IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11512 of 2020

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IMPERIA DEVELOPERS PARTNERSHIP FIRM THROUGH ITS PARTNER AYUBBHAI ALIBHAI PATEL

Versus

LEGAL HEIRS AND REPRESENTATIVES OF THE DECEASED IBRAHIMBHAI ADAMBHAI PATEL & 16 other(s)

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Appearance:

MR MUHAMMAD ISA M HAKIM(10874) for the Petitioner(s) No. 1

for the Respondent(s) No.

10,11,1.1,12,1.2,12.1,12.2,12.3,12.4,12.5,12.6,12.7,13,13.1,13.2,13.3,13.4,13.5,14,14.1,14.2,14.3,14.4,14.5,14.6,14.7,14.8,14.9,15,15.1,15.2,15.3,15.4,15.5,15.6,15.7,16,16.1,16.2,16.3,16.4,16.5,16.6,17,17.1,17.2,17.3,17.4,17.5,3,3.1,4,4.1,4.2,4.3,4.4,4.4.1,4.4.2,4.4.3,4.5,4.6,5,5.1,5.1.1,5.1.2,5.1.3,5.1.4,5.2,5.3,5.4,6,6.1,6.2,6.3,6.4,7,7.1,7.2,7.3,7.3.1,7.3.2,7.3.3,7.3.4,7.3.5,7.3.6,7.3.7,7.4,7.4.1,7.4.2,7.4.3,7.4.4,8,9,9.1,9.2,9.3,9.4,9.5,9.6

MR PR THAKKAR(899) for the Respondent(s) No.

1,1.1.1,1.1.2,1.1.3,1.1.4,1.1.5,1.1.6,1.1.7,1.1.8,1.1.9,2

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

Date : 03/11/2020

ORAL ORDER

1. Heard learned advocate Mr. M.T.M. Hakim for the petitioner and learned advocate Mr. Jigar Raval for the respondent through video conference.

2. The facts of this case has developed into a peculiar scenario as stated here-in-below after filing of this petition:

(i) The petitioner challenged the order

below Exh.14 in Special Civil Suit No. 91/2020 passed by the 5th Additional Senior Civil Judge, Vadodara on 5.9.2020 whereby the trial Court granted ad-hoc interim relief of maintain Status quo during pendency of hearing of application for stay at Exh.5 and allowed application Exh.6 for appointment of Court Commissioner. The trial Court also suo motu passed an order calling upon both the sides to make submissions as to why the State Government should not be joined as a defendant under Order I Rule 10(2) of the Code of Civil Procedure, 1908 (for short "the Code"). After recording the facts, the trial Court came to the conclusion that defendant no. 13/2 i.e. Aiyab Alibhai Daud Patel was legal heir of Ibrahim Adambhai Patel and both the plaintiffs are also legal heirs of Ibrahim Adambhai Patel. The trial Court further recorded that during the pendency of the Civil Suit, the suit land was sold to defendant no.11 who is petitioner before this Court.

(ii) It appears that the plaintiffs of Special Civil Suit No.91 of 2020

earlier preferred Regular Civil Suit No.396 of 2018 with the same prayers which was dismissed under Order VII Rule 11 of the Code on the ground of limitation and Regular Civil Appeal No. 345/2019 was filed against the said order. The petitioner therefore has filed an application under Order VII Rule 11 of the Code for rejection of the plaint of Special Civil Suit No.91 of 2020. However, while deciding application Exh.14 filed by the plaintiffs of Special Civil Sui no. 91 of 2020 for granting ad interim relief during pendency of hearing of application under Order VII Rule 11 of the Code and application for stay at Exh.5 as the petitioner taking advantage of the lock-down started construction on the suit land, the trial Court was of the opinion that in Special Civil Suit no. 91 of 2020, the plaintiffs have challenged registered sale deed dated 27.06.2019 and therefore, the trial Court came to the conclusion that till application under Order VII Rule 11 as well as application Exh.5 for stay is heard, it would be in the interest of

justice, to stop the construction being carried out by the petitioner-defendant no.11, failing which, there would not be any purpose of keeping the suit pending. The trial Court thereafter on its own by considering the facts stated in the sale deed dated 27.6.2019 and copy of extract of 7 and 12 from the revenue records came to the conclusion that there is a difference in the measurement of the suit land and formed an opinion that it was necessary to join the State Government as a party defendant under Order I Rule 10(2) of the Code. The trial Court, therefore, passed the impugned order dated 5.9.2020 granting ad-interim injunction of status quo during pendency of hearing of application for stay at Exh.5 and also allowed application for appointment of Court Commissioner at Exh.6 and directed both the sides to make submissions as to why the State Government should not be joined as necessary and proper party under Order I Rule 10(2) of the Code.

(iii) The petitioner being aggrieved by the said order has preferred this

petition.

(iv) On 21.9.2020, after hearing both the sides this Court passed the following order :

> “1) Heard learned Senior Advocate Mr. Mihir Joshi assisted by learned advocate Mr. M.T.M. Hakim for the petitioner and learned advocate Mr. P.R. Thakkar for the respondents no. 1.1 to 1.9 and 2 through video conference.
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> 2) By this petition under Article 227 of the Constitution of India, the petitioner has prayed for the following reliefs:
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> > “(A) THIS HON'BLE COURT MAY BE PLEASED TO quash and set aside the impugned order dated 05/09/2020 passing ad hoc order below Application Exhibit 5 for interim reliefs, allowing application Exhibit 6 for Panchkyas and issuing show cause notice for impleadment of State Government in pursuance to Pursis Exhibit 14 in Special Civil Suit No.91/2020 passed by the Court of Hon'ble 5th Additional Senior Civil Judge, Vadodara (“ANNEXUREA”);
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> > (B) THIS HON'BLE COURT MAY BE PLEASED TO quash and set aside the impugned order dated 08/09/2020 below Exhibit 28 and 29 in Special Civil Suit

No.91/2020 passed by the Court of Hon'ble 5th Additional Senior Civil Judge, Vadodara refusing the suspension of order dated 05/09/2020 (“ANNEXUREB”);

(C) THIS HON'BLE COURT MAY BE PLEASED TO reject Application Exhibit 6 in Special Civil Suit No.91/2020 and further be pleased to Application Exhibit 28 and 29 in Special Civil Suit No.91/2020;

(D) THIS HON'BLE COURT MAY BE PLEASED TO pass orders for urgent and immediate hearing of application Exhibit 5 on merits in time bound schedule;

(E) THIS HON'BLE COURT MAY BE PLEASED TO pass appropriate orders of posting the further hearing of the proceedings of Special Civil Suit No.91/2020 before any other appropriate Court except the 5th Additional Senior Civil Judge, Vadodara;

(F) Pending admission hearing and till final disposal of present petition, THIS HON'BLE COURT MAY BE PLEASED TO stay the execution, implementation and operation of the orders dated 05/09/2020 dated 05/09/2020 passing ad hoc order below Application Exhibit 5 for interim reliefs, allowing application
Exhibit 6 for Panchkyas and issuing show cause notice for impleadment of State Government in pursuance to Pursis Exhibit

14 in Special Civil Suit No.91/2020 passed by the Court of Hon'ble 5th Additional Senior Civil Judge, Vadodara, in the interest of justice and equity;

(G) THIS HON'BLE COURT MAY BE PLEASED TO award the costs of present petition;

(H) THIS HON'BLE COURT MAY BE PLEASED TO grant such other and further relief/s as may be deemed, fit, just and proper in the facts and circumstances of the case, in the interest of justice and equity."

3) Learned Senior Advocate Mr. Mihir Joshi submitted that by passing the impugned order, under Exh14, as an adhoc order during pendency of Exh5 in Special Civil Suit No. 91/2020 filed by the original plaintiffs, the Court below has in effect allowed Exh5 application for interim injunction under Order 39, Rule 1 and 2 of the Code of Civil Procedure , 1908 ("the Code" for short) by granting status quo during the pendency of hearing of the application of joining the Government under Order 1 Rule 10(2) of the Code filed by the plaintiff, application Exh5 for interim injunction and the application under Order 7, Rule 11 filed by the petitioner.

4) After arguing the matter at length, learned advocate Mr. P.R. Thakkar who appears on caveat raised the preliminary objection with regard to the maintainability

of this petition as alternative remedy under Order 43, Rule 1(r) of the Code is available to the petitioner by preferring an appeal from order.

5) After arguing the matter at length by both the sides, the consensus is arrived at between the parties as under :

i) The impugned order dated 05.09.2020 passed by the 5th Additional Senior Civil Judge, Vadodara, below Exh14 read with Exh5 shall be modified by vacating the order of status quo and the parties are ready to proceed with simultaneous hearing of application under Order 1, Rule 10, application under Ex5 and application under Order VII, Rule 11 within a stipulated time.

6) In view of the above consensus arrived at between the parties, this Court is not entering into the merits of the matter. The impugned order dated 05.09.2020 passed by the 5th Additional Senior Civil Judge, Vadodara in Special Civil Suit No.91/2020 below Exh14 read with Exh5 as interim orders is hereby ordered to be modified and the order of status quo is vacated. The Court below is directed to hear the application Exh5 along with the application filed under Order VII Rule 11 of the Code on or before 29th October, 2020.

7) It is clarified that the order passed for appointment of Commissioner under Exh 6 is not

disturbed.

8) With the aforesaid directions, the present petition is disposed of."

(v) It appears that after the aforesaid order was passed, an application Exh.79 was filed before the trial court by some third person to join as party in the suit.

(vi) The petitioner therefore, filed application Exh.91 before the trial court as the trial Court was insisting for hearing for joining State Government as a necessary and proper party under Order I Rule 10 of the Code, inspite of there being an order dated 21.9.2020 passed by this Court to hear only the applications under Order VII Rule 11 and Exh.5 application. Another application Exh.92 was filed by the third party for joining them as a necessary and proper party with a request to hear application Exh.79 after the application under Order VII Rule 11 and application Exh.5 is heard as per order passed by this Court.

(vii) However, the trial Court passed an order dated 30.09.2020 by giving vague explanation and reasons ordered to keep Exh.79 application in abeyance directing the parties to make submissions for joining the State Government as necessary party under Order I Rule 10 of the Code along with hearing of application under Order VII Rule 11 as well as application Exh.5.

(viii) The petitioner, also preferred application under section 24 of the Code before the learned Principal District Judge, Vadodara being Civil Miscellaneous Application No.115/2020 for transfer of the matter to another court as the trial Court was inclined to proceed in its own manner without following the order passed by this Court in letter and spirit. It was also contended in the application for transfer filed by the petitioner that the trial Court has shown undue haste with the proceedings of the suits and the same were conducted on almost day to day basis. It was also averred in the application that after perusing the Development permission, NA permission and other permissions under the Revenue

law, which are on record of the suit, same have been ignored by the trial Court. It was contended that the trial Court ought not to have proceeded with the suit contrary to the order passed by this Court and the trial Court was expected to hear only Order VII Rule 11 application and application Exh.5.

(ix) The petitioner thereafter preferred Misc. Civil Application No. 1/2020 before this Court to recall the order dated 21.9.2020 passed by this Court as the trial Court was bent upon hearing the parties for joining the State Government under Order I Rule 10(2) of the Code by misinterpreting the consensus recorded by this Court in paragraph no. 5 of order dated 21.9.2020 and ignoring the final direction given by this Court in paragraph no. 6 of the said order. The said application was listed for hearing before this Court on 14.10.2020, however, as the application for transfer of the case was heard by the Principal District Judge and order was awaited, the same was adjourned to 16.10.2020

(x) Meanwhile, the trial Court posted the hearing of the applications under Order VII Rule of 11 of the Code and Exh.5 on 15.10.2020. As the matter was listed before this Court for review, on 16.10.2020 a request was made by the petitioner to adjourn the hearing on the said date. The petitioner also informed the trial Court that this Court would not be able to hear the matter on 16.10.2020 as the High Court was completely closed for the purpose of sanitisation from 16.10.2020 to 19.10.2010. Inspite of pointing out this fact, the trial Court adjourned the matter to 17.10.2020. It was also informed by the petitioner that the District Judge, Vadodara by order dated 14.10.2020 dismissed the application filed by the petitioner under section 24 of the Code to transfer the matter on flimsy ground that the petitioner made such a prayer in the original petition and therefore, the District Court cannot pass any order for transfer of the matter. It was also pointed out by the petitioner that the District Judge also defended the order dated 30.9.2020 passed by the

trial Court by observing that the trial Court was justified in hearing the parties for joining the State Government under Order I Rule 10 of the Code though there is specific direction by this Court to hear the matter qua only for application under Order VII Rule 11 and application Exh.5 on or before 29.10.2020. It is true that the District Court in the final direction expected the trial Court to comply with the direction of this Court in letter and spirit without being influenced by the earlier observation made below applications Exh. 14, 79 and 91.

(xi) Be that as it may, on 20.10.2020 when the Misc. Civil Application No. 1/2020 was heard it was informed by the petitioner that the trial Court reluctantly kept the matter on 20.10.2020. This Court therefore, passed the following order on Misc. Civil Application No. 1/2020 :

> “Heard learned Senior Advocate Mr. Mihir Joshi appearing for the learned advocate Mr. M.T.M. Hakim for the petitioner and learned Senior Advocate Mr. Dhaval Dave appearing for learned advocate Mr. Jigar Raval for the respondent

through video conference.

By this application, the applicant-original petitioner has prayed for the following reliefs :

> "(A)This Hon'ble Court may be pleased to quash and set aside the observation recording consent of the applicant for hearing of Order 1, Rule 10
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> (2) in Para No. 5 (I) of the order or in the alternative, clarify that such notice would be heard in due course after Exh.5 and Exh.16 is heard, if at all the same is necessitated;
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> (B) Pending admission, hearing and final disposal of the present application, this Hon'ble Court may be pleased to grant ad interim relief and / or interim relief and thereby stay the proceedings of Special Civil Suit No. 91 of 2020 pending before the Court of 5th Additional Senior Civil Judge, Vadodara.
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> (C) This Hon'ble Court may be pleased to grant such other and further relief/s as may be deemed, fit, just and proper in the facts and circumstances of the case, and in the interest of justice and equity."

Learned Senior Advocate Mr. Joshi submits that the applicant has filed a draft amendment on 20th October, 2020 in this application pointing out the subsequent

development after filing of this application which has taken place after the passing of the order in the Special Civil Application and order passed by the District Court rejecting the application for transfer of Special Civil Suit No. 91/2020 filed by the respondent. Mr. Joshi further submitted out that learned 5th Additional Senior Civil Judge, Vadodara (Code No.GJ00755) posted the matter for hearing on 17th October, 2020 in spite of pointing out that the applicant-petitioner has preferred this application for review and that the High Court was closed for sanitisation from 16th to 20th October, 2020.

Today when the matter is called out Mr. Joshi informed that the learned 5th Additional Senior Civil Judge, Vadodara (Code No.GJ00755) has kept the matter tomorrow i.e. 21st October, 2020 to proceed further as per his order dated 30th September, 2020 passed below Exhs. 79 and 91 to hear the parties for joining the State Government under Order 1 Rule 10(2) of the Code of Civil Procedure in spite of there being a direction given by this Court by order dated 21st September, 2020 to hear the application Exh.5 along with application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 only.

Mr. Joshi thereafter, submitted that the petitioner would like to amend the petition by moving appropriate draft amendment, if the same is revived by the Court.

On the other hand, learned Senior Advocate Mr. Dhaval Dave assisted by learned advocate Mr. Jigar Raval who has replaced learned advocate Mr. P.R. Thakkar for the respondents caveator submitted that respondent caveator has no objection, if the prayer made in paragraph no. 11(A) is granted by the Court whereby the consent of the applicant for hearing of Order 1 Rule 10(2) in paragraph no. 5(i) of the order dated 21st September, 2020 passed by this Court is withdrawn and clarify that such notice issued by the Court under Order 1 Rule 10 (2) of the Code would be heard in due course after Exh.5 along with the application under Order 7 Rule 11 is heard.

Considering the aforesaid fact situation, the order dated 21st September, 2020 is hereby recalled. Special Civil Application No. 11512/2020 is revived.

The applicant-petitioner may file draft amendment, as it may desire.

In the meanwhile, order dated 5th September, 2020 passed below Exh.14 in Special Civil Suit No. 91/2020 is stayed till further order and further proceedings of Special Civil Suit No. 91/2020 pending before the learned 5th Additional Senior Civil Judge, Vadodara (Code No.GJ00755) are stayed.

Registry is directed to provide a copy of writ of this order to learned advocate for the applicant

through email so as to enable him to serve the same upon the respondents through Email/ RPAD. Direct service is permitted forthwith.

Misc. Civil Application stands disposed of.

Special Civil Application No. 11512/2020 is ordered to be listed for hearing on 27th October,2020."

3. After the above order was dictated, learned advocate Mr. Raval submitted that without entering into any controversy, let all the orders passed by the trial Court below Exh. 14, 79 and 91 be quashed and the matter be transferred to any other Senior Civil Judge who may hear the application under Order VII Rule 11 and application Exh.5 within a time bound schedule.

4. To this submission, learned advocate Mr. Hakim appearing for the petitioner pointed out that earlier also when the advocate of the petitioner gave consent to hear the matters before this Court, while arguing the matter before the District Court for transfer application, contrary submissions were made on behalf of the respondents-original plaintiffs. He therefore, submitted that in such circumstances, taking into consideration

the submissions made by learned advocate Mr. Raval, appropriate order be passed in the interest of justice.

5. Without entering into the controversy as to whether the trial Court has passed the order dated 30.9.2020 contrary to the direction given by this Court or whether the District Court has unnecessarily defended the trial Court for passing such order, the following order is passed in the interest of justice:

(i) The order dated 5.9.2020 passed below Exh.14 is hereby quashed and set aside. However it is made clear that panchnama carried out pursuant to the order dated 5.9.2020 would continue to be on record as if application Exh.6 is allowed. It is further clarified that order dated 5.9.2020 passed by the trial Court below Exh.14 is quashed and set aside so far as directions are given by the trial Court calling upon both the sides to make submission as to whether State Government is a necessary party or not under Order I Rule 10 of the Code as well as the granting of ad-interim relief of status quo during the pendency of hearing of the application Exh.5 and application under Order VII Rule 11 of the Code is concerned. It is

again made clear that Exh.14 order is set aside qua only calling upon both the sides for hearing of joining State Government as necessary and proper party under Order I Rule 10(2) of the Code as well as granting of ad-interim relief during the hearing of pendency of Exh.5.

(ii) Trial Court is directed to request for further clarification if the trial Court is unable to understand the aforesaid order in English language, so that necessary translation of the aforesaid order can be provided by the Registry of this Court in vernacular language so as to make trial Court understand the direction given by this Court.

(iii) The trial Court shall pass an order below Application under Order VII Rule 11 on or before 31.12.2020. If the application below Order VII Rule 11 is allowed then there is no need to proceed further as rightly understood by the trial Court as well as District Court while passing the orders dated 30.9.2020 and 14.10.2020 respectively. In case the application under Order VII Rule 11 is rejected, then the trial Court shall not hear the matter for further 30 days so as to enable the petitioner to challenge such order

before appropriate forum and after expiry of the appeal period, the trial Court shall proceed to hear application for stay at Exh.5 i.e. after 31st January, 2021 or any other date prior thereto, if the order is pronounced early below application under Order VII Rule 11. If need be, the trial Court shall decide the application Exh.5 on or before 28.2.2021.

(iv) The trial Court is also not required to decide to join the State Government as necessary and proper party as it is up to the plaintiffs and defendants to make an application if necessary to join the State Government as a necessary and proper party in the suit. This direction is given as the dispute is between the private parties with regard to the transaction of the sale of the land in question and the State Government may not at all be concerned for such transaction between the private parties. The trial Court can call for the revenue records and other documents from the concerned Government office, if required during the course of the trial.

(v) In view of aforesaid fact situation and in view of prayer made by the Learned

advocate Mr. Jigar Raval for plaintiffs/respondents herein, it would be in the interest of justice of both the sides to transfer the entire proceedings of the Special Civil Suit No. 91 of 2020 to any Senior Civil Judge who has jurisdiction to hear the Special Civil Suit other than the 5th Additional Senior Civil Judge, Vadodara (Code No. GJ00755). The Principal District Judge,Vadodara is hereby directed to pass necessary order to transfer the Special Civil Suit No. 91/2020 from the Court of 5th Additional Senior Civil Judge, Vadodara (Code No.GJ00755) to any other competent Court of Senior Civil Judge at Vadodara and the aforesaid directions No. (i) to (iv) shall be carried out by the Court where such suit is transferred, in letter and spirit without interpreting the order passed by this Court so as to see that no further litigation is required to be initiated before this Court in respect of the impugned orders which are under challenge.

6. With the aforesaid directions, the petition is disposed of. Notice is discharged.

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR