

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 853 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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 concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

BABUBHAI NATHABHAI JAZADIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 853 of 2004
MR BS PATEL for Petitioner No. 1-16
MRS RANJAN B PATEL for Petitioner No. 1-16
MR SIRAJ GORI ASST GOVERNMENT PLEADER for Respondent No. 1-2
MR PUSHPADATTA VYAS for Respondent No. 3-7,12-14
..... for Respondent No. 8-11
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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 30/09/2004

ORAL JUDGEMENT

Rule. Mr.Siraj Gori, learned AGP and Mr.Pushpadat Vyas, learned advocate waive service for respective respondents.

Heard Mr.B.S.Patel, learned advocate for petitioner and Mr.Siraj Gori, learned AGP for respondent - State Authority, so also, Mr.Pushpadat Vyas.

Upon hearing learned advocates for the parties, it appears that questions involved in this petition are more or less on the same point as they were considered by this Court in the proceedings of Special Civil Application No.1492 of 2004 and other allied matters which has been disposed of as per the order dated 23.9.2004. However, the only distinguishing feature in the said case of Special Civil Application No.1492 / 2004 and other matters, was that the State Government directed for prohibitory orders, whereas in the present case, direction given by the State Government is for setting aside the order passed by the Mamlatdar and ALT dated 16.10.2000. It appears that the State Government under Section 43 may have right to consider the matter on the question as to whether land is in its restricted tenure or unrestricted tenure. However, the power which is being exercised by the Mamlatdar and ALT is as that of quasi judicial authority under Bombay Tenancy and Agricultural Lands Act, 1948 [hereinafter referred to as "the Act"]. If either party to the proceedings or any other person including the State Government, if aggrieved by the decision of the Mamlatdar and ALT, then in that case, it would be for such aggrieved party to resort to the proper proceedings before proper forum. The State Government in exercise of the administrative jurisdiction cannot direct for setting aside of the order passed by the Mamlatdar and ALT. As per the scheme of the Act, against the decision of the Mamlatdar, the revision lies to the Gujarat Revenue Tribunal and therefore, if the State Government is aggrieved by the decision of the Mamlatdar under Section 70[o] of the Act declaring the status of the tenant as that of permanent tenant, the proper course for the State Government would be to prefer revision and to seek a proper order. Therefore, under these circumstances, the order passed by the State Government in exercise of its administrative jurisdiction cannot be maintained in the eye of law. But at the same time in view of the reasons recorded in the order dated 23.9.2004 in Special Civil Application No.1492 of 2004 and allied matters, similar directions would be required to be given while quashing the order passed by the State Government.

In view of the above, impugned order dated 14th October, 2002 [Annexure-A] is quashed and set aside on the ground that there is no authority with the State Government. However, further directions shall be as under:

[i] The State Government or the competent officer of the State Government may resort to appropriate proceedings before appropriate forum for challenging the order passed by the Mamlatdar & ALT converting the status of the land as unrestricted tenure or declaring the status of the original tenant as permanent tenant. Such course may be undertaken by the State Government within a period of six weeks from today.

[ii] Until the period of six weeks from today, the status quo over the land in question shall be maintained. Unless any specific direction or any order is given or passed by the competent forum in the appropriate proceedings at the instance of the State Government, the aforesaid order of status quo shall automatically stand vacated.

It is made clear that contentions of both the sides, i.e. the petitioner as well as State Government shall remain open and it will be open to the appropriate forum which may be resorted to, in case the State Government decides to prefer an appeal / revision, to decide in accordance with law and to pass appropriate orders independently on the basis of material which may be available with it without being influenced in any manner by the observations made by this Court in this judgment.

The petition is allowed to the aforesaid extent subject to aforesaid directions. Rule is partly made absolute with no order as to costs.

Date : 30.9.2004 [Jayant Patel, J.]

#kailash#