

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14956 of 2024**

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DHANSUKHBHAI JERAMBHAI PRAJAPATI & ANR.**Versus****DR. GUMANSINH BHIKHUBHAI DESAI & ORS.**

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Appearance:**MS SONAL D VYAS(999) for the Petitioner(s) No. 1,2****MR JAYNEEL PARIKH ASSISTANT GOVERNMENT PLEADER/PP for the
Respondent(s) No. 2,3**

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**Date : 28/10/2024****ORAL ORDER**

1. Heard learned Advocate Ms. Sonal Vyas on behalf of the petitioners and learned Assistant Government Pleader MR. Jayneel Parikh on behalf of respondent- State.

2. By way of this petition, the petitioners inter alia challenge an order dated 08.02.2024 passed by the Mamlatdar, Valsad (Rural) in Mamlatdar Court Case No. 10 of 2023, which had been confirmed in revision by the Deputy Collector, Valsad vide order dated 07.08.2024 in Mamlatdar Court Case Revision No. 2 of 2024.

3. Considering the submission made by learned Advocate Ms. Vyas who appears on behalf of the original defendants before the Mamlatdar and the revision applicant before the Deputy Collector, and having perused the documents on record more particularly the order passed by the Mamlatdar, it would prima facie appear that the Mamlatdar at conclusion no. 12 (2)

inter alia records that the original plaintiff was using a 12 meter road existing in the southern side of survey no. 246, which was of the ownership of one Rahul Sandipbhai Desai, for accessing his agriculture land at revenue survey no. 314. The Mamlatdar having observed as thus, later on, comes to a conclusion that the petitioner having fenced some part of his land, an obstruction was created for the original plaintiff to go to his agriculture field and whereas under such circumstances, the petitioner was directed to remove obstructions in his land, for the original plaintiff to go to his agriculture field. The said order having been confirmed by the Deputy Collector in revision. As it is, it appears that the said person namely Rahul Sandipbhai Desai does not appear to have been joined in proceedings before the Collector and whereas this Court fails to appreciate as to the relevance of directing the present petitioners for not obstructing the original plaintiff when the right of way was available through the lands of a person who was not joined in the proceedings at all.

4. This Court has also noticed an MOU, which admittedly was entered into between the plaintiff and the said Rahul Desai, before the order was passed by the Mamlatdar whereby the said Rahul Desai agrees to give right of way to the petitioners through his lands.

5. Considering such a situation, since there appears to be an apparent incongruity in the proceedings, at this stage interference is warranted. Hence issue **Notice** to the respondents returnable on **06.01.2025**.

6. By way ad-interim relief order dated 08.02.2024 passed by the Mamlatdar, Valsad (Rural) in Mamlatdar Court Case No. 10 of 2023 and order dated 07.08.2024 passed by the Deputy Collector, Valsad in

Mamlatdar Court Case Revision No. 2 of 2024 shall remain stayed.

7. Learned AGP waives service of notice on behalf of respondent-State. Direct service for rest of the respondents is permitted.

NIRU

(NIKHIL S. KARIEL,J)

Original copy of this order has been signed by the Hon'ble Judge.

Digitally signed by: NIRU ROSHAN SHAH, PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 29/10/2024 18:02:40