

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 1573 of 2023**

=====

HEMLATABEN WD/O MAHESHBHAI THAKORBHAI DESAI & ANR.

Versus

STATE OF GUJARAT & ORS.

=====

Appearance:

SHYAMAL K BHIMANI(8233) for the Petitioner(s) No. 1,2

MR JK SHAH ASSTT. GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3

MR ADIL R MIRZA(2488) for the Respondent(s) No. 4,5

=====

CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 26/07/2024

ORAL ORDER

1. Heard learned advocate Mr. Shyamal Bhimani for the petitioners, learned AGP Mr. J.K. Shah for the respondent No.1 State and learned advocate Mr. Adil Mirza for the private respondents.

2. The present petitioners were challenging the order passed by the Deputy Collector confirming the order passed by the Mamlatdar dated 17.12.2022 and 31.03.2022 respectively, whereby the rights of respondent Nos.4 and 5 to use the pathway in the land of the present petitioners had been recognized by the respondent authorities, more particularly under the provisions of the Mamlatdar Courts Act.

3. Since it appears to this Court that some further clarity was required as regards the position of the land and also as regards pathway, this Court had inter alia directed the learned AGP to direct the Mamlatdar to prepare a map, more particularly in consonance with the panchnama as drawn as per

the order of this Court dated 08.02.2023 and panchnama as drawn as per the direction of Mamlatdar before the impugned order was passed.

4. Today, learned AGP tenders a map prepared by the Mamlatdar and whereas it appears prima facie to this Court that there is no other pathway, whereby the respondent Nos.4 and 5 could access their land being Survey No.554 other than passing through either the road as mentioned as “A” and the road as mentioned as “B” in the map in question. Perusing the map, it would appear that the land of respondent Nos.4 and 5 is landlocked inasmuch as the land is surrounded by Survey Nos.592 - 591, 585, 583 and 582 of three sides and there is a creek on the remaining side. It also does not appear to this Court that the respondent Nos.4 and 5 could have used in any other land to access Survey No.584 other than the land of the present petitioner, which are Survey Nos.585 and 583. Under such circumstances, the map is ordered to be taken on record. Learned advocate Mr. Bhimani is permitted to file an affidavit controverting the map.

Let this matter be listed on 13.08.2024.

The Arrangement vide order dated 08.02.2023 shall continue and in case of any obstruction by the petitioners, it would be open for the respondent Nos.4 and 5 to approach the Mamlatdar with appropriate application.

Y.N. VYAS

(NIKHIL S. KARIEL,J)