

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4546 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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ABDUL REHMAN MOHD.HUSSAIN TAPALI & 3 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MI HAVA for Petitioner(s) : 1 - 4.
MS MANISHA LAVKUMAR, for Respondent(s) : 1,
DELETED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 11/12/2008

ORAL JUDGMENT

Petitioners have challenged an order dated 29.3.01 passed by the Collector, Surat by which while setting aside entry No.2768 dated 1.12.94 and

another entry No.2933 dated 4.10.98, the Collector further directed that the petitioners herein being non-agriculturists, proceedings under section 84-C of the Bombay Tenancy and Agricultural Lands Act ('Tenancy Act' for short) should be initiated.

2. Petitioners claimed to have purchased the suit lands from respondent No.4. Name of respondent No.4 was entered exclusively in the revenue records by virtue of entry No.2768 dated 1.12.94. The sale took place on 4.10.98. Entry accordingly was made being entry No.2933 which was certified on 30.11.98.

3. After issuing show cause notice in October 2000, the Collector eventually passed the impugned order.

4. With respect to entry No.2768, the Collector found that the same was not as per the valid family arrangement and could not have been therefore made. With respect to the purchase made by the petitioners, the Collector observed that the petitioners were not agriculturists. They have not been able to produce on record anything to suggest that they could have purchased agricultural lands. He, therefore, ordered cancellation of both entries and initiation of inquiry under section 84-C of the Tenancy Act.

5. Learned AGP submitted that the order of the Collector is appealable. However, at this distant point of time, I do not find it appropriate to

relegate the petitioner to the State Government.

6. Having heard the learned advocates for the parties, I find that in so far as entry No.2768 dated 1.12.94 is concerned, counsel for the petitioners is justified in pointing out that the Collector exercised sou motu powers six years after the entry was certified and such exercise of power was thus grossly belated. Even otherwise, the family members never challenged the entry and the petitioners on the strength of the said reflection of the revenue records purchased the land nearly four years after certification of the entry. For these reasons, I find that the Collector's order pertaining to entry No.2768 cannot be upheld.

6. With respect to entry No.2933 dated 4.10.98 and the further direction for initiation of inquiry under section 84-C of the Tenancy Act, I find that the Collector has not made any error. Prima facie, it appears that the petitioners are not agriculturists. They have not produced anything on record to show how they could have purchased the land in question. The said entry was revised by the Collector not after gross delay. In any case, the petitioners would have full opportunity to oppose the proceedings under section 84-C of the Tenancy Act which by the order of the Collector only gets initiated.

7. Learned advocate for the petitioners submitted that in any case, inquiry under section 84C of the

Tenancy Act cannot be initiated after unreasonable period of time. She relied on a decision of the Apex Court in the case of **Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim**, (1997) 6 SCC 71. In this regard, what is reasonable period depends on facts of each case. Particularly when the proceedings are yet to commence and as noted above, the petitioner would have full opportunity to represent their case and also taking into account the fact that the petition was pending before this Court in which stay against the order of the Secretary was granted, it would not be either possible or proper on my part to conclude this issue in this petition leaving it open for the petitioner to raise in appropriate proceedings that may be initiated.

7. Considering all these aspects of the matter, the petition is disposed of with following directions:

(1) Impugned order dated 29.3.01 is set aside in so far as the same pertains to entry No.2768 dated 1.12.94. The said entry is restored.

(2) Rest of the order is upheld.

The petition is disposed of accordingly.

(Akil Kureshi, J.)

(vjn)