IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8575 of 2022

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VENA ENERGY CLEAN POWER PVT. LTD.

Versus

SUB-DISTRICT MAGISTRATE AND ASSISTANT COLLECTOR, PATAN

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Appearance:

LEARNED SENIOR ADVOCATE MR. R.S. SANJANWALA with learned Advocate Mr. ADITYA A GUPTA(7875) for the Petitioner(s) No. 1

for the Respondent(s) No. 1,2,3,3.1,3.2,3.3,3.4,3.4.1,3.4.2,3.4.3,3.4.4,3.4.5,4,4.1,4.2,4.3,4.4,4.5,5,5.1,5.2,5.3,5.4,5.5,5.5.1,5.5.2,5.5.3,5.5.4,5.5.5,6,7,7.1,7.1.1,7.1.2,7.1.3,7.1.4,7.1.5,7.2,7.3,7.4,7.5,7.6,7.7,8,9

MR. NIKUNJ KANARA, AGP for the Respondent(s) No. 10

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CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

Date : 05/05/2022

ORAL ORDER

1. Heard learned Senior Advocate Mr. R.S. Sanjanwala with learned advocate Mr. Aditya Gupta for the petitioner.

2. By way of this petition, the petitioner has challenged the order dated 21.3.2022 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN/BA/173/2021 as also the order dated 18.3.2021 passed by the Mamlatdar - Sarswati, Dist - Patan in Ganot Case No. 70-B/1/2021.

3. Learned Senior Advocate Mr. Sanjanwala submitted that the original person i.e. Rabari Mashru Visa, who claims to be a tenant in the year 1968, pursuant to the revenue entry No. 473, handed over the possession of the land in question voluntarily in the year 2011. He also submitted that before the year 2010 the original land lord sold the land to the first purchaser and the petitioner claimed to be a third purchaser purchased the land in question in the year 2020.

4. Learned Senior Advocate states that while handing over the possession of the land in the year 2011, the possession was handed over by the so called tenant in view of fact that the Section 32 (o) of the Tenancy Act was repealed, pursuant to that, order dated 6.7.2010 passed by the Mamlatdar, the name of the Rabari Mashru Visa and his legal heirs were ordered to be deleted from the revenue record. That order was never challenged and the same stands as it is even today. The petitioner who is a company intending to set up a solar plant, just to get the things clear, preferred an application under Section 70(b) of the Tenancy Act, and sought a declaration that the there was no tenant in land in question. Instead of considering the application of the petitioner by keeping in mind the fact that original tenant already surrendered possession of the land and also not prayed for re-possession of land within a period of 2 years of after surrendering the land as provided under Section 29 (2) of the Act. The Mamlatdar ultimately held against the petitioner and held that Rabari Mashru Visa is a tenant as per Section 70(B) of the Act and land can be purchased by the tenant by determining the price as per Section 32 of the Act. The aforesaid orders were subject matter of challenged before the Deputy collector as well as GRT and both the authorities confirmed the aforesaid orders dated 18.3.2021 passed by the Mamlatdar and ALT, Sarswati.

5. Learned Senior Advocate Mr. Sanjanwala submitted that right from the year 2010, Rabari Mashru Visa’s name was deleted from the revenue record as tenant on account of repealed of Section 32 of the Act. That order / communication was never a subject matter of challenged before any of the authority and it is only after the petitioner purchased the land, initiated proceedings under Section 70(b) of the Act for declaration, ignoring the fact that Rabari Mashru Visa had never applied for re-possession of land as provided within

two years from the date the on which he handed over the possession of the land as provided under Section 29(2) of the Act and all the Authorities have held against the present petitioner. He also submitted that the petitioner is in possession of the land since date the on which the petitioner purchased the land in question and sought permission under Section 65(b) of the Act from the competent authority, which is pending.

6. In view that issue **Notice** to the respondents returnable on **23.6.2022.**

7. In the meantime, the parties are directed to maintain Status - quo in respect of the possession of the land as well as revenue entries and no proceedings under Section 32(g) of the Act can be initiated till the next date of hearing.

8. Direct service is permitted in addition to usual mode of service.

(NIRZAR S. DESAI,J)

prk