

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.6053-6054 OF 2009

(Arising out of S.L.P. (C) Nos.29342-29343 of 2008)

Morbi Nagarpalika

...Appellant(s)

Versus

Bhavanbhai Khodabhai Patel & Anr. Etc.

...Respondent(s)

O R D E R

Leave granted.

The then Administrator of Morbi Nagar Palika sold land measuring 158.50 sq. meter to the respondents sometime in June, 1986. After the elected body took over the reins of the Nagar Palika (hereinafter referred as 'the appellant'), respondent No.1 was directed not to raise construction on the land in question because it was felt that the transaction made by the then Administrator was contrary to law and against the interest of the appellant.

Respondent No.1 challenged the action of the appellant in R.C.S. No.301/1986 and sought a declaration that the appellant has no right, power and authority to interfere with his use and occupation of the land. He also prayed for grant of perpetual injunction to restrain the appellant from interfering with his possession over the suit land. The appellant also filed Civil Suit No.44/1988 for declaring the sale deed executed in favour of respondent No.1 as nullity.

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By common judgment dated 28.1.2002, the trial Court decreed the suit filed by respondent No.1 and dismissed the one filed by the appellant. Civil Appeal Nos.9/2002 and 10/2002 filed by the appellant were dismissed by Joint District Judge, Fast Track Court No.10, Morbi vide its judgment dated 15.11.2006. The appellate judgment was confirmed by the High Court by dismissing the second appeals preferred by the appellant by observing that no substantial question of law is involved therein.

We have heard learned counsel for the parties. In our opinion, the High Court was not justified in holding that no substantial question of law was involved in the second appeals. A careful scrutiny of the record shows that in the appeal filed against the judgment and decree of the trial court, the appellant had questioned the sale effected by the then Administrator in favour of respondent no.1 on the ground that in view of Section 263(2)(c) of the Gujarat Municipality Act, 1963, the suit land vested in the State Government and the Administrator had no jurisdiction to sell the same to respondent No.1 and that too by private negotiations. The same questions were also raised before the High Court in the second appeal filed under Section 100 of the Code of Civil Procedure. The lower appellate Court did consider and negatived those pleas, but the High Court did not even advert to the same and dismissed the second appeals by making a cryptic observation that no question of law arises for consideration.

In our view, the following substantial questions of law were involved in the second appeals:

...3/-

"(1) Whether the property vested in the Municipality shall, during the period of supersession, vest in the State Government and the Administrator was not authorized to sell the same; and,

(2) Whether the Administrator could sell the municipal property by private negotiation?"

As the aforesaid two questions of law arise in the second appeals, we are of the view that the matter deserves to be remanded to the High Court for fresh disposal of the second appeals.

Accordingly, the appeals are allowed, impugned order rendered by the High Court is set aside and the matter is remitted to the High Court to frame the aforesaid two substantial questions of law in the second appeals and, thereafter decide the same.

Needless to say that this order shall not preclude the High Court from framing any other substantial question of law, if, in its opinion, such a question of law arises in the second appeals.

.....J.
[B.N. AGRAWAL]

.....J.
[G.S. SINGHVI]

New Delhi,
September 04, 2009.