

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4312 of 2006

With

SPECIAL CIVIL APPLICATION No. 4314 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

ARUJUNSINH BHIMSINH PARMAR - Petitioner(s)

Versus

STATE OF GUJARAT THR' SECRETARY & 1 - Respondent(s)

=====

Appearance :

MR BB DESAI for Petitioner(s) : 1,
None for Respondent(s) : 1 - 2.

=====

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/04/2006

COMMON ORAL JUDGMENT

1.As common questions of law and facts arise in both these petitions, they are being disposed of by this common judgment and order.

2.By way of these petitions under Article 227 of the

Constitution of India, the respective petitioners have challenged the legality and validity of the common judgment and order passed by the Gujarat Revenue Tribunal dated 8th December, 2005 passed in revision application Nos. TEN.B.A.22/2000 & 23/2000 in allowing the said revision applications quashing and setting aside the separate orders passed by the Mamlatdar & ALT, Vagara, dated 31st May, 1999 passed in Tenancy Appeal Nos.2/99 and 1/99 as well as separate orders passed by the Assistant Collector, Bharuch, passed in Tenancy Appeal Nos.7/99 and 6/99 dated 29.10.1999.

3.The lands in question belonged to the respondent - trust, which is a public charitable trust registered under the provisions of the Bombay Public Trusts Act; 1950. It appears from the record that the said trust has been granted exemption certificate in form - XXIII under Section 88(B) of the Bombay Tenancy Act by the Deputy Collector, Bharuch, and the said exemption certificate is in existence. The respective petitioners submitted applications under Section 32(G) of the Bombay

Tenancy Act for declaring them as tenants of the disputed lands and the Mamlatdar & ALT, Vagara, by its order dated 15th February, 1996 passed orders in Tenancy Case No.12/95 and 13/95 declaring the respective petitioners as tenants. Being aggrieved and dissatisfied with the orders passed by the Mamlatdar & ALT, Vagara, the respondent - trust preferred appeals before the Assistant Collector, Bharuch, being Tenancy Appeal Nos.7/99 and 6/99 and the Assistant Collector, Bharuch, by its order dated 18th November, 1999 dismissed the said appeals confirming the orders passed by the Mamlatdar & ALT, Vagara. Being aggrieved and dissatisfied with the orders passed by the Assistant Collector, Bharuch, dated 18th November, 1999 passed in Tenancy Appeal Nos.7/99 and 6/99, the respondent - trust preferred revision applications before the Gujarat Revenue Tribunal being revisions application Nos.TEN.B.A.22/2000 and 23/2000 and the Gujarat Revenue Tribunal by its common judgment and order dated 8th December, 2005 allowed both the revision applications quashing and setting aside the orders passed by the Assistant Collector, Bharuch, as well

as by the Mamlatdar & ALT, Vagara, by which, the respective petitioners were declared as tenants by holding that in view of the exemption certificate under Section 88(B) of the Bombay Tenancy Act, the provisions of Section 32(G) of the Act would not be applicable and therefore, the petitioners cannot be declared as the tenants. Being aggrieved and dissatisfied with the same, the petitioners have preferred the present Special Civil Applications under Article 227 of the Constitution of India.

4. Shri Adhyaryu, learned advocate appearing on behalf of the respective petitioners has vehemently submitted that in fact, the trust is not carrying out any educational and/or any other activities as envisaged under Section 88(B) of the Bombay Tenancy Act and when the applications submitted by the respective petitioners for declaring them as tenants under Section 32(G) of the Bombay Tenancy Act came to be allowed by the Mamlatdar & ALT, Vagara, which came to be confirmed by the Assistant Collector, Bharuch, the Gujarat Revenue Tribunal ought not to have allowed the revision applications

by holding that Section 32(G) of the Bombay Tenancy Act would not be applicable. It is further submitted that if the Gujarat Revenue Tribunal was of the view that the remedy available to the petitioners was to get the exemption certificate cancelled by moving the Assistant Collector, Bharuch, than the Gujarat Revenue Tribunal ought to have remanded the matters to the Assistant Collector, Bharuch, for cancellation of the exemption certificate under section 88(B) of the Act and therefore, it is requested to allow the present Special Civil Applications and/or to remand the matters to the Assistant Collector, Bharuch.

5. At the outset it is required to be noted that there is a valid exemption certificate in favour of the respondent - trust in form XXIII under Section 88(B) of the Act and by virtue of the said exemption certificate under Section 88(B) of the Act, certain provisions of the Bombay Tenancy Act inclusive of Section 32(G) of the Act would not be applicable to the trust. Under the circumstances, the Gujarat Revenue Tribunal is justified in

quashing and setting aside the orders passed by the Mamlatdar & ALT, Vagara, as well as passed by the Assistant Collector, Bharuch, declaring the petitioners as tenants under Section 32(G) of the Bombay Tenancy Act, as the provisions of the Act itself would not be applicable to the respondent - trust in view of the exemption certificate under Section 88(B) of the Act. Under the circumstances, there is no any illegality committed by the Gujarat Revenue Tribunal and/or it cannot be said that the order passed by the Gujarat Revenue Tribunal is in any way illegal and/or dehors the provisions of the Act. So far as the contention on behalf of the petitioners that the Gujarat Revenue Tribunal ought to have remanded the matters to the Assistant Collector, Bharuch, for the cancellation of the exemption certificate under Section 88(B) of the Act is concerned, the same also cannot be accepted as the Gujarat Revenue Tribunal has merely observed that so long as the exemption certificate is in existence, nothing can be done and the appropriate remedy for the petitioners would have been to approach the Assistant Collector, Bharuch / Deputy

Collector, Bharuch, who has issued the exemption certificate and that does not mean that the Gujarat Revenue Tribunal should remand the matters and/or the Gujarat Revenue Tribunal was of the opinion that the exemption certificate in favour of the respondent - trust is not valid.

6.Considering the above facts and circumstances of the cases, there is no substance in any of the petitions and therefore, both the petitions are required to be dismissed and are accordingly dismissed.

(M.R.SHAH, J.)

kdc.