

Gujarat High Court

Nana vs State on 29 March, 2011

Author: Mr.S.J.Mukhopadhaya,&NbspMr.Justice J.B.Pardiwala,&Nbsp  
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LPA/2029/2010      4/ 4      ORDER

IN  
THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS

PATENT APPEAL No. 2029 of 2010

In

SPECIAL CIVIL APPLICATION No. 6167 of 2010

With

CIVIL

APPLICATION No. 9800 of 2010

In

LETTERS PATENT APPEAL No. 2029 of 2010

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NANA

KERALA PIYAT KHETI UTKARSH MANDAL - Appellant(s)

Versus

STATE

OF GUJARAT & 2 - Respondent(s)

=====

Appearance

:

MR

BP GUPTA for

Appellant(s) : 1,

MRS KRINA CALLA, AGP for Respondent(s) : 1,

MR

RAJESH M.CHAUHAN for MR HS MUNSHAW for Respondent(s) : 2 -

3.

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CORAM

:

HONOURABLE

THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA

and

HONOURABLE

MR.JUSTICE J.B.PARDIWALA

Date

: 29/03/2011

ORAL  
ORDER

(Per : HONOURABLE THE CHIEF JUSTICE MR. S.J.MUKHOPADHAYA) This Appeal has been preferred by the appellant - writ petitioner against the order dated 14th June 2010 passed by the learned Single Judge.

By the said order, the learned Single Judge observed that there is no final adjudication made by the office of the respondent - Additional Commissioner, who has simply observed to file civil suit for recovery and, thereby, allowed the appellant to raise all the contentions in the said civil suit that may be filed against the appellant.

Learned counsel appearing on behalf of the appellant would contend that the amount which was due as was shown by the authorities was later on withdrawn. Such decision was later on rescinded pursuant to the order dated 17th November 2009 passed by the Chairman-cum-District Development Officer, Surendranagar, whereby he had come to the conclusion that on the basis of the record, it appears that the amount of Rs.9,76,061=00 is not to be recovered from the petitioner.

We have heard learned counsels appearing on behalf of the appellant and the respondents.

It appears that the appellant earlier moved before this Court in Special Civil Application No.24262/2005 against the order of recovery. The said case remained pending for hearing for about four years and, on 10th February 2009, the appellant withdrew the petition without any liberty on the ground that the Chairman-cum-District Development Officer has prima facie come to the conclusion that no recovery is to be made from the appellant. No observation was made by this Court nor any liberty was given to prefer a second time writ petition. When the aforesaid fact came to the notice of the Forest Conservator, Rural Development Department, Gujarat State, he, by his order dated 19th March 2010, ordered to initiate recovery proceedings by filing a civil suit against the appellant. The said order was challenged by the appellant, in which, the impugned order was passed by the learned Single Judge on 14th June 2010.

From the aforesaid facts, it will be evident that the writ petitions were withdrawn by the appellant on the ground that the Chairman-cum-District Development Office had, prima facie, come to the conclusion that no recovery was to be made from the appellant and no final decision was taken. This apart, the question whether any amount is to be recovered from any person, and for that, if any individual or officer of the State intends to prefer a civil suit, no court can issue any direction preventing a party to prefer a suit before the Court of competent jurisdiction. Whether such suit as may be filed has merit or not, cannot be presumed.

For the said reason, if the learned Single Judge has refused to interfere with the impugned order, no case is made out to interfere with the same. The Appeal and the Civil Application are accordingly dismissed. No cost.

(S.J.Mukhopadhaya, C.J.) (J.B.Pardiwala, J.) /moin Top