

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No. _____ of 2023
(@Special Leave Petition (C) No. 4689 of 2023)**

Ali Hussain Ishaq Ali Vohra & Ors. ... Appellant(s)

Versus

State of Gujarat & Ors. ... Respondent(s)

J U D G M E N T

Sanjay Kumar, J

- 1.** Leave granted.
- 2.** The appellants were non-suited by the Gujarat High Court in Special Civil Application No. 15098 of 2022 on the ground that they had not taken the leave

of the Court to file a case afresh while withdrawing their earlier writ petition, viz., Special Civil Application No. 4865 of 2020. Aggrieved thereby, they are before this Court.

3. Heard Mr. Rauf Rahim, learned counsel for the appellants; and Ms. Deepanwita Priyanka, learned counsel, appearing for the respondents.

4. The record reflects that the appellants earlier filed Special Civil Application No. 4865 of 2020 seeking a declaration that the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991, and the Rules framed thereunder, were unconstitutional. They also sought quashing of the Notification dated 30.09.2014 issued by the Government of Gujarat under the aforestated enactment and the decision dated 06.09.2019 of the Collector, Vadodara District, refusing them permission for transfer of the property in question. Lastly, they sought a direction to the

Sub-Registrar, Bapod, to release the sale deed dated 17.03.2015 executed in their favour. However, they filed I.A. No. 2 of 2021 in Special Civil Application No. 4865 of 2020 stating that they had filed the writ petition as they proposed to purchase land from Shobhanaben Chandrakant Jadhav and others and as the sellers were Hindus and they were Muslims, their transaction required permission in terms of the impugned enactment. However, they decided to transfer their rights in favour of one Jigneshbhai Dhuman who was a Hindu and, therefore, the provisions of the impugned enactment would no longer apply to the transaction, after assignment of their rights in favour of Jigneshbhai Dhuman. They, therefore, prayed as under:

'..... on account of this development, the provisions of the impugned statute herein do not apply to the petitioners and therefore, the petitioners seek to withdraw the petition with a liberty to approach this Hon'ble Court again if need so arises.'

5. However, a Division Bench of the Gujarat High Court passed order dated 17.06.2021, dismissing Special Civil Application No. 4865 of 2020 as withdrawn without referring to the prayer made for grant of liberty to approach the High Court again if the need arose. According to the appellants, the arrangement with Jigneshbhai Dhuman did not work out and that is the reason why they again had to approach the Gujarat High Court by way of Special Civil Application No. 15098 of 2022, reiterating prayers identical to those made in Special Civil Application No. 4865 of 2020.

6. Perusal of the impugned order dated 19.09.2022 passed by the Gujarat High Court reflects that the Division Bench noted the fact that the prayers in both the writ petitions were identical and, having perused the order dated 17.06.2021 passed in the earlier case dismissing it as withdrawn with nothing further, the Division Bench opined that the same was a withdrawal

simpliciter and not a withdrawal with leave to file a fresh petition either on the same cause of action or on a different cause of action.

7. It appears that the Division Bench failed to take note of the prayer made by the appellants in I.A. No. 2 of 2021, wherein they specifically sought liberty to file a case afresh if the need arose. The mere absence of the mention of such liberty in the dismissal order dated 17.06.2021 cannot be taken to be a refusal of such prayer by the High Court upon application of mind. There is no indication to that effect in the order itself.

8. We are, therefore, of the opinion that the High Court ought not to have held against the appellants on technicalities when the withdrawal application filed by them indicated their clear intention to file a case afresh if the need arose. The appeal is accordingly allowed, setting aside the order dated 19.09.2022 passed by the Gujarat High

Court in Special Civil Application No. 15098 of 2022.
The said case shall stand restored to the file and
shall be adjudicated on its own merits and according
to law, subject to just exceptions.

In the circumstances, no orders as to costs.

....., J
(Krishna Murari)

....., J
(Sanjay Kumar)

24th April, 2023
New Delhi.

ITEM NO.49

COURT NO.13

SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 4689/2023

(Arising out of impugned final judgment and order dated 19-09-2022 in SCA No. 15098/2022 passed by the High Court Of Gujarat At Ahmedabad)

ALI HUSSAIN ISHAQ ALI VOHRA & ORS.

Petitioner(s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent(s)

(IA No. 36786/2023 - EXEMPTION FROM FILING O.T.)

Date : 24-04-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KRISHNA MURARI

HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s) Mr. Rauf Rahim, AOR
Mr. A.A. Zabuawala, Adv.
Mr. Ali Asghar Rahim, Adv.

For Respondent(s) Ms. Deepanwita Priyanka, AOR

UPON hearing the counsel the court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the
signed non-reportable Judgment. Pending
application(s), if any, shall stand disposed of.

(Geeta Ahuja)
Assistant Registrar-cum-PS

(Beena Jolly)
Court Master

(Signed Non-Reportable Judgment is placed on the file)