IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.2492 of 2024

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ABREL SPV 2 LIMITED THROUGH BALU KHIMA MODHWADIA
Versus
STATE OF GUJARAT

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Appearance :
MR D C DAVE, SENIOR COUNSEL ASSISTED BY MR NISHITH P ACHARYA for the Petitioner.
for the Respondent Nos.2,3,4,5,6
MR NIKUNJ KANARA, AGP for the Respondent Nos.1 & 2.

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CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

Date : 13/02/2024
ORAL ORDER

Learned Senior Advocate Mr. D. C. Dave appearing with Mr. Nishith Acharya for the petitioner is permitted to implead Deputy Collector, Savarkundla as party - respondent No.7. Cause title be amended accordingly.

2. At the outset, learned Senior Advocate Mr. D. C. Dave states that the principle grievance of the petitioner is that though revision application along with application for stay is filed by the petitioner before the Deputy Collector, Savarkundla challenging the order dated 16.1.2024 passed by the Mamlatdar, Savarkundla in Mamlatdar Courts Case No.11 of 2023, the Deputy Collector, Savarkundla has not even issued notice to the other side and the private respondents are utilizing this lapse on the part of the Deputy Collector in demolishing the property of the petitioner.

3. Learned Senior Advocate Mr. D. C. Dave draws attention of this Court to the prayers made in this petition which reads as under :-

"(a) Your Lordships be pleased to admit and allow this petition;

(b) Your Lordship be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus and be pleased to quash and set aside the completely illegal, arbitrary and unsustainable order dated 16.01.2024 passed by the ld. Mamlatdar, Savarkundla bearing No.MCourt/AML/11/2023 passed in MAM. Court Case No.11/2023 passed under the provisions of the Mamlatdar Courts Act annexed at Annexure A as well as the final notice dated 08.02.2024 issued by the ld. Mamlatdar bearing no. JMN/VASHI/80/2024 annexed at Annexure B;

(c) During the pendency and final disposal of the petition, Your Lordships be pleased to stay the operation and implementation of order dated 16.01.2024 passed by the ld. Mamlatdar, Savarkundla bearing No.MCourt/AML/11/2023 passed in MAM. Court Case No.11/2023 passed under the provisions of the Mamlatdar Courts Act annexed at Annexure A as well as the final notice dated 08.02.2024 issued by the ld. Mamlatdar bearing no. JMN/VASHI/80/2024 annexed at Annexure B;

(d) In alternate, Your Lordship be pleased to stay the operation and implementation of order dated

16.01.2024 passed by the ld. Mamlatdar, Savarkundla bearing No.MCourt/AML/11/2023 passed in MAM. Court Case No.11/2023 passed under the provisions of the Mamlatdar Courts Act annexed at Annexure A as well as the final notice dated 08.02.2024 issued by the ld. Mamlatdar bearing no. JMN/VASHI/80/2024 annexed at Annexure B till the final disposal of the revision application filed by the petitioner before the learned Deputy Collector, Savarkundla;"

4. According to learned Senior Advocate Mr. D. C. Dave, though no period of limitation is prescribed in Section 23 of the Mamlatdar Courts Act, the revision application is filed by the petitioner on 2.2.2024 i.e. within a period of one month from the date of the impugned order dated 16.1.2024. The principle grievance of the petitioner is that with a view to frustrate the proceedings of revision application, the private respondents have taken law in their hands and have started damaging the property of the petitioner to remove the alleged obstructions on the road which is the subject matter of dispute between the parties. Therefore, though urgency was stated by the petitioner before the Deputy Collector, Savarkundla requesting for urgent hearing of the stay application along with revision application, on first occasion, the petitioner found that Deputy Collector was on leave. Upon resuming, when the petitioner preferred an application, photocopy of which is placed on record today, received by the Inward Clerk of the Deputy Collector, Savarkundla on 12.2.2024, even till now i.e. 2.50 p.m. today, even notice is also not issued to the private respondents and urgent hearing is denied to the petitioner. That

results in allowing the private respondents to take the law in their hands and thereby continuously damage the Compound Wall which the private respondents are alleging that the same has been constructed to obstruct the right of way of the private respondents.

5. Learned Senior Counsel Mr. Dave today makes a limited prayer that in view of the above developments, the Deputy Collector, Savarkundla may be directed to issue notice to the private respondents and decide the stay application of the petitioner preferred along with the revision application and till then the parties may be directed to maintain *status quo* in respect of the land in question. He clearly concedes that aforesaid order may be made operative only till the first hearing of stay application before the Deputy Collector and once the Deputy Collector hears the parties, the Deputy Collector may independently decide the issue on hand on the basis of pleadings and oral submissions that may be advanced by the respective parties.

6. Mr. Nikunj Kanara, learned Assistant Government Pleader though tried his best to inquire the reason behind the refusal by the Deputy Collector, Savarkundla to grant urgent hearing considering the urgency shown by the petitioner, could not point out any reason as to why the urgent hearing was not granted and the private respondents were allowed to alter the original position even during the pendency of the revision application as no notice is issued, though period of 30 days which at the most can be said to be a shortest period of limitation for preferring the revision application.

7. Today it is only 13.2.2024 and what is under challenge is the order dated 16.1.2024 and, therefore, usually it is expected

that till the right of revision is exercised by the parties and hearing on the subject matter is given, the parties may not be permitted to alter the ground position.

8. In view of the above, considering the fact that despite petitioner attempted to approach the Deputy Collector, Savarkundla and sought urgent hearing, no hearing was granted by the Deputy Collector and even no notice is also issued to the private respondents, interest of justice would be served, if the present petition is disposed of without entering into the merits of the case by issuing following directions to the newly joined respondent No.7 - Deputy Collector, Savarkundla :-

(i) The Deputy Collector, Savarkundla shall issue notice to the respondents in the revision application as well as stay application filed by the petitioner latest by 16.2.2024.

(ii) I am conscious that while passing this order, the private respondents are not before this Court and, therefore, the Deputy Collector, Savarkundla is directed to give hearing to the petitioner at the earliest, but not later than 10 days from today.

(iii) Till that date, the Deputy Collector shall ensure and take effective steps to ensure that status-quo in respect of the land in question prevailing as on today is maintained by both the sides.

(iv) The aforesaid order is passed only on consideration of the fact that despite the efforts made by the petitioner, the Deputy Collector, Savarkundla has failed to give hearing to the petitioners and, therefore, ultimately the petitioners had to approach this

Court and such inaction on the part of the Deputy Collector, Savarkundla has resulted in increasing the burden on this Court.

(v) It is made clear that the order of status-quo passed above shall not create any right and/or equity in favour of any parties nor it shall be construed that this order is passed considering the merits of the matter and the Deputy Collector, Savarkundla is directed to independently hear and decide the issue in revision application as well as stay application.

(vi) On first hearing, after hearing the parties and considering the merits of the case, it would be open to the Deputy Collector, Savarkundla to decide as to whether any further hearing is required or not and whether status-quo granted by this Court is required to be extended or not.

(vii) As and when stay application of the petitioner is decided, the Deputy Collector, Savarkundla is directed to afford an opportunity of hearing to all litigating parties and thereafter to pass a reasoned order noting all the contentions of the parties and to assign reasons for accepting or refusing the same.

9. With the aforesaid directions, without entering into the merits of the case, the present petition stands disposed of.

Direct service is permitted today.

(NIRZAR S. DESAI,J)

SAVARIYA