

**(2008) 05 GUJ CK 0008**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 6330 of 2008**

Balubhai Lalabhai

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

**Date of Decision : 06-05-2008**

**Acts Referred:**

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43, 70

**Citation : (2008) 05 GUJ CK 0008**

**Hon'ble Judges : Abhilasha Kumari, J**

**Bench : Single Bench**

**Advocate : K.K. Trivedi, for the Appellant; Jaswant K. Shah, AGP, for the Respondent**

## **Judgement**

Abhilasha Kumari, J.—Rule. Mr.J.K. Shah, learned Assistant Government Pleader waives service of Rule on behalf of the respondents. In the facts and circumstances of the case, and with the consent of the learned Counsel for the parties, the matter is taken up for final hearing today.

2. This petition has been filed by the petitioner with the following prayers:

[A]. Your Lordships may be pleased to admit the present petition.

[B]. Your Lordship may be pleased to issue a writ of Certiorari or a writ in nature of Certiorari or any other appropriate writ/s, order/s, and/or direction/s quashing and setting aside the notice issued by the respondent No. 2 dtd.13/12/2006 (Annexure - A) as well as order passed by the respondent No. 2 dtd.9/8/2002 (Annexure - B).

[C]. Your Lordships may be pleased to issue a writ of Mandamus or writ in nature of mandamus or any other appropriate writ/s, order/s, and/or direction/s directing the respondent No. 3 to enter the necessary Mutation Entry giving effect to the order dtd.18/4/2002 passed by the respondent No. 5 in Tenancy Case No. 33 of 2001 (Annexure-C), in the revenue records/ Village Form Nos.6 & 7/12, of Village Katargam, Taluka Choryasi (now City), District Surat within time

which may be stipulated by this Hon''ble Court.

[D] Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to grant ad-interim / interim relief staying the execution, operation and implementation of the notice issued by the respondent No. 2 dtd.13/12/2006 (Annexure-A) as well as order passed by the respondent No. 2 dtd.9/8/2002 (Annexure-B).

[E] Such other and further relief/s as may be deem just and proper in the facts and circumstances of the case may please be granted in favour of the petitioner in the interest of justice.

3. Briefly stated, the facts of the case are that, the petitioner is the owner and possessor of land bearing Survey No. 21/2, Revision Survey No. 18/4 of Village: Magdalla, Taluka Choryasi (now City), District: Surat, admeasuring about 10724 sq.mtrs. It is the case of the petitioner that the respondent No. 5 i.e. the Additional Mamlatdar & ALT (Tenancy), Choryasi, passed an order dated 18.4.2002, in Tenancy Case No. 33/2001 u/s 70(o) of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Act" for short), declaring the petitioner as permanent tenant, and thereby removing the restrictions imposed u/s 43 of the Act. The said order of the Mamlatdar was confirmed by the respondent No. 4 i.e. the Deputy Collector, and thereafter by the respondent No. 2 i.e. the District Collector, Surat. Respondent No. 2, forwarded the proposal to the State Government vide letter dated 30.9.2002, a copy of which is annexed as Annexure - E to the petition, with an observation that the order dated 18.4.2002 passed by the respondent No. 5 is in consonance with the Circular issued by the State Government.

4. It is not disputed that the State Government has not challenged the order dated 18.4.2002 passed by the respondent No. 5 (Additional Mamlatdar & ALT) till date. The case of the petitioner is that inspite of not having challenged the order dated 18.4.2002, which is in consonance with the earlier Circular of the Government, the State Government issued Circular dated 7.10.2005, empowering the District Collector to decide the cases u/s 43 of the Act. The District Collector issued a notice dated 13.12.2006 (Annexure A to the petition) to the petitioner for review of the order dated 18.4.2002 passed by the respondent No. 5 in Tenancy Case No. 33/2001, in view of Circular dated 7.10.2005. Thereafter, the matter was adjourned.

5. It is stated in the petition that in the meanwhile, the Circular dated 7.10.2005 was challenged before this Court by a number of affected persons by filing Special Civil Application No. 9609 of 2006 and other allied matters. The said writ petitions were allowed vide judgment and order dated 17-18-23.01.2007, copy of which is annexed as Annexure - F to the petition. This Court (Coram:Jayant Patel, J.) vide the above referred judgment quashed and set aside the Circular dated 7.10.2005, and held the same as ultra vires the provisions of the Act. The relevant extract of the judgment is reproduced hereinbelow:

Paragraph 42.8:

The circular of the State Government dated 07.10.2005 is in conformity with the express basic scheme and mechanism provided under the Act and the circular attempts to nullify the power conferred by the legislature upon the Mamlatdar & ALT for the first instance and the circular is intended to confer the power upon the Collector with the approval of the State Government against the express statutory scheme and mechanism of the Act and hence, the said circular of the State Government is ultra vires to the Act and hence, unconstitutional and void.

6. It is further averred by the petitioner that in view of the quashing and setting aside of the Circular dated 7.10.2005, the matter could not have been processed further by the respondent No. 2. Being aggrieved by the communication dated 13.12.2006 (Annexure - A) and communication dated 9.8.2002 (Annexure - B), which have been issued by the respondent No. 2 in pursuance to the Circular dated 7.10.2005, the petitioner has approached this Court by way of the present writ petition.

7. I have heard Mr.K.K.Trivedi, learned Counsel for the petitioner and Mr.J.K.Shah, learned Assistant Government Pleader for respondents at length and in detail.

8. Mr.K.K.Trivedi, learned Counsel for the petitioner submits that the impugned notice dated 13.12.2006 (Annexure - A) issued by the respondent No. 2 is contrary to the judgment and order dated 17-18-23.01.2007 rendered by this Court in Special Civil Application No. 9609 of 2006. It is submitted by Mr.Trivedi that the order dated 18.4.2002 of the Mamlatdar & ALT has remained unchallenged till date, and therefore, has attained finality. It is pointed out by the learned Counsel for the petitioner that the judgment of this Court rendered in Special Civil Application No. 9609 of 2006 has not been challenged by the respondents so far, and the respondents are, therefore, bound to give effect to it.

9. Mr.J.K.Shah, learned Assistant Government Pleader has submitted that the State Government has filed a Letters Patent Appeal against this judgment but the same is lying in the Registry of the High Court for removal of office objections.

10. Be that as it may, the fact remains that the judgment of this Court dated: 17-18-23.1.2007 in Special Civil Application No. 9609 of 2006 whereby the Court has dealt with the rights of a person claiming protection as a protected or permanent tenant, and whereby the Circular dated 7.10.2005 of the State Government has been quashed and set aside, still holds the field. Since the Circular dated 7.10.2005 has not yet been restored, it cannot be made applicable to the case of the petitioner.

11. In view of the above position, and in the facts and circumstances, the only conclusion which can be arrived at by this Court is that since the Circular dated 7.10.2005 has been quashed by this Court vide the judgment dated 17-18-23.1.2007, the respondents are bound to give effect to the said decision

of this Court rendered in Special Civil Application No. 9609 of 2006, and it is so directed. In the event that Circular dated 7.10.2005 is restored, or otherwise, in any proceedings that may be initiated before any forum, the Collector would be at liberty to take action, in accordance with law.

12. Under the circumstances, the impugned notice dated 13.12.2006 (Annexure - A), in so far as it relates to the Circular dated 7.10.2005 of the State Government, is quashed and set aside with the clarification that the present direction shall not operate as a bar to the Collector in exercising other statutory powers, as may be available under the Act, nor shall the bar operate for other remedial measures against the order dated 18.4.2002 passed by the Mamlatdar and ALT, if otherwise permissible in law.

13. So far as the directions of the Collector at Annexure B are concerned, it is clarified that if the respondents do not take proper recourse to law, within a period of three months from the date of this order, the restriction imposed vide order dated 9.8.2002 (Annexure B) shall cease to operate after the expiry of the above stipulated period of three months. It is open to the petitioner to apply to respondent No. 3 for the mutation of entries in pursuance to the order dated 18.4.2002, which will be dealt with by the respondent No. 3, in accordance with law.

14. The writ petition is disposed of in the above terms. Rule is made absolute accordingly. There shall be no orders as to costs.