

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 9998 of 2000**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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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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**RAMSANGBHAI ALABHAI PARMAR - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**

MR PS CHAMPANERI for Petitioner(s) : 1,  
MR MR MENGDEY. AGP for Respondent(s) : 1 - 2.  
RULE SERVED for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 28/02/2007**

**ORAL JUDGMENT**

1. In this petition, the petitioner has challenged  
an order dated 14<sup>th</sup> October, 1997 passed by the  
District Registrar, Surendranagar as upheld by

the appellate orders dated 13<sup>th</sup> August, 1999 and 25<sup>th</sup> August, 2000.

2. Short facts leading to the present petition are that the petitioner was a member of one Anandgadh Samudayik Kheti Sahakari Mandli ltd., an agricultural cooperative society (here-in-after referred to as "the said society"). As a member of the said society, he was also assigned certain agricultural lands for personal cultivation admeasuring 20 acres.

2.1 The District Registrar however, was of the opinion that the petitioner became the member of the society illegally and from the very outset, he never resided within a radius of five miles from the situation of land and was thus not personally cultivating the land in question. It was found that the petitioner possessed agricultural lands in a village Dudhrej which he was cultivating. The land at Dudhrej was of sufficient area to disqualify the petitioner from seeking membership of the said cooperative society. The District Registrar therefore, issued show cause notice dated 9<sup>th</sup> July, 1997, copy of which though has not been produced on record, the same is supplied by the learned AGP which is ordered to be taken on record. In the show cause notice, it was stated inter-alia that the petitioner has been wrongly entered in the membership of the said

cooperative society and wrongly allotted the agricultural lands for his cultivation. It was stated that he himself owns and possesses agricultural lands in village Dudhrej. It was stated that as per the by-laws of the said society itself, area of operation is confined to radius of five miles from Anandgadh village and only those persons residing in the said region be admitted to the membership of the said society. It was stated that on account of these reasons, the petitioner is liable to be removed from membership under the provisions contained in Section 23 of the Gujarat Cooperative Societies Act (here-in-after referred to as "the said Act"). The petitioner was given an opportunity to show cause why such steps not be taken.

2.2 The petitioner replied to the said show cause notice under his letter dated 22<sup>nd</sup> September, 1997, a copy of this letter has been produced on record by learned AGP. In this reply, the petitioner did not dispute that he does not reside within radius of five miles from village Anandgadh. He also did not dispute that far away from land in question, he owns and possesses agricultural lands in village Dudhrej. He only stated that now the legislature has amended the provisions of law regarding requirement of residence within five miles of the agricultural land, such provision should not

be made applicable to him. The District Registrar however, passed his impugned order dated 14<sup>th</sup> October, 1997 holding that the petitioner was not cultivating the land personally and he was not qualified to become the member of the said society. The petitioner appealed against the said order to the higher authorities, however, unsuccessfully.

3. Learned advocate Shri Champaneri submitted that the impugned order is illegal and unlawful. He submitted that the authorities could not have exercised powers under section 23 of the said Act since the petitioner had not made any declaration which was false at the time of becoming a member of the society.

4. Reliance was placed on the decision of **Vikrambhai Dhirajbhai Patel v. A.S. Jog, District Registrar Co-op. Societies, Mehsana and anr.** reported in 30(1)GLR 690, wherein learned Judge observed that a member can be removed if he has made any false declaration for acquiring the membership and if there is no declaration, no question of removal would arise. For the same purpose, reliance was also placed on decision of this Court rendered in Special Civil Application No.7476/1999 on 2<sup>nd</sup> November, 2006.

5. I am afraid the petition cannot be allowed. The fact that the petitioner never resided within

the area of operation of the said society is not in dispute. The petitioner resided far away from village Anandgadh. Even after entering into membership of the society and allotment of agricultural lands, the petitioner never shifted his location. All through out therefore, the petitioner was not cultivating the land personally as required under the law. Even otherwise, the petitioner could never have been admitted to the membership of the said society since he was not qualified to be a member as per the by-laws of the society. In that view of the matter, facts arising in this petition are vitally different from those involved in the above mentioned decisions reliance on which has been placed by the learned advocate for the petitioner. Particularly, in decision dated 2<sup>nd</sup> November, 2006, this Court in Special Civil Application No.7476/1999 found that the by-laws of the concerned society were amended subsequent to the petitioners therein having been admitted into the membership of the society. Particularly, in such a case, powers under section 23 could not have been exercised since there was no question of false declaration by the member for acquiring the membership of the society. As noted, in the present case from the very outset, the petitioner was not qualified to become the member of the said society. His reply to the show cause notice issued by the District Registrar was amply eloquent on all relevant

aspects of the matter. In view of this admitted position, I see no possibility of interference.

6. The petition is therefore disallowed. Rule is discharged. No costs.

(Akil Kureshi, J.)

(raghu)