

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 19851 of 2016**

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SHIRIN D/O. MOHAMMED ISAP PATEL W/O. RAMJAN KATIYA &
1....Petitioner(s)
Versus
STATE OF GUJARAT & 7....Respondent(s)

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Appearance:

MR SHALIN MEHTA, LEARNED SENIOR ADVOCATE with ABHISST K
THAKER, ADVOCATE for the Petitioner(s) No. 1 - 2
MR TIRTHRAJ PANDYA AGP for the Respondent(s) No. 1
MR DHAVAL D VYAS, CAVEATOR for the Respondent(s) No. 6

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CORAM: HONOURABLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/11/2016

ORAL ORDER

Heard Mr. Shalin Mehta, learned senior advocate
with Mr. Abhisst K. Thaker, learned advocate for the
petitioners and Mr. Dhaval Vyas, learned advocate for
respondent No. 6 (Caveator).

Learned Senior Counsel submits that the disputed
mutation entries have been made on the basis of a
false "Pedhinama" in which, the names of the
petitioners, who are both the grand-daughters of the

original owner of the land, have not been shown. The petitioners have approached the Assistant Collector by filing an RTS Appeal No. 101 of 2012, which has been rejected solely on the ground of delay. However, the Collector by his order dated 05.07.2014, has held that since the entry has been mutated on the basis of a false genealogy (pedhinama), the question of delay would not arise. He has, therefore, directed that the names of the petitioner be mutated in the Revenue record. The said order of the Collector has been quashed and set aside by the impugned order dated 09.09.2016 passed by the Special Secretary, Revenue Department (Appeals) (SSRD). He has allowed the revision application preferred by the private respondent No. 6 on the ground of delay.

It is submitted that while passing the impugned order, the SSRD has gone into the merits of the case and discussed the principles of Muslim Law, which is not warranted. It is submitted that in view of the principles laid down by this Court in the case of ***Evergreen Apartment v. Special Secretary (Appeals)*** reported in ***1991 (1) GLR 113*** and several other

decisions, the SSRD cannot adjudicate on the basis of another law or statute while deciding RTS proceedings.

It is further submitted that a Civil Suit is also pending at the behest of the petitioner for the partition of the property, wherein it has been averred that the names of the petitioners have not been disclosed in the revenue entries.

Having heard learned counsel for the respective parties, the following order is passed.

Issue **Notice** returnable on **16.01.2017**.

Ad-interim relief in terms of paragraph 23(B) is granted till then.

It is, however, clarified that the land bearing Survey No.39, Khata No. 118, purchased by the respondent No. 6, shall not come within the purview of the ad-interim relief granted by this Court, for the time being.

Mr. Dhaval D. Vyas, learned advocate for respondent No. 6 has submitted that respondent No. 6 purchased the land bearing Survey No. 39, Khata No. 118 by a Registered Sale Deed dated 11.06.2009, much before the dispute was raised by the petitioners. The said respondent, being a *bona fide* purchaser may not be affected adversely by the order of the Court.

In addition to the normal mode of service, direct service is also permitted.

(SMT. ABHILASHA KUMARI, J.)

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