

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11478 of 2024**

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LH OF DECD ISHWARBHAI AATMARAM JASWANTBHAI ISHWARBHAI
PATEL

Versus

BAI JIVIBEN D/O VERABHAI SHIVABHAI & ORS.

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Appearance:

MR SUNIL S JOSHI(2925) for the Petitioner(s) No. 1

MR J K SHAH, AGP for the Respondent(s) No. 6

MR SHALIN MEHTA, SR. ADVOCATE with R N JADAV(7688) for the
Respondent(s) No. 2,3,4

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CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 16/12/2024

ORAL ORDER

1. Heard learned Advocate Mr. Sunil S. Joshi for the petitioner, learned AGP Mr. J.K. Shah for the respondent-State and learned Senior Advocate Mr. Shalin Mehta with learned Advocate Mr. R.N. Jadav for the respondents No. 2 to 4.

2. By way of this petition, the petitioner challenges an order dated 03.04.2024 passed by the SSRD, confirming an order passed by the Mamlatdar and ALT, dated 30.06.2023, whereby the Mamlatdar and ALT had closed the inquiry under Section 32P of the Gujarat Tenancy and Agricultural Lands Act with regard to the land in question.

3. Considering the submissions made by learned Advocates for the respective parties, prima facie it appears to this Court that while the

petitioner as the legal heir of the original tenant and the respondents No. 2 to 4, as purchasers of the property from the landlord, are fighting over a parcel of land, which should have ideally vested in the State for distribution as per the object of Section 32P(2)(c) of the Tenancy Act. It would prima facie appear that the petitioner was a tenant of the land in question and whereas upon the father of the petitioner not agreeing to purchase the land, as per the provisions of Section 32G of the Tenancy Act, the inquiry had been closed and the sale had been declared ineffective. As per the provisions of the Tenancy Act, it would prima facie appear that upon such a contingency taking place, the land would stand vested with the State for distribution as per the list of priority as per section 32P(2)(c) of the Tenancy Act.

3.1 In this regard, it would appear that the sale had been declared ineffective on 10.10.19778 and whereas the respondents No. 2 to 4 appear to have purchased the property from the original landlord vide registered sale deed dated 31.03.1982. Though it appears that there are later developments which have taken place inasmuch as, authorities concerned have granted non-agriculture use permission insofar as the parcel of land is concerned and whereas such permission had withstood challenged by the petitioner before a learned Co-ordinate Bench of this Court, before the

Division Bench of this Court as well as before the Hon'ble Supreme Court. It would also appear that the Hon'ble Supreme Court while not entertaining the SLP, vide an order dated 22.11.2024 had inter alia observed that this Court shall decide the present petition on its own merits without being influenced by the observations made in the impugned order passed by the learned Co-ordinate Bench as affirmed by the Division Bench.

4. While the said aspect of grant of non-agriculture use permission would require to be factored while deciding the petition, but primarily, to this Court, it would appear that the issue requires appropriate attention at the level of the State authorities, prima facie because of inaction/connivance on the part of the State authorities, it would appear that a parcel of land which should have been distributed as per the scheme under Section 32P(2)(c) of the Tenancy Act, has been, prima facie sold off without any authority by the original landlord and the matters have reached upto such a stage as noticed by this Court that even NA permission had been granted by the competent authority.

5. As against the same, learned Senior Advocate Mr. Mehta on behalf of the purchasers of the land - respondents No. 2 to 4 herein would submit that irrespective of whatever has happened, this Court may not

lose sight of the fact that the State has never ever question the transaction, whereby the petitioner has purchased the land in question.

6. Having regard to the submissions made by the learned Counsels and the prima facie observations of this Court as above, the issue requires consideration. Hence, issue **Notice** to the respondents returnable on **03.02.2025**. Learned AGP Mr. Shah waives service of notice for the respondent-State and learned Advocate Mr. R.N. Jadav waives service of notice for the respondents No. 2 to 4.

7. Let the State file an appropriate affidavit insofar as the above issue raised by this Court, is concerned.

8. Needless to clarify that though learned Advocate Mr. Joshi presses hard for an interim relief, since the learned Co-ordinate Bench, the Division Bench of this Court and the Hon'ble Supreme Court have not interfered insofar as the NA permission is concerned, basis which the construction as alleged by learned Advocate Mr. Joshi is being carried out, yet, to balance the equities it is observed that all actions taken further would be subject to final result of this petition.

(NIKHIL S. KARIEL,J)

BDSONGARA