

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 12525 of 2021**=====
VIRESHBHAI THAKORBHAI PATEL**Versus****STATE OF GUJARAT**
=====

Appearance:

MR AMIT THAKKAR WITH MR RUTUL P DESAI(6498) for the
Petitioner(s) No. 1,2,3

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

MR HARDIK MEHTA AGP (99) for the Respondent(s) No. 1
=====**CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL****Date : 14/09/2021****ORAL ORDER**

1. Heard learned Advocate Shri Amit Thakkar with learned Advocate Shri Rutul Desai for the petitioners and learned AGP Shri Hardik Mehta for the respondent Nos.1 and 2.

2. By way of this petition, the petitioners challenge an order passed by the respondent No.1 dated 24.05.2021, whereby a representation preferred by the present petitioners as per the direction of this Court dated 10.12.2020 in Special Civil Application No.11594 of 2020 has been rejected.

3. Learned Advocate Shri Amit Thakkar, would submit that the land in question being Revenue Survey Nos. 113/A, 113/B and 113/D are the Wakf properties and whereas learned Advocate Shri Thakkar, would draw the attention of this Court to PTR of the Wakf whereby the land at Survey Nos.113/B and 11/3 A have been referred to. Learned Advocate further submits that apart from Revenue Survey No.113/B admeasuring 2217 Sq.

Mtrs., there is another land of Survey No.113-B admeasuring 1250 Sq. Yrds. and whereas learned Advocate would clarify the same by referring to Form No.7 of the land which refers the land as being for public purpose of going to the Edgah. It is submitted by the learned Advocate that a portion of the land has been allotted to respondent No.3 and whereas the learned Advocate would draw the attention of this Court to Section 51 of the Wakf Act, 1995, which inter alia requires that for acquiring property of Wakf even for the public purpose, consultation of Wakf Board is necessary. Learned Advocate would submit that no such consultation appears to have been taken place and such aspect not having been appropriately appreciated since such contention had been taken before the respondent No.1 as reflected in the order itself. Learned Advocate would further submit that the land in question has been used by the villagers as well as the devotees who are coming to Edgah and without considering the interest of the villagers or the devotees, the land has been allotted to respondent No.3, more particularly, without fulfilling the legal requirement.

Learned Advocate further draws the attention of this Court to a observations made by the signatory to impugned order dated 24.05.2021 wherein the petitioners have been referred to as third party objectors and it is further mentioned that the objections have been taken for unnecessary purposes etc. Learned Advocate would submit that since the said Authority was considering a representation as per the directions of this Court in Special Civil Application No. 11594 of 2020, such observations, ought not to have been made and it is further submitted that the observations at page 34/B is what appears to have weighed with the respondent No.3 had to have come to a conclusion referred at page 34 A.

4. This petition is strongly contested by the learned AGP, who submits that the land ultimately belongs to the Government and from one public purposes, the State Government was allotting the same to another public

purpose, which was perfectly justified and lawful.

5. Having regard to the submissions made by the learned Advocates for the parties, prima facie, it appears to this Court that the requirements of the Wakf Act have not been fulfilled before allotting the land to the respondent No.3. Furthermore, there does not appear to have been any specific application of any mind on the fact that the land in question was being used for benefit of devotees of the Wakf concerns and other villagers of near by areas since a long period of time and whereas while prima facie allotment to respondent No.3 can be stated to be a public purpose but at the same time, interest of the devotees and other villagers who have been using the land for a long time have not been appropriately considered by the respondent No.1.

6. Having regard to the same, issue Notice returnable on 12.10.2021. Learned AGP waives service of notice on behalf of the respondent Nos.1 and 2.

By way of interim relief, the operation of the order dated 24.05.2021 is stayed till next date of hearing and whereas the respondents are directed to maintain status-quo with regard to the subject land.

Direct service is permitted for other respondents.

Y.N. VYAS

(NIKHIL S. KARIEL,J)