

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 13674 of 2009
With
SPECIAL CIVIL APPLICATION No. 2894 of 2010
With
SPECIAL CIVIL APPLICATION No. 2892 of 2010

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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- 1 Whether Reporters of Local Papers may be allowed
to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy
of the judgment ?
- 4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?
- 5 Whether it is to be circulated to the civil judge
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BHAVNABEN RAMESHBHAI MAKANI & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PJ KANABAR for Petitioner(s) : 1 - 2.
MR PK JANI GOVERNMENT PLEADER with MR NIKUNT RAVAL AGP for
Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/08/2010

COMMON ORAL JUDGMENT

1. Rule. Mr. Raval, learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondents.

2. With the consent of the learned advocates appearing on behalf of the respective parties and in the facts and circumstances of the case, the present petitions are taken up for final hearing today.

3. By way of these petitions under Articles 226 and 227 of the Constitution of India, the petitioners have prayed for an appropriate writ, order and/or direction, quashing and setting aside the impugned order dated 25/11/2008 passed by respondent No.2 – District Collector, Amreli in JMN/REVISION/108(6), CASE NO.180 of 2005 as well as order passed by Revisional Authority i.e. the Secretary (Appeals), Revenue Department, State of Gujarat dated 15th/19th September, 2009 in Revision Application No.MVV/HKP/AML/ 10/2008 confirming the order passed by the Collector, Amreli dated 25/11/2008.

4. As for the reasons stated hereinbelow this Court is quashing and setting aside the impugned orders and remanding the matter to the Collector, Amreli, this Court is not further elaborating the facts. Suffice it to say that the proceedings were initiated by the Collector, Amreli under Rule 108(6) of the Bombay Land Revenue Rules and the petitioners were called upon to show cause as to why the mutation entry should not be quashed and set aside. In the

said proceedings, the Collector, Amreli quashed and set aside the mutation entry and also quashed and set aside the transfer in favour of the petitioners.

5. Having heard learned advocates appearing on behalf of the respective parties and considering the fact that there was no show cause notice issued upon the petitioners to show cause as to why transfer/sale in favour of the petitioners should not be quashed and set aside, it appears to the Court that the Collector, Amreli was not justified in quashing and setting aside the transfer/sale in favour of the petitioners and, therefore, the order passed by the Collector, Amreli whereby quashed and set aside the mutation entry and quashed the transfer/sale in favour of the petitioners, cannot be sustained and the same deserves to be quashed and set aside. Consequently the order passed by the Revisional Authority also deserves to be quashed and set aside and the matter is required to be remanded to the Collector, Amreli for passing appropriate order, after giving an opportunity to the petitioners.

As agreed by Mr.Kanabar, learned advocate appearing on behalf of the petitioners that the order passed by the Collector, Amreli dated 25/11/2008 to be treated as show cause notice and the petitioners shall respond to the same and the said Notice be treated as calling upon the petitioners to show cause as to why transaction in favour of the petitioners shall not be quashed, without further entering into the merits of the case and without expressing

anything on merits with respect to transaction in favour of the petitioners, the impugned order dated 25/11/2008 passed by respondent No.2 – District Collector, Amreli in JMN/REVISION/108(6),CASE NO.180 of 2005 as well as order passed by Revisional Authority i.e. the Secretary (Appeals), Revenue Department, State of Gujarat dated 15th/19th September,2009 in Revision Application No.MVV/HKP/AML/ 10/2008 are hereby quashed and set aside solely on the ground that the order passed by the Collector, Amreli is in breach of principles of natural justice. The Collector, Amreli is directed to decide and dispose of JMN/REVISION/108(6),CASE NO.180 of 2005 in accordance with law and on merits, after giving an opportunity to the petitioners. As stated hereinabove, the order dated 25/11/2008 passed by the Collector, Amreli, which is now set aside that itself be treated as show cause notice to the petitioners calling them to show cause as to why transfer/sale in favour of the petitioners should not be quashed. It will be open for the petitioners to reply to the same within a period of six weeks from today. Thereafter, the Collector, Amreli to pass an appropriate order in accordance with law and on merits. Rule is made absolute to the aforesaid extent. No costs.

(K.S. JHAVERI, J.)

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