IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.16288 of 2020

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HAMIDABEN UMARBHAI VAGADIYA & ORS.

Versus

MAMLATDAR, VADGAM & ORS.

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Appearance :
MR MA KHARADI for the Petitioners.
for the Respondent No.4.
MS KRUSHITA DAVE, AGP for the Respondent No.1.
MR SMIT P VAGHELA for the Respondent Nos.2,3
NOTICE SERVED BY DS for the Respondent Nos.4.1,4.2,5,6,7

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

Date : 09/04/2024
ORAL ORDER

1. By way of this petition, the petitioners have prayed for the following reliefs :-

> "[A] Admit this petition.
>
> [B] Allow this petition by issuing a writ of mandamus or any other appropriate writ, order or direction directing the respondent authority to record the entry in the revenue records regarding the direction issued by this Hon'ble Court in Special Civil Application No.16018 of 2017 and further the respondent authority may be directed to record the entry with regard to the dismissal of suit for default and thereby names of the petitioners may be recorded in view of the 'HIBA' (oral gift).
>
> [C] Grant the interim relief by directing

respondent to maintain status-quo qua possession, pending admission and till final disposal of this petition."

2. At the time when the matter was listed before this Court on 26.8.2021, the coordinate Bench of this Court passed the following order :-

"Draft amendment is allowed. To be carried out forthwith.

Upon amendment being carried out, Issue notice returnable on 06.10.2021.

Learned advocate for the petitioner draws attention of this Court to the directions issued in Special Civil Application No.16018 of 2007 dated 12.10.2007 particularly Clause(iv) of Para-8 and Para9. It is submitted that thereafter, the Civil Suit referred to in the order of this Court was preferred by the private respondents challenging the validity of the HIBA (BAKSHISH). The said suit came to be disposed of by an order dated 19.02.2020 under Order IX Rule 3. Thereafter, there is no challenge to the aforesaid order in the civil suit indicating that HIBA (BAKSHISH) is not under any challenge or cloud. In that view of the matter, it is submitted that the entry made on the basis of such document is required to be confirmed.

> In view of the aforesaid facts, till returnable date, by way of interim relief status-quo to be maintained with regards to the possession. Direct service is permitted."

3. When the prayer made in this petition is perused in light of the aforesaid order, it is clear that the petitioner is seeking to challenge an order passed by the Mamlatdar, Vadgam by way of this petition.

4. As per the RTS proceedings, order passed by the Mamlatdar is always subject to challenge before the Deputy Collector. Therefore, an appropriate course for the petitioner would be to approach the Deputy Collector for redressal of his grievance by way of an appropriate application / RTS Appeal.

5. Considering the fact that relief is operating in favour of the petitioner since 26.8.2021 and the same is in operation till today and the aforesaid fact has not been disputed by even Mr. Smit Vaghela, learned advocate for the respondent Nos.2 and 3, interest of justice would be served if the petitioner is relegated to avail appropriate alternative remedy before the Deputy Collector by filing an appropriate application / RTS appeal.

6. Considering the fact that the relief is in operation since last three years, it would be in the interest of justice that the relief granted by the coordinate Bench of this Court is continued till the first date of hearing before the Deputy Collector.

7. In view of the above, as learned advocates for the

parties are agreeable to the aforesaid, following order is passed :-

(i) The petition is disposed of without expressing any opinion on merits with a view to enable the petitioner to avail appropriate alternative remedy by filing application / RTS appeal before the concerned Deputy Collector.

(ii) Interim relief granted in the nature of status-quo be maintained with regard to possession shall remain in operation till the present petitioner prefers an application / RTS Appeal before the concerned Deputy Collector and the Deputy Collector hears the matter for the first time. Thereafter, it would be open for the Deputy Collector to decide whether to continue the aforesaid relief or not after hearing the parties.

(iii) The petitioner shall approach the Deputy Collector within a period of one month from today.

(iv) The Deputy Collector shall not reject the petitioner's application on the ground of delay as the petitioner had already approached this Court and the proceedings were pending before this Court by way of this petition.

8. With the aforesaid observation and direction, without entering into the merits of the case, the petition stands disposed of.

Direct service is permitted.

(NIRZAR S. DESAI,J)

SAVARIYA