

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2680 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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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?

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PATEL SHANKARLAL CHHAGANBHAI DECEASED

Versus

LT. BECHARJI SONAJI THAKUR THROUGH HIS LEGAL HEIRS  
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Appearance:

1. Special Civil Application No. 2680 of 2004  
MR NEHAL R JOSHI for Petitioner No. 1-1/2  
NOTICE SERVED for Respondent No. 1,3/1-3/3,4/1-4/2,5-7  
UNSERVED-EXPIRED (N) for Respondent No. 2  
..... for Respondent No. 3,4  
MR KUNJAL PANDYA, AGP for Respondent No. 5-7
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 30/07/2004

ORAL JUDGEMENT

Rule. Shri Kunjal Pandya, Learned AGP waives service of rule on behalf of the respondent no.5 to 7. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order dated 20.9.2003 passed by the Secretary (Appeals) in Revision Application No.10 of 1997 in dismissing the same and confirming the order passed by the Collector, Mehsana dated 23.1.1996 and also the Prant Officer, Mehsana dated 27.8.1992 passed in Revision Application No.54-55/88.

3. The heirs of deceased Becharji Somaji Thakore were the owners of the land bearing S.No.115/6 admeasuring 31 gunthas of land and land bearing S.No.1158 admeasuring 16 gunthas of land situated at Village Godhra, Taluka Vijapur, District Mehsana. That the original land owners sold the aforesaid lands to the petitioners by Registered Sale Deed and necessary entries to that effect were mutated vide entries No.2050 and 2051. As the said land was a new tenure land and as they were sold without obtaining prior permission from the Competent Authority and therefore, the aforesaid two entries came to be taken under suo motu review by the Prant Officer, Mehsana. That the Prant Officer, Mehsana by his judgement and order dated 27.8.1992 set aside the aforesaid two entries and as the sale was effected without prior permission of the Competent Authority, the aforesaid lands came to be confiscated and forfeited to the Government. Being aggrieved and dissatisfied with the order passed by the Prant Officer, Mehsana dated 27.8.1992, the petitioners preferred appeal before the Collector, Mehsana being Revision Application No. RTS/43 of 1992. The Collector, Mehsana also by his judgement and order dated 23.1.1996 dismissed the said revision application confirming the order passed by the Prant Officer, Mehsana dated 27.8.1992.

4. Being aggrieved and dissatisfied with the judgment and order passed by the Collector, Mehsana dated 23.1.1996 passed in Revision Application No. RTS/43 of 1992 in dismissing the same and confirming the order passed by the Prant Officer, Mehsana dated 27.8.1992, the petitioners preferred Revision Application under Rule 108(6)(a) of the Bombay Land Revenue Rules before the State Government i.e. Secretary (Appeals), Revenue Department, which was numbered as Revision Application No.10 of 1997 and the Revisional Authority i.e.

Secretary (Appeals), Revenue Department by its judgment and order dated 28.9.2003 dismissed the said revision application confirming the order passed by both the authorities below.

5. Being aggrieved and dissatisfied with the same, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

6. Shri N.R.Joshi, Learned Advocate appearing on behalf of the petitioners had submitted that the impugned judgment and order passed by the Secretary (Appeals) is a non-speaking and non-reasoned order. He has submitted that many contentions were raised before the Revisional Authority but the Revisional Authority has not considered and discussed the same in its judgment. He has further submitted that the question with regard to initiation of suo motu powers after 22 years have not been considered at all by the Revisional Authority. He has further submitted that after narrating the facts, the Revisional Authority has summed up the judgment and dismissed the revision application without assigning any reasons in support of his conclusion for dismissal of the revision application. Shri Joshi has also tried to argue the matter on merits but in view of the fact that the judgement and order passed by the Secretary (Appeals), is without assigning any reasons and is a non-speaking and non-reasoned order, this Court proposes to dispose of the present Special Civil Application by remanding the matter and therefore, the case of the petitioners on merits is not considered by this Court.

7. Shri Kunjal Pandya, Ld. AGP appearing for the respondent nos.5 to 7, though has tried to support the order passed by the Revisional Authority i.e. Secretary (Appeals) but he has failed to convince this Court with regard to the passing of the order by the Revisional Authority i.e. Secretary (Appeals) in a most casual manner and without assigning any reasons.

8. Heard the Learned Advocates appearing on behalf of the parties.

9. This Court has considered the importance and necessity of giving reasons by the authorities below in its judgment and order dated 21.6.2004 passed in SCA No. 276 of 2004 in the case of Ambalal Somabhai Parmar Vs. State of Gujarat. Considering the judgment of the Honourable Supreme Court of India in the case of Certified Area Committee Vs. Additional Director,

Consolidation & Others reported in 2002 (10) SCC Page 87,  
this Court has held as under:-

"The Revisional Authority is exercising quasi-judicial powers. The Revisional Authority is required to assign reasons either to allow the revision application and/or to dismiss the revision application. The Revisional Authority cannot pass an order without assigning any reasons. Not assigning any reasons would lead to arbitrariness. If the order passed by the Revisional Authority is challenged before the higher authority and/or before this Court and if the reasons are not assigned, the higher authority and/or this Court would not be in a position to know what was passing the mind of the Revisional Authority while rejecting the revision application. Therefore, the Revisional Authority is bound to give the reasons and deal with the contentions raised by the revisionist in the revision application and/or at the time of hearing of the revision application."

This Court has also considered the observation of the Honourable Supreme Court of India in the case of Certified Area Committee (supra) which reads as under:-

"The reasons are the flesh and blood of judicial adjudication and such reasons must be shown in the orders which are liable to be challenged in the Superior Court."

10. Under the circumstances, as in the impugned judgment and order dated 20.9.2003, no reasons are given for rejecting the revision application and confirming the orders passed by both the authorities below, the judgment and order passed by the Revisional Authority i.e. Secretary (Appeals) dated 20.9.2003 in Revision Application No.10 of 1997 in rejecting the revision application is required to be quashed and set aside on this ground alone and the matter is required to be remanded to the Secretary (Appeals) for deciding the revision application afresh in accordance with law and/or merits and after considering the submissions and to pass a speaking and reasoned order. Accordingly, the judgement and order passed by the Revisional Authority i.e. Secretary (Appeals) dated 20.9.2003 in Revision Application No.10 of 1997 is hereby quashed and set aside. The matter is remanded to the Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad for deciding the Revision Application No.10 of 1997 afresh and in accordance with law and on merits and to pass a reasoned and speaking order after considering all the submissions put forth by the parties. Such an

exercise is required to be done by the Revisional Authority as early as possible within a period of three months from the date of receipt of this order. In view of the fact that now the matter is remanded to the Secretary (Appeals) for deciding the revision application on merits, adinterim relief granted by this Court earlier in its order dated 5.3.2004 to the effect that the petitioner shall not be dispossessed from the land in question will be continued till the final disposal of the aforesaid revision application. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah, J)

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