

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/LETTERS PATENT APPEAL NO. 509 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 5538 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In R/LETTERS PATENT APPEAL NO. 509 of 2023**

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STATE OF GUJARAT
Versus
VIJAYBHAI AMBALAL PATEL

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Appearance:
MR CHINTAN DAVE, ASST GOVERNMENT PLEADER for the Appellant(s)
No. 1,2
MR AB PATEL, ADVOCATE for the Respondent(s) No. 1

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE MR.
JUSTICE A.J.DESAI
and
HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 12/04/2023

**ORAL ORDER
(PER : HONOURABLE THE ACTING CHIEF JUSTICE MR. JUSTICE
A.J.DESAI)**

ORDER IN LETTERS PATENT APPEAL

Heard Mr. Chintan Dave, learned AGP appearing for the appellant and Mr. A.B. Patel, learned advocate appearing for the respondent - original petitioner.

ADMIT

ORDER IN CIVIL APPLICATION

1. Heard Mr. Chintan Dave, learned AGP appearing for the applicant and Mr. A.B. Patel, learned advocate appearing for the respondent - original petitioner.
2. Rule returnable on 03.05.2023. Mr. A.B. Patel, learned advocate waives service of notice of rule on behalf of respondent.
3. By way of the captioned writ petition, the original petitioner has prayed as under:

“8. (A) This Hon’ble Court be pleased to issue a writ of certiorari and mandamus or any other appropriate writ and command the District Collector, Kheda to grant non-agricultural use permission in respect of agricultural lands bearing Block No. 1293/3 admeasuring 6880 Sq. Mtrs and land bearing Block No. 1293/5 admeasuring 10927 Sq. Mtrs. situated at being Mouje Killedari Party, Taluka Nadiad (City) and District Kheda and further be pleased to quash and set aside the orders dated 23.03.2023 at “**Annexure - A Collectively**” passed by the District Collector, Kheda at Nadiad.”

4. The order challenged is dated 23.03.2023 passed by the District Collector, Kheda by which the application filed by the respondent under Section 65 of Bombay Land Revenue Code for converting the land for non-agricultural purposes was rejected.

5. The matter was listed for admission on 29.03.2023. On 29.03.2023, the learned Single Judge issued notice and made it returnable on 06.04.2023. On 06.04.2023, following order was passed:

“1. Heard learned advocate Mr.A.B.Patel for the petitioner and learned Assistant Government Pleader Mr.Rohan Shah for the respondent No.1.

2. Issue Notice, returnable on 6 th April, 2023. Direct service is permitted today.

To be listed on top of the Board.”

6. Accordingly on 06.04.2023 itself, the original petitioner filed another application under Section 65 of the Code for conversion from agricultural land to non-

agricultural land which came to be produced by the original petitioner by way of filing additional affidavit dated 10.04.2023 (page 145).

7. On 10.04.2023, the learned Single Judge passed the following order which is impugned in the appeal:

“1. Heard learned Senior Advocate Mr.R.S.Sanjanwala with learned advocate Mr.A.B.Patel for the petitioner and learned Assistant Government Pleader Mr.Rohan Shah for the respondent No.1.

2. Learned Senior Advocate Mr.Sanjanwala has filed an additional affidavit of the petitioner placing on record the fresh application for NA permission dated 06.04.2023 filed before the respondent authority.

3. The respondent authority is directed to pass appropriate order in view of the said application before 13th April, 2023 and place the same on record.

4. All the Collectors of Gujarat are directed to process all the NA applications pending before them on or before 13th April, 2023. This order may be communicated to all the Collectors of Gujarat forthwith.

5. Stand over to 13th April, 2023.”

8. We are of the considered opinion that by observing in paragraph no. 3 of the aforesaid order, the learned Single Judge has directed to decide an application which was filed by the original petitioner during the pendency of the petition which prima facie seems to be that the order which is impugned in the original petition is ignored and of which validity is yet to be decided including the contention of the state authorities about availing alternate remedy by filing appeal before appropriate forum challenging the said decision dated 29.03.2023.

9. Apart from this, the learned Single Judge has directed all the Collectors of the State of Gujarat to process all such applications filed under Section 65 of the Code within a period of three days i.e. on or before 13.04.2023.

10. We have also considered the submission made by learned counsel for the respondent - original petitioner Mr. A.B. Patel that the applications under Section 65 of

the Code pending before the various Collectors, if not decided on or before 15.04.2023, they may have to pay premium at the new rate since the new jantri rates are going to be implemented from 15.04.2023. We are of the considered view that when there are no orders passed below applications filed in different districts and pending before the Collectors and no decision has been rendered, the same cannot be taken into consideration at this stage and if any order is passed, remedy would be available to those persons who are dissatisfied with the orders passed below applications under Section 65 of the Code.

11. Hence, the implementation and execution of the impugned order is required to be stayed. Accordingly, interim relief in terms of para 4 (b) of the application is granted. Direct service is permitted today.

(A.J.DESAI, ACJ)

(BIREN VAISHNAV, J)

DIVYA