

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 59 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

KANTIBHAI CHHAGANBHAI PATEL

Versus

DEPUTY SECRETARY

Appearance:

MR MI HAVA for Petitioners

Mr. T.H. Sompura, Ld.Govt. Counsel for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 31/01/97

ORAL JUDGEMENT

The present petition is directed against the Revisional Orders pronounced by the State Government under Section 34 of the ULC Act, 1976. It appears that the holder of the land was one Chaganbhai Bhagabhai Patel. At the initial stage it appears that a show cause notice came to be issued and served upon Chaganbhai Patel on 6th

September 1991. Later on the said holder Chaganbhai Patel had expired on 30th September 1992. Despite this, it appears that the proceedings had gone ahead against the deceased land holder, and ultimately the impugned orders dated January 04, 1994 came to be issued.

Ld. counsel Mr. Hava who appears on behalf of the petitioners urges that, the said orders are void as they are against a dead person. No elaborate debate would be necessary to convince a judicial mind that any order which is against a dead person would be a nullity. Any how Ld. Govt. Counsel Mr. Sompura wanted to salvage the situation by urging that, at the initial stage when the proceedings were initiated under Section 34 of the ULC Act, 1976, there was a valid issuance and valid service of the notice. Accepting the above said aspect as a true one, the question remains as to whether ultimately the orders could have been passed against a dead person. The answer to this question must be in a negative. It is therefore abundantly clear that the impugned orders are bad, and they require to be quashed and set aside and the matter requires to be returned and resubmitted to the State Government for a fresh decision under Section 34 of the ULC Act, 1976. In the result therefore, the petition stands allowed. The impugned orders are hereby quashed and set aside, and the matter is hereby remanded back to the State Government for the appropriate proceedings under Section 34 of the ULC Act, 1976, after affording a reasonable opportunity of being heard to the petitioners. Rule is made absolute accordingly with no order as to cost.

Till the above said proceedings are complete, the petitioners also shall maintain the status quo qua the land.

Incidentally, it shall have to be said that the consequential orders under Section 10 (3) and 10(5) of the ULC Act, 1976 dated 8-9-95 and 1-10-96 are also quashed and set aside.
