IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 945 of 2013

In SPECIAL CIVIL APPLICATION NO. 13457 of 2011

With
CIVIL APPLICATION NO. 8147 of 2013
In
LETTERS PATENT APPEAL NO. 945 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE VIJAY MANOHAR SAHAI

and
HONOURABLE MR.JUSTICE K.J.THAKER

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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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JAYANTIBHAI JOITARAM PATEL & 4....Appellant(s)
Versus
DISTRICT COLLECTOR & 5....Respondent(s)
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Appearance:
MR AM PAREKH, ADVOCATE for the Appellant(s) No. 1 - 5

MR UTKARSH SHARMA AGP for the Respondent(s) No. 1 - 2

MR SHITAL R PATEL, ADVOCATE for the Respondent(s) No. 5

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CORAM: **HONOURABLE MR.JUSTICE VIJAY MANOHAR SAHAI**
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 28/02/2014

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE VIJAY MANOHAR SAHAI)

1. By way of the present Letters Patent Appeal, the appellant – original petitioner has challenged the judgment and order dated 28.3.2013 passed by the learned Single Judge in Special Civil Application No. 13457 of 2011, whereby the learned Single Judge was pleased to dismiss.

2. In the writ petition, the appellant herein – original petitioner has challenged the order dated 28.3.2007 passed by the Gujarat Revenue Tribunal in Revision Application preferred by the appellant-ori. Petitioner, wherein, the Tribunal has rejected the application of the petitioner and confirmed the order dated 16.10.89 passed by the Deputy Collector (L.R.) Appeals, Ahmedabad.

3. The Five Judges Full Bench of this Court in the case of **Gujarat State Road Transport Corporation v. Firoze M. Mogal and another, 2014**

GLH 1 has held as under :-

> "x) If the Special Civil Application is described as one not only under Article 226 of the Constitution, but also under Article 227 of the Constitution of India and the Court or the Tribunal whose order is sought to be quashed, is not made a party, the application is not maintainable as one for the relief of certiorari in the absence of the concerned Tribunal or Court as party, but the same may be treated as one under Article 227 of the Constitution of India. If the Court or Tribunal is not impleaded as a party respondent in the main petition, then by merely impleading such court or tribunal for the first time in the Letters Patent Appeal will not change the nature and character of the proceedings before the learned Single Judge. By merely impleading such a Court or Tribunal for the first time in the LPA, the appeal could not be said to be maintainable, if the proceedings before the learned Single Judge remained in the nature of supervisory proceedings under Article 227 of the Constitution.

> xi) If the learned Single Judge, in exercise of a purported power under Article 227 of the Constitution sets aside the order of Tribunal or Court below and at the same time, the essential conditions for issue of writ of certiorari are absent, no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself and such an order can be challenged only by way of a Special Leave Petition before the Supreme Court."

4. In view of the aforesaid Full Bench decision, the present Letters Patent Appeal is not maintainable as the learned Single Judge has exercised jurisdiction under Article 227 of the Constitution of India. Hence, the present Letters Patent Appeal stands dismissed as not maintainable. We, however, make it clear that we have otherwise, not gone into the merit and the dismissal of this appeal will not stand in the way of the appellant in seeking appropriate remedy before the appropriate forum in accordance with law.

5. In view of dismissal of Letters Patent Appeal, Civil Application does not survive and it is accordingly dismissed.

(V.M.SAHAI, J.)

(K.J.THAKER, J)

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