

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (ST) NO.5898 OF 2015
IN
WRIT PETITION NO.6641 OF 2013

Pramod Keshrichand Shah and another	Petitioners
versus	
Champaben Mohan and others	Respondents

WITH
REVIEW PETITION (ST) NO.6072 OF 2015

Pramod Keshrichand Shah and another	Petitioners
versus	
Gangaben Nanu through POA, Mukesh Patel & ors.	Respondents

WITH
REVIEW PETITION (ST) NO.5901 OF 2015

Pramod Keshrichand Shah and another	Petitioners
versus	
Ramaben Bechharbhai Patel and others	Respondents

WITH
REVIEW PETITION (ST) NO.6070 OF 2015

Pramod Keshrichand Shah and another	Petitioners
versus	
Jogi Ranchod through POA, Mukesh Patel & ors.	Respondents

WITH
REVIEW PETITION (ST) NO. 6074 OF 2015

Pramod Keshrichand Shah and another	Petitioners
versus	
Dhanaben Jivan through POA Mukesh Patel & ors.	Respondents

WITH
REVIEW PETITION (ST) NO.6067 OF 2015

Pramod Keshrichand Shah and another	Petitioners
versus	
Ramnubhai Paragbhai Halpati through POA Mukesh Patel and others	Respondents

WITH
REVIEW PETITION (ST) NO.5899 OF 2015

Pramod Keshrichand Shah and another	Petitioners
versus	
Bava Dheda and others	Respondents

Mr.VR.Walawalkar with Mr.Ajit J. Kenjale and Rajesh Dharap for
Petitioners.

Mr.Kishor S. Patil for Respondent nos.1 to 7 in RPW(ST).5898/2015,
for Respondent nos.1 to 8 in RPW(ST).6072/2015 and for
Respondent no.1 in RPW(ST) Nos.5901, 6070, 6074, 6067,
5899/2015.

Mr.S.S.Deshmukh for Respondents 8 to 10 in RPW(ST).5898/2015.

CORAM : NARESH H. PATIL AND
B.P.COLABAWALLA, JJ.

DATE : 25th August 2016

PC :

1. The order dated 29 February 2012 in DAPVR Revision No.2 of 2008 passed by Administrative Tribunal of Daman and Diu, at Daman was quashed and set aside by this Court vide order dated 23 September 2014 (Coram : Naresh H. Patil and B.P.Colabawalla, JJ.). Rule was made absolute in terms as stated in the operative part of the order.

2. The Respondent nos.1 in Writ Petition Pramod Keshrichand Shah filed Special Leave to Appeal (C) No.2050 of 2015 before Apex Court challenging the order dated 23 September 2014 of this Court. By order dated 30 January 2015, the Apex Court passed following order :

" Having heard learned Senior Counsel appearing for the Petitioner, we are of the opinion that before deciding the Writ Petition by permitting the Petitioner to prosecute his appeal before the Tribunal on the basis of photostat copies instead of certified copies, the High Court ought to have satisfied itself that the Writ Petition deserved its attention. The Tribunal had found that the disputes were fully covered against the writ petitioners by the doctrine of res judicata. We think that it may not have been proper for the High Court to issue a certiorari without fully considering the legal propriety of doing so. It is further pointed out that myriad reliefs had been prayed for in the writ petition, including a prayer for handing over the possession. Inasmuch as the High Court has "allowed" the Writ Petition, it is possible to misconstrue the impugned Order as having granted the relief of possession.

In these circumstances, the Special Leave Petition is disposed of by granting leave to the Petitioner to file a Review before the High Court. If the Review is filed within 30 days from today, the High Court is requested to decide the matter on merits by condoning the delay, if any. Before deciding the Review, the High Court will, needless to state, give notice to the concerned opposite party."

3. By an order dated 15 December 2015, the Apex Court corrected its order dated 30 January 2015 by passing following order:

" In order dated 30.01.2015 last line of page no.1 be read as under :

*'The Collector had found that the disputes were.....'
Rest of the Order remained unchanged."*

4. Consequent to the order passed by the Apex Court, the Respondents in the writ petition, Pramod Shah and others, filed present review petitions.

5. Learned counsel appearing for the Review Petitioners submits that the Review Petitioners filed seven review petitions in respective writ petitions. Learned counsel for Review Petitioners submits that under Daman Abolition of Proprietorship of Village Regulation, 1962, the "occupancy day" is prescribed as 20 December 1961. In other words, persons who are in occupation of the lands on the said day i.e. 20 December 1961, could apply to be occupants. The original Writ Petitioners resorted to proceedings before Mamlatdar and Collector after about 36 years of the settlement of the issue regarding occupation of the subject land. Learned counsel referred to the orders passed by Mamlatdar in the year 1970, the order passed by Collector in the year 1972 and the order of dismissal of revision, filed by the Writ Petitioners, by the Administrative Tribunal. The appeal filed against the order of Mamlatdar by Writ Petitioners came to be dismissed by the Collector on 7 August 2007, against which a revision was preferred to the Administrative Tribunal. The Tribunal dismissed the revision on 29 February 2012. Learned counsel for Review Petitioners, therefore, submits that the legal consequence of these proceedings settled prior to near about 30 years, is required to be looked into.

6. Learned counsel appearing for the Respondents in review petitions (original Writ Petitioners) submitted that it would not be

appropriate to deprive the Writ Petitioners from agitating their rights in statutory revision prescribed under Daman Abolition of Proprietorship of Village Regulation, 1962. The counsel for Respondents in review petition disputed the interpretation placed by the counsel for Review Petitioners on the orders passed by this Court and the Apex Court. It was the submission of learned counsel for the Respondents in review petition that this Court had not expressed any opinion on the merits of the rights claimed by the contesting parties about occupation of the suit land. What was allowed by this Court was right of revision before the Administrative Tribunal to be exercised even in absence of a certified copy of the order.

7. We have heard learned counsel for Daman Administration. We have perused the order passed by this Court in writ petition.

8. On noticing that the revision filed by the Writ Petitioners was rejected for want of certified copy of the order passed by the Collector, with a view to allow the Writ Petitioners to raise appropriate issues in the revision petition, we had permitted the Writ Petitioners to canvass their pleas in the revision petition on the basis of a photostat copy of a certified copy of the order passed by the Collector. It is clarified that we had not permitted the Writ Petitioners to resort to any proceedings relating to taking over possession of the suit land.

9. It seems that the Review Petitioners and the Daman Administration desire that the writ petition ought to have been considered even on merits. Learned counsel appearing for Review

Petitioners submits that appropriate reply would be tendered within two weeks from today.

10. In view of the order passed by the Apex Court, we find it appropriate to observe that Writ Petition No.7058 of 2013 is required to be heard again. Hence, we pass following order :

(a) The order under review passed on Writ Petition Nos.6641/2013, 6642/2013, 6670/2013, 6671/2013, 6674/2013, 7053/2013, 7055/2013, 7057/2013, 7058/2013 and 7157/2013, dated 23 September 2014, is recalled;

(b) Writ Petition Nos.6641/2013, 6642/2013, 6670/2013, 6671/2013, 6674/2013, 7053/2013, 7055/2013, 7057/2013, 7058/2013 and 7157/2013 are restored to file;

(c) Writ Petition Nos.6641/2013, 6642/2013, 6670/2013, 6671/2013, 6674/2013, 7053/2013, 7055/2013, 7057/2013, 7058/2013 and 7157/2013 may be moved before the Court according to roster. The review petitions are disposed of accordingly.

(B.P.COLABAWALLA, J.)

(NARESH H. PATIL, J.)