

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3560 of 1999

with

SPECIAL CIVIL APPLICATIONS NO.3564 & 3565 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
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? : NO
5. Whether it is to be circulated to the Civil Judge? :

BHARAT SHANTILAL PATEL

VERSUS

STATE OF GUJARAT

(in Sp.CA 3560/99)

ABDULMAJID HAJILATIF MEMAN

versus

STATE OF GUJARAT

(in Sp.CA 3564/99)

JAWAHARBHAI DAHYABHAI PATEL

versus

STATE OF GUJARAT & ORS.

Appearance:

MR NK MAJMUDAR for Petitioners

Ms.HARSHA DEVANI, A.G.P. for Respondent No. 1

MS KJ BRAHMBHATT for Respondent No. 4

(in all the above matters)

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 29/10/1999

ORAL COMMON JUDGEMENT

1. These three petitions involving common questions of law and fact are proposed to be disposed of by common Judgment/order.

2. Special Civil Application No.3560/99 was admitted by this Court on 11.5.1999. On the first day the respondents were not heard. The other two writ petitions have not been admitted so far. They are at the admission stage. In these petitions the order dated 27.3.1998, Annexure : E, passed by respondent No.2 is under challenge. The said order was passed by the Deputy Collector, Dabhoi, holding that since the land in question remained unused continuously from the years 1985 to 1988 without any agricultural and non-agricultural use the said land was resumed to the Government and order for taking possession was passed and Mamlatdar was directed to take possession of the land in question. Various grounds have been taken by the petitioners challenging the impugned order.

3. Counter Affidavit has been filed by the Deputy Collector. In this Counter Affidavit in Para : 4 preliminary objection is raised that the impugned order was challenged earlier by Dhartinagar Co.Operative Housing Society, who is respondent No.4 in Special Civil Application No.3560/99 and the said challenge failed in Special Civil Applications No.6620 of 1998 and 6623 of 1998 decided by this Court on 28.12.1998, Annexure : F. Accordingly the main objection is that the members of the said housing co-operative society have no independent legal status to challenge the same order again. The second preliminary objection is that the petition suffers from the vice of laches inasmuch as impugned order was passed on 27.4.1998 whereas Special Civil Application No.3560 of 1999 was filed in April, 1999 i.e. after delay of one year.

4. So far as merits of the case are concerned it has been pleaded in the counter affidavit that the order is perfectly valid and justified and the land was resumed in accordance with law after giving opportunity of hearing to the society.

5. On the preliminary objection learned Counsel for the petitioner has argued vehemently that none of the objections in the nature of preliminary objection can be sustained. According to him, since the right and interest of the petitioners were affected by the impugned order they had right to be heard and if notice would have been given they could have raised their grievances before the Authority. Violation of principles of natural

justice was complained of by the learned Counsel for the petitioner with vehemence at the time of argument. He has relied upon two decisions of this Court, but has tried to distinguish the decision of the Apex Court on the point unsuccessfully. The Apex Court in the case of Daman Singh v/s. State of Punjab, reported in AIR 1985 SC 973, had an occasion to examine similar question regarding status of registered co-operative society vis-a-vis the members of the registered society. The Apex Court held that "...once a person becomes a member of a co-operative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body." According to the Apex Court, even for the purpose of amalgamation of the co-operative society if notice to the society was issued, principles of natural justice stood satisfied. Notice to the society, according to the Apex Court, will be deemed as notice to all its members. Notice to individual member of a co-operative society, according to the opinion of the Apex Court, is opposed to the very status of co-operative society, a body corporate, and is therefore unnecessary. These observations of the Apex Court were tried to be distinguished by Shri N.K.Majmudar on the ground that the facts of that case were altogether different. It should not be forgotten that Obiter Dicta of the Supreme Court is equally binding on all the Courts in India. Moreover here the law laid down by the Apex Court is that if notice is given to the co-operative society it is not necessary to issue notice to the members of the society. This principle has to be applied in the instant case as such. Consequently I do not find any merit in the contention that notices should have been given to the members of the society separately who are the petitioners in this case.

6. On the factual side no notice could successfully be given by the Authorities to the members for the reasons given in Para : 11 of the Counter affidavit wherein it is clearly stated that no addresses are supplied and no other details of the members are given except their names. Consequently in the absence of other details and addresses no notice could be given by the Authority to the members.

7. The cases relied upon by Shri Majmudar are obviously distinguishable on facts. In Amarasinhji Mills Ltd. v/s. State of Gujarat, reported in 1999(2) G.L.H. (UJ) 6 the facts were altogether different. Here breach

of principles of natural justice was up-held on the ground that the Authority proposing to resume the land had relied upon materials which were never disclosed to the petitioner. Thus, in this case violation of principles of natural justice was up-held on the ground that the material upon which reliance was placed by the Authority resuming the land was neither supplied to the petitioner nor it was disclosed in the show cause notice. That is not the fact in the case under consideration before me. Hence the aforesaid verdict neither applies to the facts of the case nor it can be preferred to the verdict of the Apex Court referred to hereinabove.

8. Similar is the case of Yogeshwarnagar Co.Operative Housing Society Ltd. v/s. State of Gujarat, reported in 1999 (1) G.L.H. 321 which can also be distinguished on facts. It was a case under the Urban Land Ceiling Act where it was laid down that the principles of natural justice were violated inasmuch as while taking action under Sec.21(2) of the ULC Act show cause notice was not given to the proposed dwellers.

9. In these two cases the position of members of Registered co.operative society were neither considered nor it was laid down that notices to such members of the society are necessary before any action is proposed which is likely to affect their interest. Consequently these cases are distinguishable on facts.

10. It is also difficult to accept the contention that the members of the society or some of the members had no notice of the earlier writ petitions. The writ petition No.6620/98 was filed by Dhartinagar Co.Operative Housing society through its Chairman Shri Abdulmajid Hajilatif Meman. He is petitioner in Special Civil Application No.3564 of 1999 which is pending before me for admission. Along with him ten other persons were joined as petitioners. Consequently Abdulmajid Hajilatif Meman had notice of filing of earlier petition No.6620 of 1998 and he could have intimated other members of the society. Similarly the writ petition No.6622 of 1998 was filed by the said society through the same chairman. Thus, at least one of the members of the society had due notice of the orders passed in the earlier writ petitions against the society. If earlier writ petitions No.6620 of 1998 and 6622 of 1998 were dismissed by this Court it will be deemed that all the points raised in the said writ petitions were considered and not accepted. It is not a case where the co.operative society in the earlier petitions acted against the interest of its members. Para : 7 of the writ petition No.6620 of 1998 clearly

shows that it was stated that the members of the society being owners of the plots were required to be heard before passing any order against them. It was also pleaded that the order was passed without issuing any notice to the plot holders giving them opportunity of hearing. It was also pleaded that plot holders were necessary parties inasmuch as they were likely to be affected by the said order, hence, opportunity of hearing was to be afforded before passing any adverse order affecting their rights. In spite of these assertions the writ petition was dismissed it will be deemed that these points were canvassed and considered by this Court but not accepted. Thus, also on the grounds of principles of resjudicata or on the ground of principle analogous to resjudicata this plea cannot be permitted to be raised by the members individually through subsequent writ petitions.

11. Thus, first preliminary objection that these writ petitions are not maintainable in view of dismissal of two earlier petitions filed by the co-operative society has to be accepted and if this is so, there arises no occasion to discuss the merits of these petitions. On grounds of resjudicata and principles analogous to resjudicata these petitions are liable to be dismissed.

12. In view of the aforesaid discussion there is no necessity to consider the plea of laches. Of course the writ petitions have been filed after about one year of passing of impugned order, but if these petitions fail on first preliminary objection, it is not necessary to discuss other preliminary objections.

13. For the reasons given above Special Civil Application No.3560/99 which was admitted for hearing is hereby dismissed with no order as to costs. Special Civil Application Nos.3564 and 3565 of 1999 which are pending admission are dismissed at the admission stage with no order as to costs.

Date : October 29, 1999 (D. C. Srivastava, J.)

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