

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 19000 of 2022**

=====
ALIMAHAMAD SULEMANBHAI GANCHI

Versus

STATE OF GUJARAT
=====

Appearance:

MR DHAVAL M BAROT(2723) for the Petitioner(s) No. 1,2,3,4,5

for the Respondent(s) No. 10,2,3,4,5,6,7,8,9

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1
=====**CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Date : 22/09/2022****ORAL ORDER**

1. Mr.Dhaval Barot, learned advocate for the petitioners, at the out-set, has submitted an affidavit dated 21.09.2022 of the petitioners, declaring before this Court that an application has been filed before the Deputy Collector, seeking withdrawal of the revision application. The application has been filed, considering the fact that the order passed by the Mamlatdar is without jurisdiction. It is submitted that even the Mamlatdar has accepted the said fact that Clause-b of Section 26, bars the proceedings. It is submitted that it provides that in respect of any removal of any impediment or of any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party, under this Act, or in a Civil Court, or under Chapter XII of the Code of Criminal Procedure, the suit is barred.

2. Reliance is placed on the judgment of this Court in the case of

Ilaba Devendrasinh Jadeja vs. State of Gujarat passed in Letters Patent Appeal No.1130 of 2018. In paragraphs 13 to 16, this Court, while considering the provisions of Section 26, has observed thus:-

"13. Before parting with this order, we may observe that in the course of the hearing of this appeal, our attention was also drawn to Section 26 of the Mamlatdar Courts Act, 1906. Although, Section 26 of the Act may not be relevant for the purpose of deciding the present appeal, yet having regard to the importance of the provision of the Act and for the guidance of the authorities under the Act, we would like to say something.

14. The provisions of Section 26 are reproduced below;

"26. No suit shall lie under this Act,- (a) against Government or against any Government Officer in respect of any act done or purporting to be done by any such officer in his official capacity, except where acting as a manager or guardian duly constituted under any law for the time being in force; or

(b) in respect of any removal of any impediment or of any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party, under this Act, or in a Civil Court or under Chapter XII of the Code of Criminal Procedure, 1989"

15. Section 26 opens with the sentence "No suit shall lie under this Act". It creates a bar for entertaining a suit to be filed under the said Act and it does not take away the jurisdiction of the Civil Court to entertain, try and decide the suit in respect of matters covered by clause (b) of Section 26 above. On the contrary, if it shown that a Civil Suit is filed in respect of matter covered by Section 26 (b) of the said Act, prior to initiation of proceedings under Section 5 of the Mamlatdars' Courts Act, then there is a bar to entertain the suit under the provisions of Mamlatdars' Courts Act. It also cannot be urged that Section 26 (b) would be attracted only in case where there is already a decision of a Civil Court, as the phraseology used therein is "that has been the

subject of previous proceedings" in a Civil Court. However, this is also not acceptable for the reason that the legislature would have used the word "decided" or "concluded" in respect of the proceedings or Civil Suit covered by Section 26 (b) of the said Act.

16. We may only observe that the bar of jurisdiction of Mamlatdar's Court under Section 26(b), operates only when it is pointed out that the civil suit was filed prior to the institution of proceedings under Section 5 of the said Act. In the present case, the Special Civil Suit No.186 of 2014 was filed after the institution of proceedings under Section 5 of the Act, 1906. Hence, it cannot be said that the Mamlatdar's Court proceeded without jurisdiction or that it could not have proceeded with the matter."

3. Considered the submissions. Issue notice, returnable on **14.10.2022.**

4. In the meantime, ad-interim relief in terms of paragraph 30(B) is granted. Direct service is permitted.

Hitesh

(SANGEETA K. VISHEN,J)