

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 10009 of 2024****With****R/SPECIAL CIVIL APPLICATION NO. 11457 of 2024**

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GIRIJABEN WD/O SHANKARGIRI & ORS.

Versus

SHIVLALGIRI @ JAGDISHGIRI UMEDGIRI & ORS.

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Appearance:

MR RASESH H PARIKH(3862) for the Petitioner(s) No. 1,2,3,4

MR.HEMANG H PARIKH(2628) for the Petitioner(s) No. 1,2,3

MR KAMAL TRIVEDI, LD. ADV. GENERAL with MR.G.H.VIRK, LD.

GOVERNMENT PLEADER with MR.J.K.SHAH, ASST. GOVERNMENT

PLEADER/PP for the Respondent(s) No. 2

MR TRILOK J PATEL(658) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**Date : 09/09/2024****ORAL ORDER**

1. Heard learned Senior Advocate Mr.H.H.Parikh with learned advocate Mr.Kishan Dave on behalf of the petitioners, learned Advocate General Mr.Kamal Trivedi with learned Government Pleader Mr.G.H.Virk with learned Assistant Government Pleader Mr.J.K.Shah on behalf of the respondent - State and learned advocate Mr.Trilok Patel on behalf of respondent no.1 in Special Civil Application No.10009/2024.

1.1. Heard learned advocate Mr.Trilok Patel on behalf of the petitioner, learned Senior Advocate Mr.H.H.Parikh on behalf of respondents no.1 to 4 and Advocate General Mr.Kamal Trivedi with learned Government Pleader Mr.G.H.Virk with

learned Assistant Government Pleader Mr.J.K.Shah on behalf of respondent - State in Special Civil Application No.11457/2024.

2. While under normal circumstances, the issue involved on merits in the present writ petitions is not such where presence of learned Advocate General would be required, yet, considering the peculiar circumstances of these cases, this Court had requested the learned Advocate General to assist this Court.

3. The peculiar facts being that in the present writ petitions, orders passed by the In-Charge Chairman of the Gujarat Revenue Tribunal dated 20.05.2024 (SCA No.10009/2024) and 29.04.2024 (SCA No.11457/2024) are under challenge. It would appear that before the Gujarat Revenue Tribunal, a common order passed by the Deputy Collector in Tenancy Appeal No.666/1998 and 665/1994 dated 31.08.1996 was under challenge. Again, the revision applicant in both the revision application was also the same.

3.1. It would appear that in the very selfsame common order, the In-Charge Chairman of the Gujarat Revenue Tribunal has

passed two diametrically different orders more particularly on the aspect of condonation of delay. It would appear that in order dated 29.04.2024 corresponding to Revision Application No.783/1996, the order passed by the Deputy Collector had not been interfered with on the ground that there was no reason mentioned for the delay of 22 years which had occurred in challenging the order in question. On the other hand, in order dated 20.05.2024 in Revision Application No.782/1996 by the very revision applicant challenging very same order, the Gujarat Revenue Tribunal had observed that since the order impugned being the order of Mamlatdar and ALT, Khambhat were against the legal position, therefore, there are in-effect a nullity and that, an order which is a nullity, could be challenged at any point of time without any reference to the Limitation Act. It would also be relevant to observe here that the delay had been condoned by the Gujarat Revenue Tribunal without there being a separate application for condonation of delay.

3.2. Since two diametrical different orders had been passed with regard to the very selfsame impugned order under challenge and since it has come to the notice of this Court

that the concerned Member has been passing orders repeatedly which are otherwise against the settled propositions of law, which are against the statutes in question and which are bereft of any legal reasoning, this Court had called upon the learned Advocate General to examine such matters and whereas, today, learned Advocate General in the present petitions as well as the petitions on which attention of the learned Advocate General had been drawn to, has submitted that the State is looking into the issue very seriously at the highest level. Learned Advocate General would submit that this Court may pass appropriate orders on the merits of the issue and whereas, the State is on its own independently looking and examining the orders passed by the concerned Member.

4. In this view of the matter, since the State is looking into the matter at the highest level, to this Court, it would appear that the State should instruct the concerned Member not to take up any further matters till the State finally opines whether the orders passed were justifiable or not.

4.1. It is clarified at this stage that the legality and validity of the orders are under challenge before this Court and inquiry

by the State is whether it would behove a Chairman of the quasi-judicial body like the Gujarat Revenue Tribunal in passing such orders and where a person who passes orders which are contrary to the settled proposition of law, contrary to decisions of the High Court and the Supreme Court and passes orders which are without any reasons whatsoever should be permitted to continue on such a senior position. The said aspect had been clarified by the learned Advocate General.

5. Under such circumstances, while the Court proposes to interfere with the impugned orders, more particularly on account of the lacunas noted hereinabove, the State is directed to comply with the statement made by learned Advocate General and whereas the State through the Revenue Department shall forthwith i.e. during the course of the day intimate to the In-Charge Chairman, Gujarat Revenue Tribunal not to hear or decide any applications and not to take any administrative decisions till the State would finally take a decision on the above aspect. In other words, the State will direct the Member concerned to go on administrative leave till the final decision is taken by the State in this regard.

5.1. It has been submitted by learned Advocate General that since the issue is being taken up at the highest level by the State, such decision would be taken by the State within a period of eight weeks from today.

6. Coming back to the merits of the matters, as noted by this Court, a very selfsame order passed by the Deputy Collector dated 31.08.1996 had been challenged before the Gujarat Revenue Tribunal. To this Court, it would appear that considerations with regard to condonation of delay should have weighed uniformly which is as noted hereinabove, while the Gujarat Revenue Tribunal did not feel it appropriate to condone the delay since sufficient cause was not made out in the order passed on 29.04.2024 in Revision Application No.TEN/BA/783/1996, the same view should have followed in the Revision Application No. REVISION/BA/782/1996 more particularly since the order in question was a common order, parties were also the same and the issue involved was also the same and whereas, both the learned advocates for the respective parties are ad idem that except for the difference in the name of the parties, the issue involved was completely identical.

6.1. Again, as observed by this Court, in Revision Application No.782/1996 where the delay had been condoned on the specious ground as noted hereinabove and even that too without any application for condonation of delay being filed by the revision applicant concerned.

6.2. In view of the above observations, since it would clearly appear that the orders passed by the Gujarat Revenue Tribunal are unsustainable, the orders passed in Revision Application No.783/1996 dated 29.04.2024 and in Revision Application No.782/1996 dated 20.05.2024 by the Gujarat Revenue Tribunal are hereby quashed and set aside. The Judicial Member, Gujarat Revenue Tribunal shall hear and decide the Revision Applications within a period of three months from the date of receipt of this order and whereas needless to clarify that the Gujarat Revenue Tribunal shall take appropriate decision in accordance with law on the merits of the revision applications.

6.3. It is clarified that in case orders referred to hereinabove by the Gujarat Revenue Tribunal have been implemented by the Revenue Authorities at the district level, they shall restore

status-quo ante within a period of thirty days from the date the order is brought to the notice and meanwhile till the final decision is taken by the Gujarat Revenue Tribunal, all parties to maintain status quo including the Revenue Authorities.

7. Insofar as the aspect with regard to the Member concerned, the State shall take appropriate decision and inform this Court within a period of eight weeks from today by filing a separate note in the present application. The State i.e. the Secretary, Revenue Department shall also ensure that appropriate instructions to the In-Charge Chairman, Gujarat Revenue Tribunal is issued before the end of the day directing him to step down on administrative leave during the State takes an appropriate decision into his conduct as a Chairman of the Tribunal concerned.

7.1. It is clarified at this stage that attention of the learned Advocate General has been drawn to number of orders passed by the Member concerned and whereas to ensure that the case of the parties may not be affected on merits, numbers of such petitions are deliberately not mentioned. Again, it is further observed that all observations hereinabove are prima facie and whereas the same should not be treated as this

Court having finally opined as regards the conduct or competence of the Member in question.

8. With the above observations and directions, the present petitions stand disposed of.

9. Copy of this order shall be provided as early as possible to learned Assistant Government Pleader Mr.Shah to be given to the State Authorities for onward communication and due compliance.

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(NIKHIL S. KARIEL,J)