

(2003) 09 GUJ CK 0058

In the Gujarat High Court

Case No : Special Civil Application No 8615 of 2003

Marubhai Mandanbhai Maru

APPELLANT

Vs

Bhaibhai Samudayik Mandi

RESPONDENT

Date of Decision : 25-09-2003

Acts Referred:

Citation : (2003) 09 GUJ CK 0058

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; Baiju Joshi, for Respondent No. 1, 4-21 and Desai, AGP for Respondent No. 2-3 and 22, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr.Joshi and Mr.Desai, Ld.AGP waive service of rule on behalf of respective respondents. With the consent of learned advocates matter is taken for final hearing today.

2. The present petition is preferred by the petitioner challenging the legality and validity of the order dated 8.5.03 passed by the Dy.Secretary of the State Govt whereby the revision application has been dismissed for default.

3. Having heard Mr.Dagli, Ld.advocate for the petitioner and Mr.Desai, Ld.AGP for respondent Nos. 2,3 and 22 and Mr.Joshi for remaining respondents, it appears that the petitioner has submitted written arguments and therefore the petitioner was under impression that the matter will be decided on the basis of written arguments submitted by the petitioner. Mr.Desai, Ld.AGP submitted that it was on account of transfer of earlier officer since the Dy.Secretary who resumed the charge wanted to be well apprised of the facts the notice was issued. Otherwise, Mr.Desai has submitted that even by the verification of the record it is found that the written arguments of the petitioner were already there on the record.

4. Under the above circumstances, I find that the Dy.Secretary of the State Govt was not justified in dismissing the revision application for default and when the

written arguments were already submitted he could have rendered his decision on merits on the basis of such written arguments. Therefore, the order, dated 8.5.03 passed by the Dy.Secretary, State Govt dismissing the revision for default can not stand in the eye of law.

5. Mr.Dagli for the petitioner as well as Mr.Joshi during the course of hearing have submitted that if the hearing is fixed by the Dy.Secretary the petitioner as well as private respondents shall appear through their advocates and shall make their oral submission on the basis of material available on record and they have no objection if the matter is decided by the Dy.Secretary afresh.

6. Considering the above, I find that the following directions shall meet with the ends of justice:

(i) The order, dated 8.5.03 passed by the Dy.Secretary, State Govt dismissing the revision for default is quashed and set aside.

(ii) The Dy.Secretary shall fix the date of hearing within a period of one month from today and both parties shall positively remain present before the Dy.Secretary on the date fixed for hearing and after hearing both sides on the scheduled date, the Dy.Secretary shall render decision within a period of one month from the date of conclusion of hearing.

7. Petition is allowed in terms of aforesaid directions. Rule is made absolute. In the facts and circumstances of the case, there shall be no order as to costs.