

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 15566 of 2022****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2022****In R/SPECIAL CIVIL APPLICATION NO. 15566 of 2022**=====
LALITKUMAR RAMSHAKTI**Versus****STATE OF GUJARAT**
=====**Appearance:**MR MITUL SHELAT WITH MR HITESH M SABHNANI(10731) for the
Petitioner(s) No. 1

for the Respondent(s) No. 1

MR SALIL M THAKORE(5821) for the Respondent(s) No. 4,5

NOTICE NOT RECD BACK for the Respondent(s) No. 7

NOTICE SERVED for the Respondent(s) No. 8

NOTICE SERVED BY DS for the Respondent(s) No. 1,2,6

NOTICE UNSERVED for the Respondent(s) No. 3
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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 20/10/2022****ORAL ORDER****Order in Special Civil Application:**

1. Mr Mitul Shelat, learned advocate appearing with Mr Hitesh M. Sabhnani, learned advocate for the petitioner, has tendered the draft amendment. Amendment is allowed in terms of the draft. The same shall be carried out forthwith.

1.1 The petition, initially, was seeking direction to the respondent to decide the application for abatement filed by the petitioner before proceeding with the final adjudication of the appeal. This Court, after hearing the petitioner, has passed an order issuing the notice and in the meantime, the Deputy Collector, was directed not to pass a final order in the proceedings i.e. Tenancy Appeal Case no.30 of 2011. During the pendency of the writ petition, the petitioner, had taken out the civil application (for stay) no.1 of 2022,

inter alia, praying for stay of the implementation and operation of the order dated 22.4.2022 passed by the Deputy Collector in the aforesaid tenancy appeal case number. The grievance raised by the petitioner/applicant is that though this Court, has directed the Deputy Collector not to pass the order; the petitioner, is in receipt of the order dated 22.4.2022 which, has been dispatched in the month of September 2022. It is submitted that such an act on the part of the Deputy Collector, would not be in the right earnest, inasmuch as, this Court, has categorically, directed Deputy Collector not to pass the order. The said notice, was also duly served upon the office of the Deputy Collector.

1.2 It is submitted that upon the death of the sole appellant on 1.7.2021, the petitioner had filed an application seeking abatement in view of the provisions of section 18 of the Mamlatdars' Courts Act, 1906 read with section 72 of the Gujarat Tenancy and Agricultural Lands Act, 1948. Attention is invited to the provisions of sub-section (3) of section 18 of the Mamlatdars' Courts Act, 1906. It is submitted that sub-section (3) provides for the procedure in case of a death of a party while the suit is pending. It is submitted that after the death of the person concerned, the application has to be made within a period of one month by the legal representative of the deceased party. In absence of any application, the suit shall abate. It is submitted that section 72 of the Tenancy Act, provides that in all inquiries and proceedings commenced on the presentation of the application under section 71, the Mamlatdar or the Tribunal shall exercise the same powers as the Mamlatdars' Court under the Mamlatdars' Court Act, 1906 and shall follow the provisions of the said Act, as if the Mamlatdar or the Tribunal were a Mamlatdars' Court under the said Act. It is therefore submitted that

the death occurred in the month of July 2021; however, there was no application by any of the heirs of Mr Vinod Purshottambhai Mistry and therefore, when the application was filed by the petitioner, the same should have been accepted by the Deputy Collector instead proceeding with passing of the order.

1.3 On the merits, Mr Mitul Shelat, learned advocate, submitted that the petitioner, had purchased the land from the erstwhile owner vide registered sale deed dated 13.12.2007 and entry no. 10643 dated 9.1.2008 was posted in the revenue record wherein, it is not in dispute that the petitioner is an agriculturist. It is submitted that the said entry, was challenged by Mr Vinod Purshottambhai Mistry before the Mamlatdar who, after hearing all the concerned parties, has directed certification of the entry no.10643 dated 9.1.2008. The said order of the Mamlatdar has attained finality. It is submitted that even Mr Vinod Purshottambhai Mistry, has filed a special civil suit no.110 of 2011 which, came to be dismissed on moving the application on Order VII Rule 11(d) of the Code of Civil Procedure, 1908. The said judgment is challenged before this Court; however, no stay has been granted.

1.4 It is submitted that in the RTS proceedings, there were directions issued by the learned Secretary, Revenue Department (Appeals) (hereinafter referred to as "learned Secretary") to determine the status of Mahadevsinh Chandansinh Champavat the predecessor in title which, has been stayed by this Court vide order dated 9.10.2017 passed in Special Civil Application no.18590 of 2017. It is therefore submitted that the Deputy Collector, has mainly relied upon the said order of the Collector; however, while accepting the status of the petitioner of agriculturist directed the petitioner to get the transaction regularized by paying the amount of jantri.

2. On the other hand, Mr J. K. Shah, learned Assistant Government Pleader, while placing on record the proceedings/Rojkam, submitted that that matter was heard on 24.3.2022, when the petitioner was present and has put his signature. On that day, it was made clear to the petitioner that the matter is heard and is reserved for order. The order, thereafter was passed on 22.4.2022; however, owing to the procedural inadequacy, the same could be dispatched only in the month of September 2022. Therefore, the petitioner is not correct in contending that the order was passed after the order dated 10.8.2022 passed by this Court.

3. Heard Mr Mitul Shelat, learned advocate appearing with Mr Hitesh Sabhnani, learned advocate for the petitioner and Mr J. K. Shah, learned Assistant Government Pleader for the respondent-State.

4. Pertinently, the proceedings of appeal were pending before the Deputy Collector who, as per the rojkam, had concluded the hearing on 24.3.2022 and the order appears to have been passed on 22.4.2022; however, owing to the procedural lapse or the lapse on the part of the office of the Deputy Collector, the said order neither was uploaded nor dispatched to the petitioner. The petitioner perhaps, thereafter, under an impression that the order, is yet to be passed and upon coming to know about the death of the appellant i.e. Mr Vinod Purshottambhai Mistry, filed an application for abatement; however, the said application, was not accepted by the office of the Deputy Collector and therefore, the petitioner having left with no option has sent it through registered post A.D./speed post.

5. It is not in dispute that the application of the petitioner was

not received by the office of the Deputy Collector and therefore, the course which was available to the Deputy Collector was to have informed the petitioner about passing of the order dated 22.4.2022; however, the application of the petitioner remained unanswered. Furthermore, this Court, had issued the notice on 10.8.2022 and twice the matter was adjourned. During the pendency of the petition also, the said fact, was not reported to the learned Assistant Government Pleader about passing of the order; however, having not done so, and now placing on record the order dated 22.4.2022, would not be in the right earnest.

6. Let the order dated 22.4.2022 passed by the Deputy Collector, be stayed till the next date of hearing.

7. Let the matter appear on 13.12.2022.

Order in Civil Application (for stay) No.1 of 2022:

In view of the order having been passed in the main matter, no orders are required to be passed in civil application (for stay) no.1 of 2022 and hence, the same is disposed of.

RAVI P. PATEL

(SANGEETA K. VISHEN,J)