.09.2016 for issuance of Raja chithi, the same came to be granted by the Panchayat. On 18.03.2018, the petitioner applied for industrial registration

which was granted on 21.03.2018.

2.7. According to the petitioner he was approached by one Abbas bhai and in the name of Mr. M.K. Syed, the owner of the newspaper namely "The Message Dainik" and demand was made for carrying on construction on the site otherwise, he would be defamed in the newspaper.

2.8. According to the petitioner, one of the petitioners namely Lalitkumar Hemrajani filed complaint before Ambaji Police Station against Abbas, Abdul, , M.K. Saiyad. It is alleged that in view of such complaint, Mr.M.K. Saiyad owner of the newspaper complained to the Deputy Collector, Banaskantha for taking steps against the petitioner. That petitioner received a show cause notice dated 16.30.2018 from District Collector, Banaskantha stating that use of Cottage Industry is not started as per the conditions imposed under section 73 AA of the Land Revenue Code and that the proof of M/s. Madhav Infrastructure having registered with the Industries Department has not been produced and called upon the petitioner to show cause as to why steps under section 79AA should not be initiated against them.

2.9. That the petitioner appeared before the District Collector, Banaskantha for seeking time, but at that time copy of the letter of Mr.M.K.Saiyad was given and the news was reported in the Newspaper.

2.10. It is contended that in fact the District Collector Banaskantha had opined for permitting the construction use to be changed for three different lands which were previously allotted to be sold by granting permission under section 73AA, one of which was in the name of Sanjay Kantilal Patel, J.K.Marble Articles and Dharmendrasinh Rajput. However, in the case of the present petitioner, he has rejected the application of the petitioner for revising the plan. Being aggrieved with the said order of the Collector, the petitioner has preferred the present petition.

3. Heard learned advocate Mr. Y.N.Ravani for the petitioner and learned AGP Ms. Dhvani Tripathi for the State at length. Perused the material placed on record.

4. Learned advocate Mr.Y.N.Ravani for the

petitioner has submitted the same facts which are narrated in the memo of the petition and which are referred to herein above. He has vehemently submitted that the impugned order of the collector is not proper, legal and valid. He has submitted that earlier appropriate permission was granted to the predecessor in title of the petitioner. He has submitted that the impugned show cause notice was issued only on the basis of some application by the unscrupulous reporter of daily newspaper. It is submitted that the journalist had demanded amount from the petitioners and therefore petitioner filed complaint against journalist where upon journalist has made application to the Collector. He has submitted that the entire exercise undertaken by the Collector is based only on the letter of said journalist. He has also submitted that such permissions were granted earlier to other persons, which are part of the record. He has also submitted that section 73AA of the Gujarat Land Revenue Code is not applicable. He has also submitted that even the application was not filed by the tribal and it was filed by the journalist which ought not to have been considered by the Collector. He also submitted that even the notice is not in proper

form and therefore it is without jurisdiction. He has also submitted that no opportunity of being heard was given for observation as to change of cottage industries to the commercial purpose. He has submitted that the activity cannot be said to be commercial one. It is submitted that it is not an agriculture land as earlier permission for cottage industries was granted. He has submitted that once permission for industrial purpose, though for cottage industries, is granted, the land has already changed its character. He has submitted that by passing the impugned order, the Collector wanted to take away the ownership of the land of the petitioner without any opportunity, given to him. He has prayed to allow the present petition. He has relied upon the decision of this Court in case of **M/s Jailaxmi Estate & another V. State of Gujarat & Other respondents** reported in **AIR 1994 GUJARAT 38** especially head note (A) and (B) which are as under:-

“(A)Bombay Tenancy and Agricultural Lands Act (67 of 1948), S.84C, S.2(8), S.63- Conversion of land to non-agricultural one Subsequent sale of such land Provisions of Act not applicable - Show cause notice under S. 84C on

ground of breach of S. G3- Invalid.

Where N. A. permission i.e. permission for conversion of land into non-agricultural once was granted in respect of a land, it would lose its official character of agricultural land and would not be land within the meaning of S. 2(8) and provisions of Act would not be applicable to it. Consequently, a show cause notice issued under S. 84C on ground of breach of S. 63 would be invalid because under S. 63 an agricultural land could not be sold to any one except agriculturist and the land in question could no longer be characterised as agricultural land.

(B) Constitution of India, Art.226 Alternative remedy Conversion of land to non-agricultural one -Subsequent sale of such land - Provisions of Tenancy Act not applicable - Show cause notice under S. 84C of Tenancy Act Writ petition against Cannot be dismissed on ground of availability of remedy of appeal under Tenancy Act Bombay Tenancy and Agricultural Lands Act (67 of 1948), S.74-"

5. Per Contra learned AGP Ms. Dhvani Tripathi for the State has vehemently submitted that the original order for NA permission was granted

with certain conditions, the same has not been fulfilled. She has also submitted that earlier revised plan was approved, but, that was approved without obtaining prior permission of the concerned authority. She has also submitted that the original plan was for marble industries only, whereas the present revised plan differs from the earlier one. She has submitted that the transaction in favour of the present petitioner itself is illegal from the very beginning and therefore no right or title of the land vests with the present petitioner. She has submitted that the impugned order of the learned Collector is proper one and there is alternative remedy available to the petitioner. She has submitted that the petition may be dismissed.

6. Having considered the submissions made on behalf of both the sides, coupled with the material placed on record, it emerges that there is no dispute regarding the facts that originally the land was belonging to tribal Kikat Bhimabhai Somabhai, who has, after obtaining appropriate permission under section 73 AA of the Gujarat Land Revenue Code from the concerned Collector Banaskantha, sold the land to M/s. Nirmal marbles for carrying out the activities of

marble cottage industries. It also reveals that Kikat Bhimabhai has also obtained necessary permission under Section 73 of the Bombay Tenancy & Agricultural Lands Act from the Deputy Collector. It also reveals that after all these formalities, Kikat Bhimabhai has sold the land in question to M/s Nirmal Marbles through its proprietor Manish Patel vide registered saledeed dated 07/10/2015. It also reveals that necessary construction plan was sanctioned in favour of M/s. Nirmal Marbles and the said firm has also got necessary NA permission for the use of the land for marble cottage industries. Thus, when the NA permission was granted to use land for the purpose of cottage industries, the original character of the land being agriculture has already loose its character.

7. It also reveals from the record that even revised plan of M/s. Nirmal Marble was also approved with the condition of payment of premium. From the record it, appears that the petitioner has applied for revised plan. It also appears that show cause notice came to be issued by the Collector and the Collector has initiated action under Rule 57(L) of the Gujarat Land Revenue Rules, 1972. Now, Rule 57(L) provides for

transfer of land under section 73AA of the code by the Collector on certain conditions and circumstances. However, admittedly in this case earlier sanction was granted for transfer of land under section 73AA of the Code, was already granted. Therefore, now the Collector cannot set aside that order after conversion of the land from agriculture to non agricultural purpose. Not only that, but, there is also no any application made by the tribal by himself for reconveyance of land to himself. Since, the land was already converted for NA purpose even for cottage industries, it does not make difference, if there is a change of some sort of industries. At the same time, as per the material placed on record in a similarly situated matters, the Collector has granted such permission in the past. However there is no material showing the facts as to under what the circumstances such permission was granted to such persons in those cases, by the concerned authority. But, the facts of granting such permissions in similarly situated persons is not denied by the State Authority.

8. Under the aforesaid circumstances, the impugned order of the Collector is not sustainable in the eyes of law and deserves to be

quashed and set aside.

9. In view of the above, the present petition is partly allowed. The impugned order dated 04.04.2018 passed by District Collector, Banaskantha is hereby quashed and set aside. The matter is remanded back to the learned District Collector, Banaskantha to decide the application of the petitioner afresh after providing appropriate opportunity of being heard to the petitioner in accordance with law and keeping in mind the observations made by this Court as aforesaid. Such exercise be completed by the learned District Collector, as early as possible, preferably within period of 3 months from the date of receipt of this order. No order as to costs. Rule is made absolute to the aforesaid extent. Direct service is permitted.

Sd/-

(DR. A. P. THAKER, J)

URIL RANA