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**(2011) 04 GUJ CK 0151**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 5852 of 2010

State of Gujarat

APPELLANT

Vs

Patel Kantaben and Others

RESPONDENT

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**Date of Decision :** 19-04-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2011) 04 GUJ CK 0151

**Hon'ble Judges :** Mukesh R. Shah, J

**Bench :** Single Bench

**Advocate :** Pranav Dave, AGP, for the Appellant; Dhaval M. Barot, for Respondents 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.3.1, 1.3.2, 1.3.3, 1.3.4, 1.3.5, 1.3.6, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

M.R. Shah, J.—By way of this petition under Articles 226 and 227 of the Constitution of India the Petitioner-State of Gujarat has prayed for an appropriate writ, order or direction quashing and setting aside the impugned order passed by the learned Gujarat Revenue Tribunal dated 30/04/2008 in Revision Application TENBA No. 499/1997 by which the learned revenue tribunal has disposed of the said Revision Application directing the State Government to issue formal order of converting the land in question from New Tenure to Old Tenure on the Respondents-original revisionists by paying the amount of premium at Rs. 5,99,025/- with 12% interest from 05/09/1997.

2. The facts leading to the present Special Civil Application in a nutshell are as under;

2.1. The land in question, being Survey No. 216 admeasuring 2 Acres and 5 Gunthas situated at village Kadi, was restricted New Tenure land subject to restriction u/s 43 of the Bombay Tenancy Act. The Respondents herein submitted an application before the Collector, Mehsana to convert the land from New Tenure

to Old Tenure and to remove the restrictions u/s 43 of the Bombay Tenancy Act in the year 1991. The Collector, Mehsana vide order dated 26/10/1995 granted permission to convert the land from New Tenure to Old Tenure on payment of premium by the respective original owners, which was quantified at Rs. 5,99,025/-. Being aggrieved and dissatisfied with the order passed by the Collector, Mehsana dated 26/10/1995 determining the amount of premium at Rs. 5,99,025/- Respondents herein original revisionists preferred Revision Application before the Gujarat Revenue Tribunal, being Revision Application TENBA No. 584/1995, and the learned revenue tribunal vide judgment and order dated 31/03/1995 remanded the matter to the Collector, Mehsana for passing an order afresh. Thereafter, on remand, the Collector, Mehsana passed an order dated 05/09/1997 confirming its earlier order dated 26/10/1995 determining the amount of premium at Rs. 5,99,025/- and directed the Respondents herein-original revisionists to deposit the said amount within a period of 21 days. Being aggrieved and dissatisfied with the aforesaid order passed by the Collector, Mehsana dated 05/09/1997 the Respondents herein-original revisionists preferred Revision Application before the Revenue Tribunal, being Revision Application TENBA No. 499/1997 and in the said Revision Application the learned advocate appearing on behalf of the Respondents-original revisionists made a statement that the original land owners are ready and willing to pay the amount of premium as determined by the Collector, Mehsana vide order dated 05/09/1997 with 12% interest from the date of the order passed by the Collector, Mehsana and considering the same, the learned Tribunal vide impugned judgment and order disposed of the aforesaid Revision Application and directed the Collector, Mehsana to pass a formal order to convert the land from New Tenure to Old Tenure on the Respondents depositing the amount of premium at Rs. 5,99,025/- with 12% interest from 05/09/1997. Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Gujarat Revenue Tribunal dated 30/04/2008 in Revision Application TENBA No. 499/1997 the Petitioner-State of Gujarat has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Number of submissions have been made by Shri Pranav Dave, learned AGP appearing on behalf of the Petitioner as well as Shri Barot, learned advocate appearing on behalf of the Respondents. Shri Barot, learned advocate appearing on behalf of the Respondents has stated at the bar that the Respondents-original revisionists are agreeable to pay the amount of premium determined by the Collector, Mehsana vide order dated 05/08/1997 at Rs. 5,99,025 with 12% compound interest and, therefore, it is requested to consider the same.

4. Shri Pranav Dave, learned AGP appearing on behalf of the Petitioner has requested to pass an appropriate order considering the above.

5. Having heard the learned advocates appearing on behalf of the respective parties and considering the fact that as such the Collector, Mehsana passed an order allowing the application submitted by the Respondents herein-original

revisionists to convert the land from New Tenure to Old Tenure and determined the amount of premium at Rs. 5,99,025/-, which was challenged by the Respondents herein before the Revenue Tribunal and, therefore, what was challenged by the Respondents before the Revenue Tribunal was the determination of the amount of premium at Rs. 5,99,025/- only and subsequently challenge to the aforesaid order was dropped by the original land owners and they agreed to pay the aforesaid amount of premium determined by the Collector, Mehsana. Even otherwise, even on merits also, if the said Revision Application would have been considered, in that case, at the most the Revision Application filed by the Respondents could have been dismissed confirming the order passed by the Collector, Mehsana dated 05/08/1997 determining the amount of premium at Rs. 5,99,025/-. However, considering the fact that the aforesaid amount was withheld by the Respondents herein-original revisionists, which the Respondents were required to pay in the year 1997, the request made by Shri Barot, learned advocate appearing on behalf of the Respondents that the Respondents may pay the aforesaid amount of premium at the rate of 12% compound interest deserves consideration as it will put an end to the litigation and it will strike the balance between the parties and the same would be reasonable.

6. In view of the above and for the reasons stated hereinabove and considering the request made by Shri Barot, learned advocate appearing on behalf of the Respondents the impugned judgment and order passed by the Gujarat Revenue tribunal dated 30/04/2008 in Revision Application TENBA No. 499/1997 is hereby modified to the extent that on payment of Rs. 5,99,025/- by the Respondents herein-original owners alongwith 12% compound interest with effect from 05/09/1997 within a period of four weeks from the date of intimation of the calculation and the amount to be paid by the Respondents, the Collector, Mehsana to pass a formal order to convert the land from New Tenure to Old Tenure with respect to removing the restriction u/s 43 of the Bombay Tenancy Act. The aforesaid exercise of calculation of the amount to be paid by the Respondents with 12% compound interest should be made within a period of four weeks from today and thereafter within a period of four weeks thereafter from the date of the communication the Respondents herein-original revisionists to pay the said amount. On payment, the Collector, Mehsana to pass a formal order to convert the land from New Tenure to Old Tenure removing the restriction u/s 43 of the Tenancy Act only.

7. With this, the present petition is allowed. Rule is made absolute to the aforesaid extent. No cost.