

(2022) 12 GUJ CK 0061

In the Gujarat High Court

Case No : R/Special Civil Application No. 1389 Of 2020

Rameshbhai Ukkadbhai Vasava

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 12 GUJ CK 0061

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Nirav R Mishra, Rohan Shah

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. RULE returnable forthwith. Mr.Rohan Shah learned AGP waives service of notice of Rule on behalf of the respondent State.
2. With the consent of learned advocates for the respective parties, the petition is taken up for final hearing.
3. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed that the respondent authorities be directed to consider the case of the petitioner and his application be declared under the "saved cases" (keeping in lieu of the directions issued by this Hon'ble Court in common C.A.V. Judgement passed by this Hon'ble Court dated 29.04.2016 in Special Civil Application No.20552 of 2015 preferred by the petitioner).
4. It is the case of the petitioner that he had approached this Court by filing Special Civil Application No.20552 of 2015 challenging the order of the Collector which was confirmed by the Revisional Authority, by which, the application of the petitioner for grant of quarry lease was rejected. According to the petitioner, who was the petitioner of Special Civil Application No.20852 of 2015, had applied for

quarry lease for the area opposite survey no.203, 263, on the riverbed of river Narmada, Village:Indroda, Taluka:Ghadiya, the application was rejected by the Collector on the ground that the area under demand was included in the block area. That order was confirmed by the Revisional Authority. While disposing of the petitions as dismissed, the Court in para 11.1 observed as under:

"11.1 However, the following directions shall govern in respect of the applications of the petitioners and grant of quarry lease by the authorities.

(i) The application for grant of quarry lease made by each of the petitioner in the captioned petitions shall not be treated as closed by virtue of the present order;

(ii) The applications shall remain alive. The request of the petitioners for grant of quarry lease shall be considered at the time of disposal of the quarry lease area concerned, if the competent authority decides to make available the area for the purpose of grant of quarry;

(iii) At such relevant time, the application of the petitioners-applicants, if they so chose, shall be considered in accordance with law and the norms of policy as may be prevalent at that time;

(iv) The respondent-State authorities shall be necessarily guided by the law laid down by this Court in Patel Vishnubhai Maganbhai (supra) and the same, in general, stand informed and guided by the principle of fairness and equality in the matter of allotment of quarry lease as emphasised by the Apex Court in Sulekhan Singh (supra), in particular the principle underlined in paragraph 20 of the judgment, and the proposition laid down in the present order;

(v) The impugned orders are not interfered with and are maintained for the discussion and reasons hereinabove. All the petitions stand disposed of as dismissed, however qualified by the aforesaid directions. Notices in each of the petition stand discharged. No order as to cost.

5. Mr.Mishra learned counsel for the petitioner would highlight the directions issued by this Court in para 11.1(i) as reproduced herein above which observes that the application shall remain alive. He would therefore submit that his case would fall in 'saved cases'.

6. In support of his submissions, Mr.Mishra would rely on an order dated 28.04.2022 passed by the coordinate bench of this Court in Special Civil Application No.7750 of 2021.

7. Mr.Rohan Shah learned AGP would submit that the order relied upon by the learned counsel for the petitioner was in cases where applications were pending before the Collector for decision on remand and the same therefore will not apply to the facts of the present case.

8. Reading of the order dated 28.04.2022 and reading of the observations made in the order in case of the petitioner, the authorities will have to consider the application of the petitioner in light of the observations made in 11.1(i) thereof,

where the Court observed that the applications shall remain alive. The effect of such an observation whether would make the case of the applicant eligible to be one in 'saved cases' has to be considered by the authorities in accordance with law.

9. Such consideration shall be done within six weeks from the date of receipt of copy of this order.

10. The petition is allowed to the aforesaid extent.

Rule is made absolute to the aforesaid extent.

Direct service is permitted.