

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4505 OF 2006

(arising out of SLP(C)No.3449 of 2006)

COLLECTOR, RAJKOT & ORS.
PLAINTIFFS

... APPELLANTS

VERSUS

BAVABHAI KARSHANBHAI PATEL & ANR.
DEFENDANTS

... RESPONDENTS

O R D E R

Leave granted.

The challenge in this appeal is to the order dated 17.10.2002 in Special

Civil Application No.3486 of 2002 passed by the learned Single Judge dismissing the

petition as not maintainable and the order dated 16.6.2004 passed by the Division

Bench in LPA No.850 of 2003 affirming the order passed by the learned Single Judge.

We have heard the parties.

In both the orders the learned Single Judge and the Division Bench were

of the view that since the order of the Secretary to the State Government has been

challenged by the Collector the writ petition is not maintainable, according to them

the Collector is subordinate to the Secretary in the Government and, therefore, he is

incompetent to challenge the order passed by the Secretary to the State Government.

We have perused ground 'A' taken in this appeal which shows that the appeal was preferred by the Collector of Rajkot on the expressed direction given by the Ministry of Revenue. Apart from that, we are of the view that when an illegality is committed it is open to the Collector to challenge the same to protect the interest of the State. Therefore, both the learned Single Judge and Division Bench of the High Court were not correct in saying that the Collector cannot challenge the order passed by the Secretary to the State Government.

Since, the controversy has not been settled on merits, we set aside the orders of the learned Single Judge and the Division Bench of the High Court and the matter is remitted back to the learned Single Judge by restoring Special Civil Application No.3486 of 2002 before the learned Single Judge. The learned Single Judge shall after hearing the parties consider the respective merits and pass an appropriate order in accordance with law. We make it clear that the parties are at liberty to raise all rights and contentions before the learned Single Judge. The High Court is requested to dispose of the matter within six months.

The appeal is disposed of accordingly.

.....J.

(H.K. SEMA)

.....J.

(P.K. BALASUBRAMANYAN)

NEW DELHI,

OCTOBER 16, 2006.

4

ITEM NO.65

COURT NO.7

SECTION IX

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).3449/2006

(From the judgement and order dated 17/10/2002 in LPA No. 850/2003 & SCA No. 3486/2002 of
The

HIGH COURT OF GUJARAT AT AHMEDABAD)

COLLECTOR, RAJKOT & ORS.

Petitioner(s)

VERSUS

BAVABHAI KARSHANBHAI PATEL & ANR.

Respondent(s)

Date: 16/10/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

For Petitioner(s)

Mr. R.P. Bhatt, Sr.Adv.

Ms. Hemantika Wahi,Adv.

Ms. Pinky Behera, Adv.

For Respondent(s)

Mr. Mukul Rohtagi, Sr.Adv.

Mr. Mahesh Agarwal, Adv.

Mr. Rishi Agrawala, Adv.

Mr. E.C. Agrawala,Adv.

Mr. Amit Sharma, Adv.

Mr. Dhruvad K., Adv.

Mr. Jatin Zaveri ,Adv

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The orders of the learned Single Judge and the Division Bench of the High Court are

5

set aside and the matter is remitted back to the learned Single Judge by restoring Special Civil Application No.3486 of 2002 before the learned Single Judge. The learned Single Judge shall after hearing the parties consider the respective merits and passed an appropriate order in accordance with law. We make it clear that the parties are at liberty to raise all rights and contentions before the learned Single Judge. The High Court is requested to dispose of the matter within six months.

The appeal is disposed of in terms of the signed order.

(PAWAN KUMAR)

(PREM SINGH RAWA)

T)

COURT MASTER

(signed

COURT MASTER

order is placed on the file)