

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 5956 OF 2010
[Arising out of SLP(C) No.27891 of 2008]

ROHITKUMAR GANPATRAM PATEL

... Appellant(s)

Versus

VASUBAINARANBHAI PATEL & ORS.

... Respondent(s)

O R D E R

Leave granted.

2. This appeal is directed against the judgment and order dated 29th September, 2008, passed by the Gujarat High Court in Letters Patent Appeal No.1120 of 2008, admitting the appeal and staying the order of the learned Single Judge in Special Civil Application No.25033 of 2006. An order of restraint was also passed against the respondent No.1 in the High Court, Ahmedabad Urban Development Authority and any other party exercising the powers in that behalf, from demolishing the construction on the suit land until further orders. Certain conditions were also indicated in the interim order for it to become operative. Presumably, the same have been complied with.

3. Mr. Ahmadi, learned counsel appearing for the

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petitioner submits that the question of maintainability of the Letters Patent Appeal had been raised before the Division Bench of the High Court, but the Division Bench of the High Court was of the view that the appellants therein had made out a prima facie case on the question of maintainability of the appeal and the matter, therefore, required fuller hearing on the question. The appeal was, accordingly, entertained without prejudice to the objections

of the appellant herein against the maintainability of the appeal.

4. Mr. Ahmadi also submitted that the High Court had erred in admitting the LPA and passing interim orders therein, without deciding the question of maintainability.

5. On behalf of the respondent herein it has been submitted that the question of maintainability had been left open for decision but the High Court could not have considered the said question without formally admitting the appeal.

6. Be that as it may, in our view, since from maintainability of the LPA in the circumstances indicated was at issue, the same should have been considered at the earliest opportunity by the High Court, particularly, when the matter arises out of the grant of temporary injunction.

7. Having heard learned counsel for the respective parties and having considered the submissions made,

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although, we are not interfering with the order of the High Court, we also indicate that it would possibly be in the interest of all the parties for the High Court to decide the question of maintainability as quickly as possible. We may indicate that the impugned order of the High Court is dated 29th September, 2008, and about two years have elapsed since then.

8. We, therefore, dispose of the appeal by requesting the High Court to dispose of the question of maintainability of the Letters Patent Appeal raised by the appellant herein within two months from the date of communication of this order.

9. There will be no orders as to costs.

.....J.
(ALTAMAS KABIR)

.....J.
(A.K. PATNAIK)

New Delhi,
July 26, 2010.

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ITEM NO.51

COURT NO.2

SECTION IX

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

Petition(s) for Special Leave to Appeal (Civil) No(s).27891/2008

(From the judgement and order dated 29/09/2008 in LPA No.1120/2008
of The HIGH COURT OF GUJARAT AT AHMEDABAD)

ROHITKUMAR GANPATRAM PATEL

Petitioner(s)

VERSUS

VASUBAINARANBHAI PATEL & ORS.

Respondent(s)

Date: 26/07/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s) Mr. Huzefa Ahmadi, Adv.
Mr. Abhijat P. Medh, Adv.
Mr. Brajesh Kumar, Adv.

For Respondent(s) Ms. Hemantika Wahi, Adv.
Ms. Jesal, Adv.

Mr. D.N. Ray, Adv.
Mr. Lokesh K.Choudhary, Adv.
Mrs. Sumita Ray, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

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

There will be no orders as to costs.

(Sheetal Dhingra)
Court Master

(Juginder Kaur)
Court Master

[Signed order is placed on the file]