

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 18318 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE RAJESH H.SHUKLA**

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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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LILABEN D/O MAFATLAL DAGLA & W/O JETHALAL MAJIATAR &
3....Petitioner(s)
Versus
ASSISTANT COLLECTOR & 1....Respondent(s)

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Appearance:

MR BHARAT JANI, ADVOCATE for the Petitioner(s) No. 1 - 4
MR MANAN MEHTA, AGP, for the Respondent(s) No. 2
RULE SERVED for the Respondent(s) No. 1 - 2

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CORAM: HONOURABLE MR.JUSTICE RAJESH H.SHUKLA**Date : 30/11/2013****ORAL JUDGMENT**

The present petition has been filed under Articles 226 & 227 of the Constitution of India as well as under the provisions of the Bombay Tenancy & Agricultural Lands Act, 1948 for the prayers, inter alia, that the impugned order passed by the Asst. Collector, Palanpur in Case No. 3/06 dated 21.11.2006 may be quashed and set aside on the grounds stated in the petition.

2. Heard learned advocate Shri Bharat Jani for the petitioners and learned AGP Shri Manan Mehta for the respondents.

3. Learned advocate Shri Jani referred to the papers and submitted that in purported exercise of power under the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as the 'Tenancy Act') earlier also a notice was issued and vide order dated 12.1.1998 at Annexure-H ultimately the proceedings were dropped on the ground that due to scanty and irregular rains and the nature of land, cultivation is not possible and effort has been made to make the land fertile. However, in spite of this, again, the proceedings were initiated in the year 2004 on the same ground. Learned advocate Shri Jani submitted that the exercise of power is not justified on the ground that the land in question has been cultivated and only for 2 years it was not possible to cultivate. He submitted that, if for a long period it is not cultivated, the power could be assumed. However, in the facts of the case, the proceedings were dropped earlier and on the same ground again the proceedings were initiated and the impugned order came to be passed on 21st July, 2005. He submitted that even that order was quashed and set aside pursuant to the order of this High Court in Special Civil Application No. 3619 of 2006 with Special Civil Application No. 20830 of 2005 dated 16.6.2006.

4. Learned advocate Shri Jani submitted that the Act itself has been subsequently amended for which he referred to Government Notification dated 8.7.2009 by which an amendment in the Tenancy Act has been made. He pointedly referred to sec. 7 of the Amendment Act wherein it has been stated that in the principal Act, sections 65, 65A and 66 shall be deleted. He has also referred to and relied upon the order of the Hon'ble Division Bench of this High Court in Letters Patent Appeal No. 1380 of 2003 in Special Civil Application No. 15551 of 2003 (Coram: PB Majmudar & Paresh Upadhyay, JJ.) dated 2.7.2012 and submitted that as observed by the Division Bench, similar case was considered that there was no justification for invoking sec. 65 of the Tenancy Act where the land could not be cultivated for the reasons stated in this petition. He pointedly referred to the observations and submitted that if the land in question is not utilized for agricultural activity for last more than 5 years and it is kept a waste land, then sec. 65 could be resorted to by which the management of the land could be taken away by the State Government.

5. Learned advocate Shri Jani submitted that in any case pursuant to the amendment in the Act itself, now there is no machinery available to manage the land for 10 years after taking over the management and therefore the present petition may be allowed inasmuch as the land is required to be surrendered back to the concerned land-holder after the period of 10 years which is not possible in view of the amendment in the Act.

6. Learned AGP Shri Manan Mehta referred to the papers and tried to submit that merely because earlier the proceedings were dropped would not be a bar for exercise of power afresh in a given circumstance. He submitted that as observed in the order, no effort was made to make the land fertile and therefore the proceedings have been initiated. He emphasized that earlier the proceedings were dropped only to give an

opportunity to make the land fertile and thereafter as nothing was done, again, in exercise of power under sec. 65 proceedings have been initiated. Therefore, he submitted that the impugned order cannot be said to be erroneous. However, he has fairly stated that the amendment in the statute may be considered and the circumstances which may follow may be considered.

7. In view of rival submissions and having regard to the fact that earlier the proceedings were initiated after the inquiry specifically observing that the rain is scanty and the nature of land is such that cultivation is difficult, the proceedings were dropped by the order at Annexure-H dated 12.1.1998. The situation has not changed. The purported exercise of power again on the ground that even after the proceedings were dropped earlier no steps have been taken to make the land fertile and cultivate is required to be considered in background of ,

- (a) the nature of the land;
- (b) the development in the surrounding areas where it is stated that it is a residential zone and governments officers houses have been constructed and it is not possible to cultivate.

Therefore, there is no bar for exercise of power or jurisdiction, but there has to be justification for exercise of such powers.

8. The submission made by the learned AGP that earlier the proceedings were dropped to provide an opportunity for cultivation and develop the land, and since thereafter also nothing has been done, again proceedings are initiated is therefore misconceived. In any case, as pointed out by the learned AGP referring to the amendment by Government Notification dated 8.7.2009 by which the Act has been amended pursuant to which sec. 65 has been deleted, there would not be

any justification to sustain this order. The Division Bench as stated above has also referred to this aspect that as there is no machinery to manage the land and revert to the land-holder after 10 years it could be futile.

9. Therefore, in view of these observations and the background of facts, the petition deserves to be allowed and accordingly stands allowed. Prayer in terms of para 23(B) is granted. The impugned order in Case No. 3/06 dated 21.11.2006 at Annexure 'O' is hereby quashed and set aside. Rule is made absolute. No order as to costs.

(RAJESH H.SHUKLA, J.)

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