

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 536 of 2022****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2022****In****R/SECOND APPEAL NO. 536 of 2022**

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CHANDUBHAI BHAGVANJIBHAI VIRADIYA**Versus****CHANDRAKANTBHAI VASANI**

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Appearance:**MR JASPALSINH R JADEJA(11226) for the Appellant(s) No.****1,10,11,12,13,14,15,2,3,4,5,6,6.1,7,8,9****MR. ZALAK B PIPALIA(6161) for the Appellant(s) No.****1,10,11,12,13,14,15,2,3,4,5,6,6.1,7,8,9****for the Respondent(s) No. 1,2,3,4**

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI**Date : 11/01/2024****ORAL ORDER****Order in Second Appeal**

1. Advocate Mr. Zalak B.Pipalia for the appellants submitted that the appellants are residents of the properties, and they had purchased the open plots from the original owner after the same was converted into non-agricultural land for residential purpose. Mr. Pipalia submitted that the N.A. permission was

granted with common plot for the benefit of the plot holders. In spite of the condition laid down, the original owner had earlier sold the common plot by way of gift deed in favour of Sardar Patel Kanya Kelavani Charitable Trust by registered sale deed, which was challenged, as it was found to be against the condition of N.A. order, hence, in the dispute raised, the common plot was ordered to be vested in the government free from all sort of encumbrances by exercising the power under section 79A of the Gujarat Land Revenue Code.

2. Advocate Mr. Pipalia submitted that such order would not give any title in the favour of government nor the Gondal Nagarpalika, who by way of resolution had sold the common plot in favour of defendant nos.1, 2 and 3, on the very same cause to use the plot for hospital purpose for the poor people.

3. Advocate Mr. Pipalia submitted that earlier on the very same ground by order of Deputy Collector in a proceeding No.24/1994-1995, the gift deed in favour of Sardar Patel Kanya Kelavani Charitable Trust was found to be in breach of condition of N.A. Order, then both the learned Courts were required to consider the same. Mr. Pipalia submitted that non-challenge of the resolution of the Gonadal Nagarpalika cannot be made ground to defeat the rights of the plot holders, as the common plot, as per N.A. Permission, is for the benefit of the plot holders. Hence, under no circumstances, such property can be given away by the Godal Nagarpalka to any person or even for any public welfare purpose.

4. Advocate Mr. Pipalia further submitted that both the courts have erred in not appreciating the conditions in the N.A. Permission along with the lay out plan, where as

per the N.A. Permission vide condition no.5, the common plot cannot be sold, nor can be given in gift, nor there can be any mortgage, nor the same can be auctioned or can be exchanged or transferred in any form.

5. Considering the submissions, **Admit.**

6. The following substantial questions of law are raised:

(A) Whether both the Courts have erred in misreading the oral evidence of the plaintiff no.2 while dismissing the suit and appeal?

(B) Whether in the facts and circumstances of the case a common plot can be said to have been vested with the Nagarpalika

without following proper procedure prescribed under the law?

(C) Whether both the courts have materially erred in confirming the sale transaction in favour of the defendant nos.1 to 3 by defendant no.4 Nagarpalika for selling the common plot in question?

(D) Whether both the courts have failed to consider the principle of law that a vendor cannot pass a better title than what he / it has?

(E) Whether both the courts have erred in not appreciating the fact that the sale transaction in favour of the defendant no.1, 2

and 3 by defendant no.4 is *void ab initio* and therefore not binding to the plaintiffs?

Order in Civil Application

Rule returnable on 28.02.2024.

Relief in terms of prayer 6(B) (i) and (ii) is granted.

Pankaj

(GITA GOPI,J)