

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6119-6120 OF 2009
[arising out of SLP(C) No. 24416-24417 of 2009]

JARULLMIYA ISMAILMIYA MALEK

.....

APPELLANT

VERSUS

VIKRAMBHAI VIJAYBHAI PATEL & ORS.

.....

RESPONDENTS

O R D E R

1. Leave granted.

2. Respondent No. 2 who is the main affected party has been served but has not put in appearance.

3. We have heard the learned counsel for the appellant and respondent Nos. 2 to 4.

4. We see from the impugned judgment that while the matter was pending and being argued before the Division Bench, the petitioner before the High Court who is respondent No. 1 herein had made a prayer for the

withdrawal of the writ petition. This permission had been declined for the reasons which we quote herein below:

"While issuing notice on this petition returnable on 25.8.2009, it was made clear that the notice was for final disposal. Yesterday, the final hearing commenced and the matter was substantially heard, and was adjourned till today only to permit the petitioner to move an amendment which has been granted by a separate order passed today. Thereafter, the arguments of the learned counsel for the parties including respondent Nos. 4, 5 and respondent 6 Cooperative Society were heard yesterday. The learned Advocate for the petitioner, under instructions of the petitioner who is present before the Court, makes a request for permission to withdraw the petition. Since several important issues of public interest arise in this petition, and looking to the particular circumstances in which the request is made, we do not grant the permission sought for."

5. With due respect, we must state that once the petitioner before the High Court had made a prayer for withdrawal of the writ petition it was not necessary for the High Court to have gone into the merits of the controversy. We are, therefore, not called upon to opine on the merits of the case but permit respondent No. 1 before us to withdraw the writ petition.

6. As a natural consequence thereof, the order passed by the High Court will have to be set aside and rendered nonest qua the parties herein. The

consequential order made by the Registrar, Cooperative Societies dated 30th November, 2009 pursuant to the order of the High Court shall also be set aside.

7. The appeals are disposed of in the aforesaid terms.

.....J
[HARJIT SINGH BEDI]

.....J
[C.K. PRASAD]

NEW DELHI
JULY 27, 2010.

