

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2529 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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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? : NO
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? : NO

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BACHUBHAI KACHARABHAI VAGHRI

Versus

COLLECTOR

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Appearance:

MR A.J Yagnik for  
Mr. GIRISH PATEL for Petitioners No. 1-5  
Respondents No. 1 & 2 :: Served

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 31/01/2002

ORAL JUDGEMENT

The petitioners before this Court are the persons belonging to four families of the Vaghri community. The said petitioners had applied to the Dabhoda Gram Panchayat, District-Gandhinagar for allotment of land for

raising fruit bearing trees. Pursuant to the said application, the petitioners were, under order dated 23rd May, 1994 made by the Sarpanch, Dabhoda Gram Panchayat, granted land bearing survey no. 307, admeasuring 19 acres-13 gunthas for raising fruit bearing trees and for cultivating the vegetables. It appears that the said land, survey no. 307, was registered as Government Waste Land and the management of the said land was vested in the Gram Panchayat. The Gram Panchayat, therefore, under the instructions issued by the District Collector, Gandhinagar dispossessed the petitioners from the said land, survey no. 307 and took over possession from the petitioners. Feeling aggrieved, the petitioners preferred Special Civil Application No. 6166 of 1985 before this Court. In the said writ petition, this Court [Coram : M.B Shah, J. as he then was] under the interim order dated 24th June, 1986 directed the Panchayat to hand over possession of the land in dispute to the petitioners. His Lordship further observed that, 'if the Government has resumed the land, then also, the respondents are required to be handed over possession of the land.' Pursuant to the said order, possession of the said land was restored to the petitioners. The petitioners since then have been raising fruit bearing trees over the said land. Pending the above referred Special Civil Application No. 6166 of 1985, the District Collector, Gandhinagar, under his order dated 30th July, 1986 made a fresh grant of the said land Survey No. 307 in favour of the petitioners for a period of thirty years. Of the entire piece of land, admeasuring 19 acres 13 gunthas, the petitioners were given 10 acres on specific condition that the said grant did not include the pond land, the canal and the land used for public purposes. The said order dated 30th July, 1986 was taken into suo motu revision by the State Government, under show cause notice dated 26th June, 1989. Pursuant to the said show cause notice, the petitioners were heard and under the impugned order dated 11th August, 1989, the above referred order dated 30th July, 1986 was cancelled. Feeling aggrieved, the petitioners have preferred the present petition.

Mr. Yagnik has submitted that the impugned order suffers from the vice of non-application of mind. He has further stated that of the entire land survey no. 307 admeasuring 19 acres-13 gunthas, only a part of it admeasuring 10 acres has been leased to the petitioners with a specific condition that the lands of the pond, canal and such land as is used for the public purpose is not granted to the petitioners i.e., the land of the pond and canal and other land used for the public purposes has

been retained for utilization as such. Nonetheless, the State Government has set-aside the said order on the ground that the said land is a pond land and could not have been granted to the petitioners. He, therefore, submitted that the impugned order deserves to be quashed and set-aside.

On perusal of the order dated 30th July, 1986 it does appear that the pond and the canal situated on the said land, survey no. 307, has been specifically excluded from the grant made to the petitioners. Nonetheless, the State Government has set-aside the said order for the reason that the said land, survey no. 307 is a pond land. The State Government has not examined whether the entire land, survey no. 307 admeasuring 19 acres-13 gunthas, was pond land or only a part of it was a pond land. Moreover, having held that the pond land could not have been disposed of by the District Collector, the District Collector has been directed to complete the inquiry under section 61 of the Code in respect of encroachment on the said land, survey no. 307; to invite applications for disposal of the said land and to grant the same for raising fruit bearing trees in accordance with the government policy.

Considering the order made by the State Government, it appears that the directions issued by it are self-contradictory. If the land, survey no. 307, were the pond land and could not have been disposed off as held by the State Government, there was no reason why the direction ought to have been issued to dispose off the said land for raising fruit bearing trees. There is no earthly reason why the petitioners should be removed from the land in question for the same being granted to any applicant thereof, including the present petitioners. Further, if the petitioners have been inducted in the said land as lessees by lawful order made by the competent authority, the petitioners cannot be said to be encroachers or in unlawful possession of the said land. The impugned order of the State Government is based on fallacious belief that the petitioners are encroachers on the said land. The order which is made on the erroneous premise can not be sustained. The petition is, therefore, allowed. The impugned order dated 11th August, 1989 made by the State Government [Additional Chief Secretary [Appeals], Revenue Department] in Revision Application No. 19 of 1989 is quashed and set-aside. Rule is made absolute. There shall be no order as to costs.

[Ms. R.M Doshit, J.]

Prakash\*