

SPECIAL CIVIL APPLICATION*Before the Hon'ble Mr. Justice C. L. Soni***MCCAIN FOODS INDIA PVT. LTD. v. STATE OF GUJARAT
& ORS.***

Constitution of India, 1950 — Art. 226 — Gujarat Tenancy and Agricultural Lands Act, 1948 (67 of 1948) — Sec. 63AA — Bombay Land Revenue Code, 1879 (5 of 1879) — Sec. 65(B) — Refusal of permission under Sec. 63AA by Collector on ground that transfer in favour of petitioner in breach of Sec. 31 of Prevention of Fragmentation Act, 1947 — Considering that order passed without hearing petitioner, the Court quashing impugned order — Further, the Court quashing order by Prant Officer declaring preceding sale as void — Matter remitted for deciding afresh — Petition partly allowed.

ભારતનું બંધારણ, ૧૯૫૦ — આર્ટિ. ૨૨૬ — ગુજરાત ગણોત વહીવટ અને ખેતવિષયક જમીન અધિનિયમ, ૧૯૪૮ — કલમ ૬૩એએ — મુંબઈ જમીન મહેસુલ સંહિતા, ૧૮૭૯ — કલમ ૬૫(બી) — કલમ ૬૩એએ હેઠળ પરવાનગી આપવાની કલેક્ટરે ના પાડી કારણ કે જમીન ટુકડા અટકાયત અધિનિયમ, ૧૯૪૭ની કલમ ૩૧ના ભંગમાં અરજદારની તરફેણમાં તબદીલી થયેલ — વિચારતાં કે, હુકમ અરજદારને સાંભળ્યા વગર પસાર કરાયો છે, અદાલતે તે હુકમ રદ કરી નાખ્યો — વધુમાં, અદાલતે અગાઉનું વેચાણ રદબાતલ કરતો પ્રાંત ઓફિસરનો હુકમ પણ રદ કર્યો — બાબતને ફરીથી નક્કી કરવા પરત મોકલાવી — અરજી અંશતઃ માન્ય રાખવામાં આવી.

It does not appear from the said order that the petitioner was ever heard. Be that as it may, when this order was made, there was no order from any competent authority declaring the sale transaction for the land admeasuring 8,751 sq.mtrs. from Block No. 377 as invalid, being in breach of the provisions of the Fragmentation Act. (Para 10)

Though, the Collector and the Prant Officer had full knowledge about right, title and interest acquired by the petitioner in the land in question, notice of hearing was sent only to the predecessor-in-title of the petitioner who would obviously have lost interest in the land after selling it in favour of the petitioner. The petitioner once acquired interest in the land in question as back as in the year 2005 and having got one order in its favour made by the Collector on 18-4-2009 for conversion of the land from new tenure to old tenure, it was incumbent upon the Prant Officer to afford opportunity to the petitioner before making impugned order dated 6-8-2014 as the petitioner could be said to be a party directly affected by the impugned order. (Para 10)

The Court further finds that since the order dated 9-11-2011 was made prior to the declaration made by the Prant Officer about invalidity of the sale transaction took place between the predecessor-in-title and the original owner, same also needs to be quashed to be reconsidered after the Prant Officer decides the matter afresh after hearing the petitioner. (Para 11)

*Decided on 6-7-2015. Special Civil Application No. 16790 of 2014.

K. S. Nanavati, Sr. Advocate for Nanavati Associates, for the Petitioner.
Janak Raval, A.G.P., for the Respondents.

C. L. SONI, J. Draft Amendment is granted. To be carried out forthwith.

2. Additional affidavit-in-reply of the respondent No. 3 tendered by learned Assistant Government Pleader Mr. Raval is taken on record.

3. With consent of the learned Advocates for the parties, the matter is taken up for final hearing and disposal. Hence, *Rule*. Learned Assistant Government Pleader Mr. Raval waives service of Rule for the respondents.

4. By the present petition filed under Art. 226/227 of the Constitution of India, the petitioner has challenged the order dated 9-11-2011 and 6-8-2014 passed by the respondent No. 2 and respondent No. 3 respectively.

5. By the order dated 9-11-2011, respondent No. 2-Collector ordered to file the application preferred by the petitioner under Sec. 63AA of the Gujarat Tenancy and Agricultural Lands Act, 1948 ('the Act') on the ground that the land bearing Survey No. 377 of village Baliyasan, District Mehsana, was entered in the revenue record as Block as per Block Consolidation Scheme, and such block of the land is divided without permission of the competent authority, which amounted to breach of provisions of Sec. 31 of the Prevention of Fragmentation Act, and therefore, there was no clear title to the land of the petitioner.

6. By the order dated 6-8-2014, the respondent No. 3-Prant Officer declared the sale of the land from Block No. 377 admeasuring 8,751 sq.mtrs. invalid as made in breach of Fragmentation Act and without permission of the competent authority.

7. The case of the petitioner is that the petitioner purchased the land in question *vide* sale-deed dated 22-7-2005 for *bona fide* industrial purpose from Desai Maganbhai Lilabhai-original owner. After the purchase, the petitioner applied to the Collector for conversion of the land from new tenure to old tenure for non-agriculture industrial purpose. The Collector by order dated 18-4-2009 granted permission on certain conditions. However, by order dated 9-11-2011, the Collector refused to grant permission under Sec. 63AA of the Act to the petitioner on the ground that there was breach of the provision of Sec. 31 of the Fragmentation Act, and thus, title of the land was not clear. The respondent No. 3-Prant Officer then made order dated 6-8-2014 holding the transaction between predecessor-in-title of the petitioner and the original owner, named Shri Thaker Pradhanji Becharji to be invalid on the ground that the land of Block No. 377 was registered in the revenue record as Block as per Block Consolidation and sale of the part of such land was in breach of the provision of the Fragmentation Act, and without permission of the competent authority.

8. Learned Senior Advocate Mr. K. S. Nanavati appearing for Nanavati Associates submitted that neither at the time when the order dated 9-11-2011 was made by the Collector nor at the time when the order dated 6-8-2014 was made by the respondent No. 3-Prant Officer, the petitioner was heard. Mr. Nanavati submitted that the petitioner when purchased the land in 2005, it purchased with clear title and based on such title, the Collector passed order giving permission for conversion of the land from new tenure to old tenure on different conditions. Mr. Nanavati submitted that when the order dated 9-11-2011 was passed, there was no order declaring the sale transaction in favour of its predecessor-in-title to be in breach of the Fragmentation Act, and thus, title of the petitioner in respect of the land in question was clear. Mr. Nanavati submitted that when subsequently, order dated 6-8-2014 was made by the Prant Officer, the right, title and interest of the petitioner in the land in question was ignored inasmuch as not only the Collector had full knowledge about the right, title and interest of the petitioner involved in the land in question but even the Prant Officer was in knowledge about such interest of the petitioner when the impugned order dated 6-8-2014 was made as the sale in favour of the petitioner for the land admeasuring 8,751 sq.mtrs. from Block No. 377 is found to have been noted in the order. Mr. Nanavati submitted that in spite of the fact that the petitioner had acquired interest in the land in question as back as in the year 2005, still when the impugned order dated 6-8-2014 was made by the Prant Officer, the petitioner was not heard nor was given any opportunity to represent its case. Mr. Nanavati submitted that only predecessor-in-title of the petitioner was issued notice of hearing, however, since had lost interest in the land in question on account of the sale made by him in favour of the petitioner, he did not remain present before the Prant Officer and considering his absence, the order was made. Mr. Nanavati submitted that since the petitioner is affected by the impugned orders, they are required to be quashed as passed in breach of principles of natural justice.

9. As against the above arguments, learned Assistant Government Pleader Mr. Raval submitted that on account of clear breach of the provision of Fragmentation Act, the Collector rightly refused to grant permission under Sec. 63AA of the Act and the Prant Officer rightly held the sale transaction made in favour of the predecessor-in-title of the petitioner as invalid. Mr. Raval submitted that when the sale between Thakor Pradhanji Becharji - original owner and Desai Maganbhai Lilabhai from whom the petitioner purchased the land was found to be invalid in the eye-of-law, the petitioner who is successor-in-title, could not make any grievance about giving of no hearing to it, especially when his predecessor-in-title was issued notice for affording hearing to him, but he chose not to remain present.

10. Having heard learned Advocates for the parties, it appears that there is no dispute on the fact, which could be noticed from the order dated 18-4-2009 passed by the Collector, that the Collector granted permission for conversion of the land in question with other land of the petitioner from new tenure to old tenure for non-agriculture industrial purpose on certain conditions, including the condition of getting permission under Sec. 65(B) of the Land Revenue Code for use of the land for industrial purpose. It appears that thereafter the Collector made one of the impugned orders, *i.e.* dated 9-11-2011, refusing to accept the request of the petitioner to grant permission under Sec. 63AA of the Act on the ground that though the land bearing Survey No. 377 was entered in register as Block as per Block Consolidation Scheme still without permission of the competent authority for transfer of the land, as per Entry No. 1387, block was divided which was in breach of Sec. 31 of the Fragmentation Act, and thus title of the petitioner was not clear. It does not appear from the said order that the petitioner was ever heard. Be that as it may, when this order was made, there was no order from any competent authority declaring the sale transaction for the land admeasuring 8,751 sq.mtrs. from Block No. 377 as invalid, being in breach of the provisions of the Fragmentation Act. But, thereafter, by the impugned order dated 6-8-2014 at Annexure-A, which appears to have been made by issuing notice only to the original owner of the land of Block No. 377 and the predecessor-in-title of the petitioner, named Desai Maganbhai Lilabhai, it was declared that sale of the land admeasuring 8,751 sq.mtrs. in favour of Desai Maganbhai Lilabhai was in contravention of the provisions of Fragmentation Act, and without permission of the competent authority. In this very order, it is found observed that as per Entry No. 1790, the petitioner has purchased land admeasuring 8,751 sq.mtrs. from Block No. 377 for *bona fide* industrial purpose. From such observation in the order of the Prant Officer and in view of the order of the Collector dated 18-4-2009, it appears that not only the Collector but the Prant Officer had knowledge about petitioner having acquired interest in the land bearing Block No. 377 to the extent of the land admeasuring 8,751 sq.mtrs. In fact, from the order dated 6-8-2014, it appears that only in respect of the land purchased by the petitioner, sale entered between the predecessor-in-title of the petitioner and the original owner is held to be in breach of the provisions of the Fragmentation Act. However, though the Collector and the Prant Officer had full knowledge about right, title and interest acquired by the petitioner in the land in question, notice of hearing was sent only to the predecessor-in-title of the petitioner who would obviously have lost interest in the land after selling it in favour of the petitioner. The petitioner once acquired interest in the land in question as back as in the year 2005 and having got one order in its favour made

by the Collector on 18-4-2009 for conversion of the land from new tenure to old tenure, it was incumbent upon the Prant Officer to afford opportunity to the petitioner before making impugned order dated 6-8-2014 as the petitioner could be said to be a party directly affected by the impugned order.

11. Though, learned Senior Advocate Mr. Nanavati has raised manifold contentions, and though, the affidavit tendered by learned Assistant Government Pleader would present many grounds opposing the petition, the Court is however of the view that the impugned order dated 6-8-2014 passed by the respondent No. 3-Prant Officer could be interfered with and set aside only on the ground of non-observance of the principle of natural justice. The Court further finds that since the order dated 9-11-2011 was made prior to the declaration made by the Prant Officer about invalidity of the sale transaction took place between the original owner Thakor Pradhanji Becharji and Desai Maganbhai Lilabhai, same also needs to be quashed to be reconsidered after the Prant Officer decides the matter afresh after hearing the petitioner.

12. For the reasons stated above, the petition is partly allowed. Impugned order dated 6-8-2014 passed by Prant Officer is quashed and set aside and the matter is remitted to respondent No. 3-Prant Officer for deciding it afresh after giving full opportunities to the petitioner. The impugned order dated 9-11-2011 passed by the Collector is also quashed. However, it will be open to the Collector to reconsider the matter after the Prant Officer finally decides the matter afresh after giving full opportunities to the petitioner.

13. It is clarified that the Court has not gone into the other contentions/ grounds raised either in the petition or in the affidavit-in-reply filed by the respondent No. 3. It is left open to the petitioner to raise all contentions available under law before the Prant Officer when the matter is taken up for fresh decision by the Prant Officer.

Rule is made absolute to the aforesaid extent.

Direct Service is permitted.

(NRP)

Petition partly allowed.

* * *