

(2013) 12 GUJ CK 0027
In the Gujarat High Court

Case No : Special Civil Application No. 16343 of 2013

Jadeja Kishorsinh

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0027

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Vidhi J. Bhatt, for the Appellant; Dharmesh Devnani, Assistant Government Pleader for the Respondent(s) No. 1, for the Respondent

Final Decision : Disposed Off

Judgement

K.M. Thaker, J.—Heard Mr. Mehta, learned senior advocate with Ms. Bhatt, learned advocate for the petitioner and Mr. Devnani, learned AGP who has appeared on advance service of copy of the petition. At the request of learned advocate for the petitioner and with consent of learned AGP, the petition is taken up for hearing and final decision today. In present petition, the petitioner has prayed, inter alia, that:

26(A) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction, quashing and setting aside the impugned order dated 25.07.2013 passed by the respondent No. 2, being bad in law and illegal;

(B) Your Lordships may be pleased to declare that only respondent No. 1 has the authority to decide petitioner's appeal in light of this Court's oral order dated 01.11.2012 passed in Special Civil Application No. 14588/2012;

(C) Your Lordships may be pleased to issue a writ of mandamus commanding the respondent No. 1 to decide the petitioner's appeal on merits in the light of this Hon'ble Court's direction contained in its oral order dated 01.11.2012 passed in Special Civil Application No. 14588/2012;

(D) Your Lordships may be pleased to declare that the impugned order dated 29.08.2013 passed by respondent No. 2 is illegal, bad in law, arbitrary, capricious and in defiance of this Hon"ble Court's oral order dated 07.11.2012 passed in Special Civil Application No. 15384/2012;

2. At the outset, learned advocate for the petitioner relied on the decision dated 01.11.2012 passed by the Court (Coram: Hon"ble Mr. Justice K.S. Jhaveri) in Special Civil Application No. 15380 of 2012 and other connected matters. It is not in dispute that present petitioner was one of the petitioners in the said group of petitions which came to be disposed of vide order dated 01.11.2012.

3. In the said order dated 01.11.2012, the Court observed, inter alia, that:

7. It appears from the record that the statutory Appeal filed by the petitioners has been rejected on the ground of delay alone and not on merits. In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, the Apex Court has held that in matters pertaining to delay, a lenient view should be taken. Instead of rejecting the Appeals on the ground of delay, the authority concerned ought to have decided them on merits. Therefore, in the interest of justice, it would be appropriate that the authority concerned decides the Appeals preferred by the petitioners afresh on merits.

8. In view of the above, the petitions are partly allowed. The order dated 15.09.2012 passed by respondent No. 1, which are impugned in this group of petitions, are quashed and set aside. The delay caused in filing the Appeals are condoned. The authority concerned shall decide the Appeals of the petitioners afresh on merits after considering the evidence that shall be produced by both the sides. The decision on the Appeals shall be rendered within a period of four months from the date of receipt of writ of this order. It is, however, clarified that this Court has not entered into the merits of the case and the authority concerned shall decide the Appeals on merits, being uninfluenced by the fact that this Court has quashed its earlier order. With the above directions, the petitions stand disposed of. Direct service permitted.

4. Mr. Mehta, learned senior advocate submitted that according to the said order dated 01.11.2012, respondent No. 1 was obliged to hear the petitioner and pass order on merits. However, respondent No. 1 appears to have passed order remanding the order to respondent No. 2 and at that stage, the petitioner was not heard. Mr. Mehta, learned senior advocate would also contend that actually, respondent No. 1 ought to have passed order on merits and instead it is the respondent No. 2 who has passed the order which is not as per the order passed by this Court.

5. While raising the said contentions, Mr. Mehta, learned senior advocate also submitted that without prejudice to the said contentions and without entering into the said dispute about opportunity of hearing and the grievance that the order has not been passed by respondent No. 1 despite the directions in the order dated 01.11.2012, the petitioner is ready and willing to approach

respondent No. 1, i.e. the appellate authority with appropriate application/appeal, who may decide the petitioner's application/appeal on merits. Mr. Mehta, learned senior advocate further submitted that the petitioner, however, apprehends that his appeal may be decided and disposed of only on ground of limitation/delay which would cause immense prejudice to the petitioner and that, therefore, appropriate observations/directions may be made so that respondent No. 1 may decide the matter/appeal on merits.

6. It is pertinent that even in the order dated 01.11.2012, the Court had directed the authority to decide the matter on merits.

7. The only order which seems to have been passed after the order dated 01.11.2012, is the order passed on 25.07.2013 by the respondent No. 2. It is mentioned therein that the matter reached the respondent No. 2 by virtue of order of remand allegedly passed by respondent No. 1.

8. As submitted by learned senior advocate for the petitioner, it would not be necessary to enter into the said controversy and any dispute at this stage, when the petitioner is ready to file appropriate appeal before respondent No. 1 against the order dated 25.07.2013 passed by respondent No. 2.

9. However, since the petitioner apprehends that the appeal may not be considered on merits, the petition can be disposed of with appropriate observations.

10. In view of the said submissions by learned senior advocate for the petitioner, which are coupled with his apprehension, below mentioned order is passed:

Having regard to the facts and circumstances of the case and the submissions made by learned senior advocate for the petitioner and learned AGP, it appears appropriate to dispose of present petition with the clarification and observation that the petitioner may take out appropriate appeal before the appellate authority, i.e. respondent No. 1 against the order dated 25.07.2013 passed by respondent No. 2.

11. Such application/appeal may be filed on or before 31.12.2013.

12. If such application/appeal is filed by the petitioner on or before 31.12.2013, the same may be considered by the competent authority on merits. Differently put, such appeal may not be decided only on ground of limitation/delay and instead the appeal may be decided on merits in accordance with law and applicable regulations and policy.

13. The petitioner may be granted an opportunity of hearing and appropriate reasoned order may be passed by the concerned authority.

14. Such application/appeal may be decided as expeditiously as possible. It is clarified that the Court has not entered into merits of the dispute. The authority shall decide the appeal independently on its own merits without being influenced by any order or observation and it should be decided in accordance with law and

applicable rules and policy.

With the aforesaid clarification and observation, the petition is disposed of.