

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 712 of 2010

In SPECIAL CIVIL APPLICATION NO. 11947 of 2009

With

LETTERS PATENT APPEAL NO. 713 of 2010

In

SPECIAL CIVIL APPLICATION NO. 2158 of 2010

TO

LETTERS PATENT APPEAL NO. 835 of 2010

In

SPECIAL CIVIL APPLICATION NO. 2390 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE JAYANT PATEL

and

HONOURABLE MR.JUSTICE C.L. SONI

=====

- 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 ?

=====

AJMALBHAI RAMJIBHAI RABARI (DECD.) THRO HEIRS &
266....Appellant(s)

Versus

STATE OF GUJARAT & 3....Respondent(s)

=====

Appearance:

MR SUDHIR NANAVATI, LD. SR. COUNSEL with MS ANUJA S
NANAVATI, ADVOCATE for the Appellant(s) No. 1 - 267

MR HL JANI, GOVERNMENT PLEADER with MR RUTVIJ OZA, AGP
for the Respondent(s) No. 1 - 3

MR SATYAM Y CHHAYA, ADVOCATE for the Respondent(s) No. 4

=====

CORAM: **HONOURABLE MR.JUSTICE JAYANT PATEL**
and
HONOURABLE MR.JUSTICE C.L. SONI

Date : 17/10/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE JAYANT PATEL)

1. All appeals arise from the order passed by the learned Single Judge dated 26.2.2010 in SCA No.11947 of 2009 and allied matters, whereby the learned Single Judge, for the reasons recorded in the order, dismissed the petitions.
2. At the outset, we may record that the main SCA was for the relief, inter alia, to restrain the respondent authority from evicting or dispossessing the petitioners from the land bearing Survey No.14, T.P. Scheme No.1, Final Plot No.41 situated at Ghatlodia (hereinafter referred to as "land in question") and another prayer made by the petitioners was that respondent authority be directed to offer alternative living space to the residences of the area, who are petitioners - appellants herein.
3. It appears that pending the petitions, interim orders were passed for the verification of the status of the residence and there are further

interim orders passed as to whether the original petitioners are holding any other alternative place at their native place or any other residential premises or not, etc. The interim order of the status-quo was also passed at the time when the LPA was entertained.

4. We have heard Mr. Sudhir Nanavati, learned Sr. Counsel for the appellants and Mr. H. L. Jani, learned GP with Mr. Oza, learned AGP for State Authorities and Mr. Chhaya, learned Counsel for the respondent Corporation. It has been brought to our notice that the State Government has framed a Scheme dated 18.7.2013 in exercise of the power conferred under Section 58(2)(d) of Gujarat Slum Area (Improvement, Clearance and Rehabilitation) Act, 1973, whereby a particular area where slums are located is to be examined by the prescribed authority at the State level and at the city level and after examining the requisite criteria, the prescribed authority may declare that particular area as 'slum', if it meets with the criteria for declaring a particular area as 'slum'. After the area is declared as 'slum', rehabilitation process has to

be undertaken for the residents of the slum.

5. It is an admitted position that the land is belonging to the State Government, but now located within the area of Ahmedabad Municipal Corporation. Mr. Chhaya, learned Counsel appearing for the Corporation, states that the prescribed authority for the area of AMC has been so constituted under the Notification dated 30.8.2013 and certain areas are also declared as 'slums'. However, for the land in question, the matter appears to have not been considered because of the pendency of the present appeals and may be on account of the status-quo ordered by this Court.

6. It was submitted that once the area is declared as 'slum', the other process as per the Scheme for rehabilitation may be considered. In the event the area is not declared as 'slum', the petitioners - appellants or the residents of the area of the land in question may not be entitled to the benefits of the Scheme. However, he submitted that as the area is falling within the limits of AMC, the prescribed authority would have no objection for considering if the matter

is referred to the prescribed authority to consider as to whether the area should be declared as 'slum' or not.

7. Whereas, the learned GP has also no objection if the prescribed authority is to consider area covered by land in question as the 'slum' or not.

8. Mr. Nanavati, learned Sr. Counsel for the appellants, under the instructions of some of his clients, who are present in the Court, submits that the petitioners - appellants have no objection if the area in question is considered by the prescribed authority, as to whether it should be declared 'slum' or not, but he submits that the decision as may be taken may be communicated to Appellants No.27 and 31, Shri Karsanbhai Sartanbhai Rabari and Shri Bhikhabhai Versibhai Rabari having address at Khodiyar Nagar, Survey No.14, Final Plot No.41, Near Karmachari School, Rannapark, Ghatlodia, Ahmedabad-380 061. He also submitted that as the protection has been granted against the eviction by way of status-quo, the same interim relief granted earlier be continued until the decision is taken by the prescribed authority under the

Government Resolution dated 18.7.2013 and he further submits that some additional period may also be provided, leaving the residents to agitate the question further, if such contingency arises and the residents are so desirous.

9. Considering the above, we find that when the Scheme has been formulated by the government Resolution dated 18.7.2013 for rehabilitation of the slums in Gujarat State, which includes the Corporation area of AMC and when the prescribed authority, who can rather be said as an expert body is already constituted and has started functioning as per the Resolution, the issue for declaration of the land in question, to be declared as 'slum' or not should better be decided by the prescribed authority. The prescribed authority for the land in question has up till now not considered the matter.

10. Hence, the respondent Corporation as well as the State Government are directed to refer the matter to the prescribed authority for examining the aspect as to whether the land in question, which is occupied by the appellants should be declared as 'slum' or not and such decision shall

be taken within six months from the date of receipt of the order of this Court and from the date of making the reference by the Corporation to the prescribed authority. It is further observed and directed that the decision shall be communicated by the Corporation to the Appellants No.27 and 31, whose names and addresses are mentioned herein above. The said decision shall be communicated by the Registered A.D. Post. It is further observed and directed that until the decision is taken and further period of six weeks from the date of sending of the communication by Registered A.D. Post expires, interim order of status-quo as ordered earlier shall continue to operate.

11. All the appeals are disposed of accordingly.

No order as to costs.

(JAYANT PATEL, J.)

(C.L.SONI, J.)

vinod