

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 17302 of 2013**

=====

GOPALBHAI BUDHABHAI AHIR & 1....Petitioner(s)

Versus

UNION OF INDIA & 9....Respondent(s)

=====

Appearance:

MR MASOOM K SHAH, ADVOCATE for the Petitioner(s) No. 1 - 2

GOVERNMENT PLEADER for the Respondent(s) No. 2 , 6

MR DEVANG VYAS, ADVOCATE for the Respondent(s) No. 1

MR DHAVAL D VYAS, ADVOCATE for the Respondent(s) No. 7 - 10

MR HS MUNSHAW, ADVOCATE for the Respondent(s) No. 3 - 4 , 6

MS SEJAL K MANDAVIA, ADVOCATE for the Respondent(s) No. 5

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE MR.
VIJAY MANOHAR SAHAI
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA

Date : 29/06/2015

ORAL ORDER

(PER : HONOURABLE THE ACTING CHIEF JUSTICE MR. VIJAY
MANOHAR SAHAI)

Draft amendment is allowed. The petitioner to carry out necessary amendment within two weeks.

Rule be issued to Advocate General as well as Attorney General of Indian. Learned advocate Ms. Sejal Mandavia waives service of rule on behalf of respondent No. 5. Learned advocate Mr. H.S. Munshaw waives service of rule on behalf of respondent Nos. 3, 4 & 6. Learned Assistant Solicitor General of India Mr. Devang Vyas assisted by learned advocate Mr. Kshitij Amin waives service of rule for respondent No. 1.

Petitioner shall take steps to serve respondent Nos. 2, 7 to 10 by registered post through office. Steps to be taken within two weeks. Office shall send notice of rule fixing hearing on 26.8.2015. One month's time is given to learned advocate who waived service of rule for filing affidavit in reply.

Learned advocate Mr. Dhaval Vyas for respondent Nos. 7 to 10 has seriously opposed extension of stay. He has urged that validity of Gujarat Town Planning and Urban Development Act, 1976, has been upheld by a Division Bench of this Court in the case of BHUPINDRAKUMAR RAMANLAL & ORS. VS. STATE OF GUJARAT & ORS., reported in 1995(1) GLH 1124. We have carefully gone through the judgement and this judgement does not apply to the fact of the present case.

The question involved in this petition is that on 26.6.1975 proclamation of emergency under Article 352 of the Constitution of India was made. On 12.3.1976 proclamation for President's Rule was issued under Article 356 of the Constitution of India in the State of Gujarat. While Gujarat was under the President's Rule, on 30.3.1976 Gujarat State Legislature (Delegation of Powers) Act, 1976 was enacted by the Parliament conferring power on the President. By 19.6.1976 President of India enacted Gujarat Town Planning and Urban Development Act, 1976 and the same Act repealed Bombay Town Planning Act, 1954. On 26.8.1976, 42nd Constitutional Amendment Act, 1976, came into force wherein Article 357 of the Constitution of India was amended by Section 51 of the Amended Act. The amended Act now provides that law which was made during the proclamation of the President's Rule shall continue to remain in force till the amended Act is repealed by the State legislature. For ready reference Article 357 of the Constitution of India is reproduced

as under:

Exercise of legislative powers under Proclamation issued under Article 356 – (1) Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent -

- (a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;
 - (b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and the authorities thereof;
 - (c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.
- (2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, after the Proclamation has

ceased to operate, continue in force until altered or repealed or amended by a competent Legislature or other authority.”

From the perusal of the aforesaid provision, it shows that the law made in exercise of the State Legislature by Parliament or the President, such a legislation would continue to remain in force until altered or repealed or amended by a competent Legislature or other authority. After ceasing the proclamation of President's Rule under Article 356 of the Constitution of India on 24.12.1976, the Act did not come into force upto 29.1.1978. Therefore, it appears that the Act lapsed. Prima facie we find substance in the submission of learned counsel for the petitioner. Therefore, the petitioner is entitled to extension of stay until further orders.

Interim relief already granted by this Court shall remain in operation till the final decision of this matter.

(V.M.SAHAI, ACJ.)

(R.P.DHOLARIA,J.)

(pkn)