

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 200 of 2000****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 ? | Yes |
| 2. | To be referred to the Reporter or not ? | No |
| 3. | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 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 ? | No |
| 5. | Whether it is to be circulated to the civil judge ? | No |

NATWARLAL BHIMBHAI DESAI(NAIK)....Petitioner

Versus

ADDL.MAMLATDAR & AGRICULTURAL LANDS TRIBUNAL (CEILING) & 2....Respondents

Appearance:

MR AMIT V THAKKAR, ADVOCATE for the Petitioners No. 1/1 to 1/3

NOTICE SERVED for the Petitioner(s) No. 1

MS NISHA M THAKORE, ASSTT. GOVERNMENT PLEADER for the Respondents No. 1 - 3

CORAM: HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/12/2012

ORAL JUDGMENT

[1.0] Present Special Civil Application under Article 227 of the Constitution of India has been preferred by the original petitioner - original declarant challenging the impugned order dated 01.12.1995 passed by the Mamlatdar & ALT (Ceiling), Choriyasi, Surat in Ceiling Case No.692 of 1977 declaring 51 acres and 39 gunthas of land as excess vacant land under the provisions of Gujarat Agricultural Land Ceiling Act, 1960 (hereinafter referred to as "Act") as well as the order

dated 26.02.1996 passed by the Deputy Collector, Olpad Division, Surat in Ceiling Appeal No.1/1996 as well as the order dated 29.10.1999 passed by the Revisional Authority - Gujarat Revenue Tribunal in Revision Application No.TEN/BS/147 of 1996.

[2.0] Facts leading to the present petition in nut-shell are as under:

[2.1] That the original petitioner herein - Natvarbhai Bhimabhai Desai filed a statement in Form No.2 (Revised) under Rule 6 of the Ceiling Act about his holding along with necessary affidavit before the Mamlatdar & ALT, Olpad declaring 45 acres and 28 gunthas of jarayat land in his holding. That the Mamlatdar & ALT, Olpad started the proceedings under the Ceiling Act after calling for the Canal Officer Certificate under clause (6) of Section 2 of the Ceiling Act. That the Mamlatdar & ALT declared that the landlord is holding 62 acres and 01 gunthas jarayat equivalent as excess land under the provisions of the Act from his total holding of 45 acres and 30 gunthas (98 acres 01 gunthas jarayat equivalent) by his order dated 21.12.1981. The order passed by the Mamlatdar & ALT, Olpad dated 21.12.1981 came to be challenged by the original declarant - owner before the Deputy Collector, Olpad by way of Ceiling Appeal No.58 of 1982 under Section 35A of the Act, which came to be allowed and the order passed by the Mamlatdar & ALT came to be quashed and set aside and the matter was remanded to the Mamlatdar & ALT (Ceiling), Olpad who after holding an inquiry again decided by his own order dated 10.04.1987 that the landholder is holding 29 acres 29 gunthas (66 acres 35 gunthas jarayat equivalent) as excess land. The said order again came to be challenged by the original landholder before the Deputy Collector, Olpad by Ceiling Appeal No.71 of 1987 which again came to be allowed by his order dated 30.11.1987 and the matter was remanded to the Mamlatdar & ALT, after quashing

his order dated 10.04.1987. That after holding an inquiry, again the Mamlatdar & ALT (Ceiling), Olpad held by his order dated 31.05.1988 that the landholder is holding 33 acres 10 gunthas (jarayat equivalent) as surplus land i.e. 15 acres 2 gunthas of Block No.93 and Block No.81 as excess vacant land. The said order was again challenged before the Deputy Collector by Ceiling Appeal No.59 of 1998 which came to be dismissed and the order dated 31.05.1998 passed by the Mamlatdar & ALT came to be confirmed. It appears that being aggrieved by the said order the original landholder - original petitioner herein preferred Revision Application before the Gujarat Revenue Tribunal being Revision Application No.TEN/BS/292/1989 which came to be partly allowed by the Tribunal by its order dated 16.10.1992 and the order of the Deputy Collector came to be set aside and the matter was remanded to him to decide it within three months keeping in view the observations made therein. That the Deputy Collector thereafter passed an order dated 09.03.1993 which again was challenged before the Gujarat Revenue Tribunal bearing No.TEN/BS/303/1993 and by order dated 27.01.1995, the Gujarat Revenue Tribunal partly allowed the said Revision Application and considering the fact that there were four different certificates issued by the Canal Officers, it was directed to give opportunity to the original landholder as well as the Authority to prove which certificate of the Canal Officer is to be believed and/or considered. That thereafter Mamlatdar & ALT (Ceiling), Choriyasi, Surat again held an inquiry and by his order dated 01.12.1995 passed in Ceiling Case No.692 of 1977 held that the original landholder is holding total 95 acres as jarayat equivalent on 01.04.1976 and is entitled to 43 acres 08 gunthas jarayat equivalent and so 51 acres 39 gunthas is declared as surplus land.

[2.2] That being aggrieved and dissatisfied with the order dated

01.12.1995 passed by the Mamlatdar & ALT (Ceiling), Choriyasi, Surat in Ceiling Case No.692 of 1977, the original landholder - original petitioner herein preferred an appeal before the Deputy Collector, Olpad being Ceiling Appeal No.1 of 1996 and by order dated 26.02.1996, the Deputy Collector, Olpad dismissed the said Appeal. Being aggrieved and dissatisfied with the aforesaid two orders, the original petitioner herein preferred Revision Application No.TEN/BS/147 of 1996 before the Gujarat Revenue Tribunal. It appears and so recorded by the Tribunal in the impugned order, only one grievance was made before the Tribunal i.e. with regard to the computation of the land as perennially and seasonally irrigated land and it was submitted that all lands are not irrigated lands and as regular water supply is not assured, it cannot be treated as perennially or seasonally irrigated land. That by impugned judgment and order dated 29.10.1999, the Tribunal has dismissed the said Revision Application No.TEN/BS/147 of 1996 and has confirmed the orders passed by the Mamlatdar & ALT (Ceiling), Choriyasi, Surat dated 01.12.1995 passed in Ceiling Case No.692 of 1977 declaring 51 acres 39 gunhtas of the land as excess/surplus land as well as the order dated 26.02.1996 passed by the Deputy Collector in Ceiling Appeal No.1 of 1996.

[2.3] Feeling aggrieved and dissatisfied with the impugned aforesaid three orders passed by the Mamlatdar & ALT, Deputy Collector and the Gujarat Revenue Tribunal declaring 51 acres 39 gunthas of land as excess/surplus land, under the Agricultural Land Ceiling Act and from the holding of the original landholder - original petitioner herein, the original petitioner herein as preferred the present Special Civil Application under Article 227 of the Constitution of India. As during the pendency of the petition, original petitioner Natwarbhai B. Desai (Naik) has expired, his heirs are brought on record.

[3.0] Shri Amit Thakkar, learned advocate has appeared on behalf of the petitioner herein - heirs and legal representatives of the original landholder. It is submitted that as such all the Authorities have materially erred in relying upon the certificate issued by the Canal Officer and treating the land as perennially or seasonally irrigated land. It is submitted that as such though in the certificates the Canal Officer has stated that the lands are situated within the command area and actual supply of water for not less than 10 months in an year is assured, while issuing such certificate the Canal Officer has not held inquiry and afforded opportunity of hearing to the landholder/petitioner. It is submitted that as such the Canal Officer issued the certificates in cyclostyle form. Therefore, relying upon the decision of the learned single Judge in the case of **Amratlal Bhikhabhai Patel vs. State of Gujarat** reported in **1994(1) GLR 637**, it is submitted that therefore, the certificate issued by Canal Officer are void and could not have been relied upon by the Mamlatdar & ALT. It is further submitted by Shri Amit Thakkar, learned advocate appearing on behalf of the petitioners that though the land are situated in the command area, the Canal Officer has to ascertain as to whether the water supply is assured as contemplated under the Ceiling Act.

[3.1] It is submitted that as such earlier by judgment and order dated 27.01.1995 in Revision Application No.TEN/BS/303 of 1993, the Tribunal remanded the matter to the Agricultural Lands Tribunal to hold the inquiry *de novo* and still the ALT has not held any *de novo* inquiry nor has he called for certificates from the Canal Officer and relied upon the earlier certificates, for computing the ceiling. It is submitted that therefore, the proceedings held by the ALT was not in accordance with the order of remand passed in Revision Application No.TEN/BS/303 of 1993.

Making above submissions, it is requested to allow the present Special Civil Application.

[4.0] Present petition is opposed by Ms. Nisha M. Thakore, learned AGP appearing on behalf of the respondents - State Authorities. It is submitted that the order passed by the ALT dated 01.12.1995 confirmed by the Deputy Collector as well as the Gujarat Revenue Tribunal declared 51 acres 39 gunthas of the land as surplus under the provisions of the Gujarat Agricultural Land Ceiling Act is just and proper and after following due procedure as required and after giving an opportunity to the original declarant - landholder. It is submitted that after holding the necessary inquiry and even considering the certificate issued by Canal Officers as well as the deposition of the Canal Officer, the Mamlatdar & ALT did consider 21 acres 02 gunthas of land as dry land and while considering the total holding did not consider the same and only thereafter has declared 51 acres 32 gunthas as excess/surplus land. It is submitted that even the order passed by the Mamlatdar & ALT is absolutely in consonance with the order of remand passed by the Gujarat Revenue Tribunal in TEN/BS/303 of 1993. Therefore, it is requested to dismiss the present Civil Revision Application.

[5.0] Heard learned advocates appearing on behalf of respective parties at length. At the outset it is required to be noted that despite the fact that the initial proceedings are initiated in the year 1977 still for one reason or the other the proceedings are not finalized due to number of orders of remand passed by various Authorities. It should be noted that the Mamlatdar & ALT has passed the impugned final order declaring 51 acres and 39 gunthas of land as excess/surplus land from the holding of the original landholder under the provisions of the Ceiling Act, which has been confirmed by the Deputy Collector (Appellate Authority) as

Revisional Authority – Gujarat Revenue Tribunal.

[5.1] At the outset it is required to be noted that as such the original landholder has never disputed the certificates issued by the Canal Officers. It appears that even the Canal Officer was examined before the first Authority and considering the said certificates of the Canal Officers and his deposition, the Mamlatdar has held that 21 acres 02 gunthas of land is a dry land and consequently has granted the benefit of the same in favour of the petitioner – landholder and only thereafter has declared 51 acres 39 gunthas of land as excess/surplus land.

[5.2] From para 6 of the impugned order passed by the Tribunal it appears that learned advocate appearing on behalf of the petitioner raised only one point whether the lands which have been considered as irrigated lands were supplied water from the canal or not. It appears that no other submissions were canvassed before the Tribunal. Shri Thakkar, learned advocate appearing on behalf of the petitioner has submitted that in the Revision memo the original revisionist raised the contention with respect to the certificate issued by the Canal Officers. However, it is to be noted that the Tribunal has categorically stated in the impugned judgment and order that the learned advocate appearing on behalf of the revisionist has raised only one point regarding whether lands which have been considered as irrigated lands were supplied water from the canal or not. Therefore, it appears that except the above, no other contentions were canvassed and/or no other submissions were made. It is not the case on behalf of the petitioner in the present petition that though points were canvassed and/or submitted, the Tribunal has not dealt with the same. Therefore, the petitioner cannot be permitted to raise the contentions with respect to the certificate

issued by the Canal Officer which were never raised and/or contended and/or submitted before the Authorities below more particularly Gujarat Revenue Tribunal.

[5.3] Now, so far as the point which was raised before the Tribunal regarding whether the lands which have been considered are irrigated lands were supplied water from the canal or not, the Tribunal has considered the entire record inclusive of the deposition of the Canal Officer and has observed that with respect to the lands to which the Irrigation Department has not supplied the water, they have been considered as dry lands by the Mamlatdar & ALT and there is no cross-examination of the Canal Officer with respect to other lands wherein the water has been supplied from the canal. The Tribunal has specifically observed and held that if the water is supplied, for the period not less than 10 months during the period, from any source of irrigation and which is consequently capable of growing atleast two crops in an year or is utilized for growing sugarcane crop is classed as perennially irrigated land. Therefore, it is held that it is not necessary that only if the sugarcane is grown then it can be classed as perennially or seasonally irrigated land. It is to be noted that even the revision application before the Tribunal, the original revisionist has specifically stated that water has been supplied from the canal for 15 days in a month. Considering the facts and circumstances of the case, no illegality has been committed by the Gujarat Revenue Tribunal in dismissing the aforesaid Revision Application confirming the order passed by the Mamlatdar & ALT declaring 51 acres 39 gunthas of land as excess/surplus land and confirmed by the Deputy Collector (Revisional Authority).

[5.4] Now, so far as the reliance placed upon the decision of the learned single Judge in the case of Amratlal Bhikhabhai Patel (Supra) is

concerned, on facts, the said decision shall not be applicable. It is to be noted and as stated hereinabove as such the original landholder did not challenge and/or questioned the certificates issued by the Canal Officers. It is also required to be noted that even earlier the Tribunal remanded the matter only to hold the inquiry and consider which certificate of the Canal Officer to be believed as there were three to four canal certificates of the Canal Officers and with respect to that only the matter was remanded. In any case as such the Mamlatdar & ALT has considered some blocks/lands as dry land considering the deposition of the Canal Officer and with respect to the lands where water is not supplied. Therefore, even the contention on behalf of the petitioner, that the order passed by the Mamlatdar & ALT is in breach of the order of remand, cannot be accepted.

[6.0] In view of the above and for the reasons stated above, the present Special Civil Application fails and the same deserves to be dismissed and is, accordingly, dismissed. Rule is discharged. No costs.

(M.R. Shah, J.)

Ajay