

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 51 of 2023
With
CIVIL APPLICATION (FOR VACATING STAY) NO. 1 of 2024
In R/SPECIAL CIVIL APPLICATION NO. 51 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 11566 of 2023

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RAMESHBHAI GORDHANBHAI TALAVIYA

Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR DIGANT POPAT FOR MR. BHAVIK P SHAH(6391) for the Petitioner(s) No. 1
MR NIKUNJ KANARA ASSISTANT GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 2,3,5
VATSAL S PARIKH(7452) for the Respondent(s) No. 4

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 07/08/2024

ORAL ORDER

CIVIL APPLICATION (FOR VACATING STAY) NO. 1 of 2024 In R/SPECIAL CIVIL APPLICATION NO. 51 of 2023

1. Heard learned Advocate Mr. Vatsal Parikh on behalf of the applicant-original respondent no. 4, learned Advocate Mr. Digant Popat with learned Advocate Mr. Bhavik Shah on behalf of the respondent no.1 and learned Assistant Government Pleader Mr. Nikunj Kanara on behalf of respondent-State.

2. Considering the submissions made by learned Advocate Mr. Parikh and learned Advocate Mr. Popat and having perused the record, it would appear to this Court that vide order dated 04.01.2023 in Special Civil Application No. 51 of 2023, a learned Co-ordinate Bench of this Court had

stayed the effect of an undated order passed by the Deputy Collector, Visavadar .

3. It would appear that the present applicant i.e. applicant in the Civil Application was the applicant in an application preferred before the Mamlatdar, Visavadar vide Mamlatdar Court Case No. 11 of 2021 inter alia claiming that the respondent had obstructed/restrained the applicant from using a way passing through the land of the respondent to go to his agricultural land. It would appear that vide an order dated 17.02.2022 the Mamlatdar, Visavadar passed an order in favour of the present applicant.

3.1 The respondent herein challenged the said order by preferring Revision Case No. 5 of 2022 before the Deputy Collector, Visavadar and whereas vide an order dated 30.09.2022, the Deputy Collector, set aside the order passed by the Mamlatdar. Under normal circumstances, a litigant against whom an order is passed by the Deputy Collector in revision under the Mamlatdar Courts Act, has two legal avenues before him [1] to approach this Court by filing a writ petition under Article 226 of the Constitution of India or [2] as per the Mamlatdar Courts Act to file a suit challenging the order of the Deputy Collector. There is no third legal avenue open. It appears that inspite of such a clear legal position, probably, the Deputy Collector was approached, and without any rhyme or reason, the Deputy Collector passes an undated order in the very revision application directing the revision applicant i.e the respondent herein in the present civil application to remove alleged encroachments in a road passing through the land of the respondent. In addition to the exercise of power by the Deputy Collector, being without jurisdiction, since the Deputy Collector had become *functus officio* upon order dated 30.09.2022 being passed, the Deputy

Collector, in revision application preferred by the respondent herein, after having allowed the revision application in favour of the revision applicant, passes the said order directing removal of alleged encroachment in the pathway going through the land of the present respondent, which probably was not the subject matter of dispute. It also clearly appears that before passing such a contradictory order, the Deputy Collector neither issued a notice to the parties, nor any justification is given in the order as to why the Deputy Collector deems it appropriate to pass such an order even after the main revision application was allowed in favour of the revision applicant. Surprisingly, while the order passed by the Deputy Collector in the main revision application was dated 30.09.2022, probably to justify his actions, the order is referred to as being passed on 30.11.2022 at two places.

4. In the considered opinion of this Court, the order of the Deputy Collector suffering from the above infirmities, the interim relief granted by this Court dated 04.01.2023 does not require any interference whatsoever at this stage. Hence the Civil Application is disposed of as rejected.

5. A copy of the present order shall be forwarded to the Collector, Junagadh as well as the Secretary Revenue Department for appropriate action.

Let the main matters to be listed for consideration on 04.09.2024.

NIRU

(NIKHIL S. KARIEL,J)