

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 12451 of 2021****SONI PRASHANTKUMAR DINKARRAI LUHAR****Versus****STATE OF GUJARAT**

Appearance:

MR DENISH MORAKHIA, ADVOCATE for MR HRIDAY BUCH(2372) for the Petitioner(s)  
No.1

for the Respondent(s) No. 2,3,4,5,6,7,8

MR HARDIK MEHTA, AGP for the Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL****Date : 09/09/2021****ORAL ORDER**

1. Heard learned Advocate Mr. Denish Morakhia for learned Advocate Mr. Hriday Buch for the petitioner and learned AGP Mr. Hardik Mehta for the respondent No.1-State.

2. By way of this petition the petitioner challenges an order passed by the revisional authority dated 15.06.2021, whereby the order of the District Collector, Amreli dated 31.12.2019 has been confirmed.

3. Learned Advocate Mr. Morakhia would submit that proceedings were initiated against the petitioner vide a show-cause notice dated 19.12.2018 under Rule 108(6) of the Land Revenue Rules and under the provision of Section 54 of the Saurashtra Gharkhed Act and whereas it is submitted by the learned Advocate that the dispute was with regard to a entry of a registered sale deed dated 03.11.2010 entered into between the petitioner and one Babubhai Popatbhai Rathod, the entry in question being revenue entry No.1459. It is submitted that in the show-cause notice the reason for issuance of the same calling upon the explanation of the petitioner was with regard to a discrepancy about whether the petitioner was an agriculturist or not. Learned Advocate Mr. Morakhia would submit that vide order dated 31.12.2019, the Collector, Amreli respondent No.3 herein, in addition to

discussing and passing an order with regard to status of the petitioner as an agriculturist, the District Collector also appears to have gone into the aspect of breach of provisions of the Gujarat Agricultural Lands Ceiling Act, which was beyond the purview of the Collector, more particularly since no show-cause notice had been issued to the petitioner in that regard. Insofar as the status of the petitioner as an agriculturist is concerned, it is contended by learned Advocate Mr. Morakhia that the issue was only with regard to the discrepancy in the name of the petitioner. It is submitted that grandfather and the father of the petitioner had carried the surname of Soni and whereas the petitioner had used the surname as Luhar and according to the Collector, the same was doubtful. Learned Advocate Mr. Morakhia has also taken this Court through the findings of the learned Collector, whereby the Collector confirms the fact that one Dinkarbhai Soni and Bhanabhai Bhagwanbhai Soni i.e. father and grandfather of the petitioner were in fact agriculturists. Learned Advocate would submit that by virtue of the same, the petitioner would automatically acquire the status of an agriculturist, whereas since the petitioner states his name as Prashantkumar Dinkarbhai Luhar, the Collector had come to a conclusion that the petitioner was not the same person as Prashantkumar Dinkarbhai Soni.

In this regard, learned Advocate Mr. Morakhia, upon instructions, submits that the petitioner would not press this petition for the said relief and whereas the petitioner would prefer a Civil Suit before the Competent Civil Court for a declaration that Prashantkumar Dinkarbhai Soni and Prashantkumar Dinkarbhai Luhar or Soni Prashantkumar Dinkarbhai Luhar are all one and the same person and whereas he requests indulgence of this Court for protecting the petitioner with regard to proceedings which are directed to be initiated against the land in question by the impugned orders.

4. Having regard to the fact that the sale deed had been entered into between the petitioner and the seller on 03.11.2010 and whereas since the show-cause notice had been issued 8 years thereafter and whereas since it is

claimed that the petitioner is the son of Dinkarbhai Soni and grandson of Bhanabhai Bhagwanbhai Soni who were agriculturists, therefore since the petitioner intends to file Civil Suit for declaration as above, this Court feels it appropriate to protect the petitioner till final disposal of the suit subject to the conditions as would be refereed to later on :

4.1 Insofar as the later part of the grievance, since it appears that the Collector had in the impugned order decided as regards alleged breach of provisions of the Gujarat Agricultural Lands Ceiling Act, and whereas since the show-cause notice dated 19.12.2018 did not call upon the petitioner to show cause on that aspect, this Court is of the opinion that interference is required.

5. Having regard to the same, this Court is of the considered opinion that a prima facie case for interference is made out. Hence, following directions are issued :

(1) The present petition would be as not press insofar as the issue with regard to the status of the petitioner as an agriculturist.

(2) The petitioner is at liberty to file a Civil Suit before a Competent Civil Court for declaration as to Prashantkumar Dinkarbhai Soni and Prashantkumar Dinkarbhai Luhar and Soni Prashantkumar Dinkarbhai Luhar are one and the same person.

(3) If such a Civil Suit is filed by the petitioner before the Competent Civil Court within a period of four weeks, the learned Civil Court shall decide the same finally within a period of twelve months thereafter.

(4) The impugned orders being order dated 31.12.2019 passed by the Collector, Amreli and order dated 15.06.2021 passed by the revisional authority are hereby stayed insofar as the aspect of the petitioner being an agriculturist or not till the Civil Suit referred to hereinabove is finally decided by the learned Civil Court.

(5) Such interim relief will be available to the petitioner only if the Civil Suit referred to hereinabove would be filed within a period of four weeks from today and whereas it would be open for the respondent authorities to file an appropriate application for modification of this order, if the Civil Suit referred to hereinabove is not filed within a period of four weeks.

(6) The revenue authorities would be at liberty to take appropriate decision in accordance with law as per final decision that may be passed by the learned Civil Court in the Civil Suit referred to hereinabove and whereas it is clarified that the relief granted to the petitioner as hereinabove will enure in favour of the petitioner only till final decision of the Civil Suit, and whereas the parties would abide by such decision.

6. Insofar as the issue now remaining to be considered by this Court in the present petition, issue **Notice** returnable on **25.10.2021**. Learned AGP Mr. Mehta waives service of notice for the respondent No.1-State.

7. Till the next date of hearing, the impugned orders being order dated 31.12.2019 passed by the Collector, Amreli and order dated 15.06.2021 passed by the revisional authority shall remain stayed as regards the issues

other then with regard to the status of the petitioner as an agriculturist, which has been dealt with as hereinabove.

Direct service for rest of the respondents is permitted.

BDSONGARA

**(NIKHIL S. KARIEL,J)**