

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 9279 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 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 ?

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**HARIJAN SHAMJI DEVA PARMAR - Petitioner(s)****Versus****STATE OF GUJARAT & 7 - Respondent(s)**

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**Appearance :**

MR KIRTIDEV R DAVE for Petitioner(s) : 1, MR RAHUL K DAVE for  
Petitioner(s) : 1,  
MS MAITHILI MEHTA, AGP for Respondent(s) : 1 - 5.  
None for Respondent(s) : 6 - 8.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH****Date : 28/04/2006****ORAL JUDGMENT**

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat, dated 28<sup>th</sup> March, 2006 passed in Revision Application No.4/2005 in dismissing the same and

confirming the order passed by the Collector, Kutchchh, dated 22<sup>nd</sup> August, 2005 passed in RTS Revision Application No.11/2004 in allowing the same and quashing and setting aside the order passed by the Deputy Collector, Anjar, dated 12<sup>nd</sup> January, 2004 passed in Appeal No.2/2003.

2. That the land bearing Survey Nos.209/1 and 354/6 situated at village Mithi Rohar, Taluka Gandhidham, District Kutchchh, was originally owned by one Kara Dana and on his death, the names of respondent Nos.6 to 8 i.e. Rama Megha, Nathu Megha and Jiva Megha were mutated in the revenue record by heirship in the year 1989 i.e. vide Entry No.1136 dated 28<sup>th</sup> February, 1989 and the said Entry was also certified on 12<sup>th</sup> May, 1989. The petitioner herein claiming to be one of the heir and has right in the land bearing Survey No. 209/1 admeasuring 4-Acres and 27-Gunthas of land challenged the said Entry No. 1136 in the year 2002, more particularly, on 6<sup>th</sup> June, 2002 by submitting an application/objection before the Mamlatdar, Gandhidham, and the

Mamlatdar, Gandhidham, treated the same as disputed and referred the Entry to the Deputy Collector, Anjar, to take the Entry No.1136 under review. The Deputy Collector, Anjar, vide its order dated 12<sup>th</sup> January, 2004 allowed the said appeal and set aside the Entry No.1136 dated 12<sup>th</sup> May, 1989 qua Survey No.209/1 and also set aside all the subsequent Entries and the Deputy Collector, Anjar, also passed an order that as Kara Dana has died without executing any Will and there are no direct heirs/descendants of the said Kara Dana, the Deputy Collector, Anjar, directed to vest the land to the government exercising powers under Section 72 of the Bombay Land Revenue Code. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Anjar, dated 12<sup>th</sup> June, 2004 passed in Appeal No.2/2003, the respondent Nos.6 to 8 preferred revision application before the Collector, Kutchchh, being revision Application No.11/2004 and the Collector, Kutchchh by its order dated 22<sup>nd</sup> August, 2005 partly allowed the said revision application by quashing and setting aside

the order passed by the Deputy Collector, Anjar. Being aggrieved and dissatisfied with the order passed by the Collector, Kutchchh, dated 22<sup>nd</sup> August, 2005 passed in RTS revision application No. No.11/2004, the petitioner preferred revision application before the Secretary (Appeals), Revenue Department, State of Gujarat, and the Joint Secretary (Appeals), Revenue Department, State of Gujarat, by its judgment and order dated 9<sup>th</sup> March, 2006/28<sup>th</sup> March, 2006 dismissed the said revision application No.4/2005 confirming the order passed by the Collector, Kutchchh, dated 22<sup>nd</sup> August, 2005. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Number of allegations are made by the petitioner against the Joint Secretary (Appeals), Revenue Department, State of Gujarat, however, without entering into the same, and finding disputed question, this Court called upon the learned

advocate appearing on behalf of the petitioner to make his submissions on merits. Shri K.R.Dave, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Entry No.1136 was a nullity and therefore, the same was rightly set aside by the Deputy Collector, Anjar, vide its order dated 12<sup>th</sup> January, 2004. He has also further submitted that the revenue authorities has no jurisdiction to decide the rights of the parties more particularly, who is the legal heir. He has also further submitted that the petitioner has filed an application for Letter of Administration before the Civil Court at Gandhidham and therefore, the revenue authorities could not have denied the rights of the petitioner.

4. At the outset it is required to be noted that the dispute is with regard to mutation entry in the revenue record which was certified in the year 1989 and the same came to be challenged by way of application before the Mamlatdar in the year 2002. Apart from the fact that there was a delay in

challenging the Entry, which was certified in the year 1989, as held by the Hon'ble Supreme Court as well as by this Court in catena of judgments that the mutation entry in the revenue record does not confer any right, title or interest in favour of the person, whose name is entered into the record of rights merely on the basis that his name is in the record of rights. In the present case, apart from the fact that the Deputy Collector, Anjar, set aside the Entry while exercising RTS jurisdiction, the Deputy Collector, Anjar, passed an order vesting the land to the government exercising powers under Section 72 of the Bombay Land Revenue Code on the ground that the deceased Kara Dana has died without having any heirs and/or descendants. As rightly held by the Collector, Kutchchh, that while exercising RTS jurisdiction, the Deputy Collector, Anjar, was not having jurisdiction to exercise the powers under Section 72 of the Code and the order passed by the Deputy Collector has rightly been set aside. Shri Dave, learned advocate appearing on behalf of the petitioner is right in

his submission that the revenue authorities have no jurisdiction to decide the dispute between the parties for the rights of the parties. However, on going through the orders passed by the Collector, Kutchchh, as well as by the Joint Secretary (Appeals), Revenue Department, State of Gujarat, none of the authorities have given any finding with regard to the rights of the parties and as stated hereinabove, it appears that the proceedings are pending before the Civil Court and considering the provisions of the Bombay Land Revenue Code, necessary Entry can be made on the basis of the order, that may be passed by the Civil Court after crystallizing the rights of the parties, and therefore, the impugned Entry is always subject to the order, that may be passed by the Civil Court. Considering the above facts and circumstances of the case, it cannot be said that the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat, dismissing the revision application confirming the order passed by the Collector, Kutchchh, in restoring

Entry No.1136 is in any way illegal, arbitrary and/or contrary to the provisions of the law. It is required to be noted that as such the Deputy Collector, Anjar, not only set aside the Entry but even passed order exercising powers under Section 72 of the Code by which the land in question was vested to the government and therefore, assuming that the petition is allowed and the order passed by the Deputy Collector, Anjar, is restored than it is not appreciable that how the petitioner will be benefited as the order passed by the Deputy Collector, Anjar, vesting the land to the government will be restored. Be that as it may, considering the fact as stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed.

(M.R.SHAH, J.)

kdc.