(2000) 01 GUJ CK 0030

Gujarat High Court

Case No: Special Civil Application No. 1679 of 1990

Keshavlal R. Khristi APPELLANT

Vs

Sonaben RESPONDENT

Date of Decision: Jan. 1, 2000

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 29, 32, 32(1B), 32A, 32B
- Civil Procedure Code, 1908 (CPC) - Section 11
- Constitution of India, 1950 - Article 227

Citation: (2000) 4 GLR 657

Hon'ble Judges: H.K. Rathod, J

Bench: Single Bench

Advocate: A.J. Patel, for the Appellant; D.F. Amin, for Respondent No. 1, 2, 3, for the Respondent

Final Decision: Allowed

Judgement

H.K. Rathod, J.

Learned advocate Mr. A.J. Patel has appeared for the petitioner. Learned advocate Mr. D.F. Amin has appeared for the respondents.

2. This petition was admitted by this Court on 19.3.1990 by issuing rule thereon and ad interim relief in terms of para 9(B) of the petition was also granted.

3. Brief facts of the present petition are that the Mamlatdar and ALT, Nadiad started suo motu inquiry u/s 32(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948 [hereinafter referred to "the Tenancy Act" for the sake of bravity] as regards survey no.459 ad measuring 1 acre 5 gunthas of village Dabhan. Notices were issued u/s 32(1B) of the Tenancy Act on 23.3.1978 to the owners and alleged tenant who was in possession of the suit survey number from 1951-52 to 1955-56 as per the copy of the pani patrak. Statements of the parties were recorded wherein the

present applicant Keshavlal Ranchhodbhai in his statement dated 1.4.1978 stated that he or his father was never in possession of the suit land and that they are not the tenants of the suit land and if the name of his father is shown as a tenant in the copy of Pahani Patrak then the same is not correct. He has further stated that he explained about his rights to purchase the suit land but after understanding the same he reiterates that he was not in possession of the suit land as a tenant nor his father was in possession of the suit land as a tenant. The learned Mamlatdar and ALT also examined the neighbours of the suit field who also supported the case of the owners that they are in actual possession of the suit land. The Mamlatdar and ALT Nadiad in Tenancy Case No. 32(1B)-Dabhan/94 dated 6.4.78 ordered that Ranchhodbhai Lavjibhai and Keshavlal Ranchhodbhai were not cultivating the suit survey number in the capacity of a tenant on 15.6.55 nor they were in possession of the suit survey number. Hence their names to be deleted from the record and the chapter to be closed. Said judgment and order of the Mamlatdar and ALT Nadiad was challenged before the Deputy Collector, Kheda by filing the Tenancy Appeal No. 1853 of 1979 which too was dismissed on 13.7.1979. Thereafter, application under sec. 70(b) and 32G of the Tenancy Act was filed on 8.10.1979. An application for injunction was also filed u/s 70(nb) of the Tenancy Act wherein the learned Mamlatdar has issued ad interim injunction which was vacated after hearing both the parties vide order dated 24.12.1979 against which order, tenancy appeal no. 3456 of 1979 was filed which appeal was allowed and the injunction order was confirmed till the final hearing of the suit filed u/s 70(b) of the Tenancy Act by order dated 18.3.1981. Against the order passed by the Deputy Collector , revision application No. TEN.BA.528/81 was preferred which was dismissed by the learned Member of the Gujarat Revenue Tribunal by order dated 8.4.83. The Mamlatdar and ALT recorded the statements of the parties, their witnesses and also considered the documentary evidence and by order dated 16.11.1984 held that the applicant had no cause of action and that he had failed to prove that he was cultivating the suit survey number in the capacity of tenant. Hence, his application was dismissed. Thereafter, the petitioner had challenged the said judgment and order in Tenancy Appeal No. 40 of 1985 before the Deputy Collector, Land Reforms Appeals at Kheda which was dismissed by order dated 31.5.1985 and hence the petitioner has, thereafter, approached the Gujarat Revenue Tribunal by filing filing revision application no. Ten.BA.548/1985. Said revision application has been decided by the Gujarat Revenue Tribunal on 29th November, 1989 wherein the learned Member of the Gujarat Revenue Tribunal has dismissed the revision application filed by the petitioner and, therefore, the petitioner has approached this Court by way of this petition challenging the order dated 29th November, 1989 passed by the learned member of the tribunal.

4. Learned advocate Mr. A.J. Patel appearing for the petitioner has submitted that the tribunal has erred in not considering the sufficient evidence which was there on record to show that the petitioner continued to cultivate the land notwithstanding

the orders passed in the earlier proceedings. It is also submitted by Mr. Patel that in earlier occasions, the orders were made only because of the understanding between the parties but in fact, the petitioner has continued to cultivate the land in question. He has also submitted that the petitioner had relied upon the documentary evidence referred to in paragraph 8 of the judgment of the tribunal and the said evidence clearly proves that the petitioner continued to cultivate the land upto the year 1972-73. He has also submitted that the tobacco licence and other documents produced before the Mamlatdar and ALT clinches the issue in favour of the petitioner but the authorities below have ignored the said evidence and held that the application of the petitioner was barred by the principles of res judicata. He has submitted that the principles of res judicata would apply only with respect to the position that obtained before the rights were adjudicated upon namely in the present case in the year 1961 and, therefore, according to his submission, principles of res judicata would not apply to the facts of the present case. He has also submitted that the proceedings under sec. 32(1B) of the Tenancy Act has nothing to do with the declaration that was sought by the petitioner u/s 70(b) of the Act. According to his submission, if the petitioner was cultivating the land in question lawfully belonging to the other side, then, he was entitled to the declaration as prayed for by him in the said application and, therefore, the tribunal as well as the authorities below have erred in not appreciating this legal position. He has further submitted that in the year 1979 when the application was made, the position that was obtaining in the past was a matter of history and the petitioner had shown that he was cultivating the land on the date when the application was made and he was doing so lawfully and, therefore, the declaration ought to have been granted by the authorities below but the authorities below have ignored the documentary evidence which is tell tale in itself. Learned advocate Mr. Patel has further submitted that in the present petition. section 32G, 32(1B) and 70(b) of the Tenancy Act are relevant for deciding the controversy between the parties. He has submitted that in the tenancy appeal no. 1853 of 1979, the Deputy Collector has kept open the right of the petitioner while observing in the judgment dated 13.7.1979 that if the petitioner is alleging that on 3rd March, 1973, the petitioner is having possession of the land, then, in such a situation, the petitioner is entitled to approach the authority under sec. 70(b) by filing appropriate proceedings before the appropriate authority and in such a situation, section 32(1B) of the Tenancy Act would not be applicable. The Deputy Collector has further observed in the tenancy appeal that if even today the petitioner is having the possession of the land in question, then, the petitioner is certainly entitled to file appropriate proceedings before the appropriate authority u/s 70(b) of the Tenancy Act to claim the right having by the petitioner as per the statement made by the petitioner before the Deputy Collector in the said tenancy appeal. Relying upon the said observations made by the Deputy Collector in the said tenancy appeal, learned advocate Mr. Patel has submitted that the said appeal has been rejected by the Deputy Collector considering the order passed by the authority below but the Deputy Collector in his order dated 13th July, 1979 has kept open the right of the petitioner which is an independent right under the Act that if the petitioner is having possession after 3rd March, 1973 and that possession has continued with the petitioner, in such a situation, the petitioner is entitled to initiate the appropriate proceedings under the Tenancy Act to establish his right as per section 70(b) of the Tenancy Act and, therefore, according to Mr. Patel, the proceedings u/s 32(1B) of the Act and sec. 70(b) of the Tenancy Act both are different and independent proceedings and determination of the rights of the petitioner in both the proceedings are separate and independent and, therefore, principles of res judicata cannot be made applicable to the proceedings under sec. 70(b). Mr. Patel has produced on record tenancy application under sec. 70(b) of the Act and 32G wherein Mr. Patel has pointed out that the petitioner has relied upon the observations made in the tenancy appeal no.1853 of 1979 dated 13th July, 1979 by the Deputy Collector and the Cause of action has arisen in view of the said observations made by the Deputy Collector in the said appeal. Learned advocate Mr. Patel has submitted that the right of the petitioner in respect of his having possession during the period from 15th June, 1955 to 3rd March, 1973 has been disposed and that right has not been challenged by the petitioner again in the revision application. However, according to him, proceedings under sec. 32(1B) of the Act is also relating to the period from 15th June, 1955 to 3rd March, 1973. However, if the petitioner is having possession after 3.3.1973 and continued to remain in possession after 3.3.1973, then, considering the language of section 70(b) of the Act, he has submitted that for the purpose of this Act, following shall be the duties and function to be performed by the Mamlatdar to decide whether a person is [or was] a tenant or a protected tenant [or a permanent tenant]. He has submitted that the Mamlatdar is duty bound to consider the case of the petitioner that the petitioner is in possession after 3.3.1973 and also continued to remain in possession after 3.3.1973 and, therefore, the proceedings which have been initiated considering the observations made by the Deputy Collector in the aforesaid appeal by order dated 13.7.1979, are independent in respect of the fact of the earlier decision under sec. 32(1B) and, therefore, the principles of res judicata will not be applicable and, therefore, according to Mr. Patel, the view taken by the tribunal is wrong and contrary to the principles of law. He has also submitted that in tenancy appeal, the question was kept open by the authority while making proper observations and, therefore, the principles of res judicata will not apply. He has submitted that the tribunal has erred in not appreciating the relevant as well as important documents on record. He has also submitted that the tribunal has erred in holding that the revision of the petitioner is barred by the principles of res judicata. Mr. Patel has drawn attention of this court to the observations made by the tribunal in para 8 of the judgment on page 8 while deciding the revision application which reads as under:

"In my opinion, though this may be good evidence in favour of the applicant, it is futile to rely on the same in this inquiry because this inquiry is already res-judicated by the previous inquiry which was held between the same parties for the same cause of action."

5. He has also drawn attention of this court to the observations made by the tribunal in the said judgment on page 63 of the petition [internal page 11 of the tribunal''s judgment] which reads as under:

"He has therefore argued that all subsequent proceedings relating to the suit survey number were not necessary and if they were necessary, the present application filed by the applicant stands res judicated. I fully agree with the arguments advanced by learned advocate Shri A.B. Patel and hold that the parties had litigation in 1961 and 1978.The applicant was not held to be the tenant of the suit land under inquiry under sec. 32(1B) of the Act. Hence the present application filed by the applicant is res judicated and he has no right or authority to file such an application."

6. Learned advocate Mr. Patel has, therefore, submitted that the principles of res judicata has wrongly been applied by the tribunal and it amounts to misconception on the part of the tribunal in not appreciating the fact that the proceedings under sec. 32(1B) and 70(b) of the Tenancy Act are separate and independent proceedings. He has further submitted that the tribunal has also erred in not appreciating the observations made by the deputy collector in tenancy appeal in their proper perspective. He has further submitted that though the tribunal has erred in rejecting the revision of the petitioner only on the ground of res judicata and, therefore, the order of the tribunal is required to be quashed and set aside by remanding the matter back to the tribunal by directing the tribunal to consider the relevant and good evidence which was produced by the petitioner before the tribunal for establishing his right after 3rd March, 1973 in respect of having possession of the land in question.

7. On the other hand, learned advocate Mr. Amin appearing for the respondents has submitted that the present petition has been filed under Article 227 of the Constitution of India and the revenue tribunal has considered all the relevant aspects of the matter and has observed that the principles of res judicata are applicable. Such findings given by the tribunal cannot be interfered with by this court in a petition under Article 227 of the Constitution. He has further submitted that since the findings given by the tribunal are not suffering from any infirmity, this court should not interfere with the same in this petition. He has further submitted that the application was not rejected only on the ground of bar of res judicata but has also decided the merits of the matter and, therefore, this court should not interfere with the same in this petition.

8. I have heard the arguments of both the learned advocates. I have also considered the documents on record.

9. Section 32G of the Act provides in respect of purchase of land by the tenant on the tillers'' day of April, 1957. As per sec. 32G(1)(a) of the Act, all tenants who u/s 32

are deemed to have purchased the lands. Section 32(1B) of the Act provides that where a tenant who was in possession of land on the appointed day and who on account of his being dispossessed of such land or any part thereof by the land lord at any time before the specified date otherwise than in the manner provided in section 29 or any other provision of this Act, is not in possession of such land or any part thereof and such land or any part thereof is in the possession of the land lord or his successors in interest on the said date and such land or part thereof is not put to a non agricultural use on or before the said date, then the Mamlatdar shall notwithstanding anything contained in the said sec. 29 or any other provisions of this Act either suo motu or on an application of the tenant made within the prescribed period, hold an inquiry and direct that such land or as the case may be part thereof shall be taken from the possession of the landlord or as the case may be his successor in interest, and shall be restored to the tenant and thereafter the provisions of this section and sections 32A to 32R shall, so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased such land or part thereof on the date on which such land or as the case may be part thereof is restored to him. It also provides that the tenant shall be entitled to restoration of land or part thereof as the case may be, under this sub-section only to cultivate it personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area if he gives undertaking in writing within such period as may be prescribed. Section 32G(1) of the Act provides that as soon as may be after the tillers'' day the tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon-

(a) all tenants who under sec. 32 are deemed to have purchased the lands,

(b) all landlords of such lands, and

(c) all other persons interested therein,

to appear before it on the date specified in the notice. The tribunal shall issue a notice individually to each such the landlord and also, as far as practicable, other persons calling upon each of them to appear before it on the date specified in the public notice.

10. Section 32G(2) of the Act provides that the tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant.

11. Section 32G(3) of the Act provides that where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. It also provides that if such order is passed in default of the appearance of any party, the tribunal shall communicate such order to the parties and any party in whose default the order was passed may within sixty

days from the date on which the order was communicated to him apply for the review of the same.

12. Section 32G(4) of the Act provides that if a tenant is willing to purchase, the tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of sec. 32H and of sub section (3) of section 63A. Relevant section 70(b) of the Act provides that for the purchases of this Act, following shall be the duties and functions to be performed by the Mamlatdar to decide whether a person (is or was a tenant) or a protected tenant (or a permanent tenant).

13. Considering the above provisions of the Act, in the present case, inquiry u/s 32G has been made by the Mamlatdar and A.L.T. and the statement of the petitioner was recorded by the authority and, thereafter, on 1st April, 1978, statement of the petitioner was recorded by the Mamlatdar with the help of the talati cum mantri. In the present case, proceedings were initiated u/s 32(1B) of the Act suo motu by the Mamlatdar and inquiry was held to decide whether the petitioner was in possession of the land on the appointed day and whether on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date otherwise than in the manner provided in section 29 or any other provision of this Act is not in possession of such land or any part thereof and such land or part thereof is in the possession of the land or his successor in interest on the said date. At the end of the said inquiry, the Mamlatdar and ALT held by order dated 6th April, 1978 that the applicants namely Ranchhodbhai and Keshavbhai have failed in establishing that they themselves have been cultivating this land as tenants and, therefore, their names to be deleted from the record and chapter to be closed. Said litigation has come to the final conclusion in respect of the right of the petitioner which was examined by the Mamlatdar while exercising suo motu proceedings under sec. 32(1B) and the same has been finally decided between the parties. In appeal against the said order of the Mamlatdar being appeal no. 1853 of 1979 arising from the proceedings u/s 32(1B) of the Act, under his judgment and order dated 13.7.1979, the Deputy Collector observed that if according to the petitioner, he is having possession of the land in question after 3rd March, 1973, then, the petitioner is entitled to approach the appropriate authority under sec. 70(b) of the Act by filing appropriate proceedings. Thus, while rejecting appeal of the petitioner arising out of the suo motu proceedings u/s 32(1B) of the Act, the Deputy Collector has made the aforesaid observations and has kept right of the petitioner open to approach appropriate authority by filing appropriate proceedings under sec. 70(b) of the Act if the petitioner is having possession of the land after 3.3.1973. Thus, in view of the aforesaid observations made by the Deputy Collector in Tenancy Appeal No. 1853 of 1979, the petitioner approached the Mamlatdar u/s 70(b) of the Act on 8th October, 1979 with an application for interim injunction u/s 70(nb) of the Act. Therefore, the question is required to be examined whether the earlier proceedings

under sec. 32(1B) suo motu initiated by the Mamlatdar and ALT to decide right of the petitioner in respect of having possession of the land in question on the appointed day would create bar of res judicata in respect of the subsequent proceedings u/s 70(b) of the Act in respect of his having possession after 3rd March, 1973 or not or whether on the appointed day he was dispossessed by the landlord or not. The appointed day is 15th June, 1955 and the specified day is 3rd March, 1973 and, therefore, the right of the petitioner having possession of the land in question between 15.6.1955 and 3.3.1973 was examined by the authority and the decision was against the petitioner in those proceedings. But, thereafter, the pettitioner has contended in tenancy appeal no. 1853 of 1979 that he is having possession of the land in question after 3.3.1973 and even till today, he is in possession of the land in question as a tenant. In the circumstances, the Deputy Collector has observed in the said tenancy appeal by order dated 13th July, 1979 that the petitioner is entitled to have remedy by way of approaching appropriate authority under sec. 70(b) of the Act. Thus, as per the judgment of the Deputy Collector in tenancy appeal, right of the petitioner as a tenant for the period from the appointed day 15th June 1955 to specified day 3rd March, 1973 has been decided against the petitioner but in view of the petitioner''s contention that he has been in possession of the land in question after the specified day 3.3.1973, this being separate and independent right requiring adjudication between the parties, the deputy collector has observed that qua said right for the period after specified day, it will be open for the petitioner to move appropriate application before the appropriate authority under sec. 70(b) of the Act. Before the lower authority, the petitioner has produced evidence in the form of tobacco licence dated 31st January, 1963; survey no.457 is shown in the name of Keshavbhai Ranchhodbhai wherein house number is shown as 904. The petitioner has also produced copies from survey book for the year 1971-72 and 1972-73 which are in the name of the petitioner and has also produced sixteen bills for taking water from the well of Babubhai Kantibhai and nine bills of taking water from the well of Babubhai Dayabhai and sixteen bills of taking water from the well of Chhotabhai Shanabhai Patel and over and above the said evidence, it was submitted by the petitioner that all throughout upto the year 1972-73, the petitioner was in actual and physical possession of the land in question and he was using it for cultivating tobacco by fetching water from the different water persons of different persons in his own name and has produced charges for the same and, therefore, prima facie, it appears that the petitioner was in possession of the land in question after 3.3.1973 and, therefore, under sec. 70(b) of the Act, Mamlatdar is required to decide whether the petitioner is or was a tenant or was a protected tenant or not and, therefore, in my view, the proceedings under sec. 70(b) of the Act are independent proceedings and such right has been rightly kept open by the deputy collector while deciding tenancy appeal. In such circumstances, now, it is necessary to examine whether the finding given by the revenue tribunal that that there is bar of the principles of res judicata is correct or not. Sec. 11 of the CPC relates to res judicata.

14. Section 11 of the CPC provides that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

15. In order to apply the general principle of res judicata, the Court must find, whether an issue in a subsequent suit was directly and substantially in issue in the earlier suit or proceedings, was it between the same parties and was it decided by such Court. Thus, there should be an issue raised and decided not merely any finding on any incidental question for reaching such a decision. So, if no such issue is raised and if on any other issue, if incidentally any finding is recorded, it would not come within the periphery of the principle of res judicata. Said view has been taken by the apex court in case of Pawan Kumar Gupta Vs. Rochiram Nagdeo, . In the said decision, the apex court has observed that the rule of res judicata incorporated in section 11 of the CPC prohibits the court from trying an issue which has been directly and substantially in issue in a former suit between the same parties, and has been heard and finally decided by that court. It holds, it is the decision on an issue and not a mere finding on any incidental question to reach such decision, which operates as res judicata. The principles of res judicata as enshrined in section 11, is evolved from the maxim ''memo debet bis vexari pro una et eadem causa''. This principle enunciates that nom an should bevexed twice over for the same cause. This principle gradually developed further by bringing within its compass more such litigations. Thus, with the passage of time, this principle gradually expanded. This shows that sphere of res judicata as enshrined in sec. 11 of the CPC is not exhaustive, it is ever growing. One such example of its growth is exhibited by the incorporation of Explanation VIII in section 11 by means of Amending Act in 1976. The submissions made are broadly under two heads. Firstly under the broad and general principle of res judicata in view of Explanation VIII and secondly, whether in a proceedings for the grant of Succession Certificate, any adjudication or issue decided therein would operate as res judicata to a suit proceeding. If the dismissal of the suit was on account of extinguishment of the cause of action or any other similar cause, the decision made in the suit on a vital issue involved therein would operate as res judicata in a subsequent suit between the same parties. If the dismissal of the prior suit was on the ground of maintainability of the suit, any finding in the judgment adverse to the defendant would not operate as res judicta in the subsequent suit. It is for the defendant in such a suit to choose whether the judgment should be appealed against or not. If he does not choose to file appeal, he cannot thereby have a bar of res judicata in a subsequent suit. However, when any application is filed challenging gradation list rejected by the administrative officer for want of material keeping open all the contentions raised, then, in such circumstances, there shall be no bar of res judicata for the subsequent second

application for the same relief. Said view has been taken by the apex court in the case of N. Annappa versus State of Karnataka and another reported in 1999 SCC Lab and Service 988.

16. Considering the provisions of sec. 11 of the CPC and the facts of the present case and also considering relevant provisions of sec. 32G, 32(1B) and 70(b) of the Act, it is clear that the proceedings u/s 32(1B) were initiated by the Mamlatdar suo motu in respect of possession of the land in question for the period from 15th June, 1955 till the specified date i.e. 3rd March, 1973 and while examining the main issue relating to the provisions of sec. 32(1B) of the Act, any observations made by the authority in respect of the right of the petitioner as to whether he was a tenant or not has to be considered as a mere finding on incidental issue and, therefore, said finding cannot operate as res judicata between the same parties in subsequent proceedings under sec. 70(b) of the Act and, therefore, revenue tribunal has committed an error which is apparent on the face of the record in holding that the subsequent proceedings initiated by the petitioner u/s 70(b) of the Act were barred by the principles of res judicata in view of the previous proceedings under sec. 32(1B) of the Act. The tribunal has erred in observing that the evidence produced before it may be good evidence in favour of the appellant/petitioner but it is futile to rely on the same in the said inquiry because the said inquiry was clearly barred by the principles of res judicata by the previous inquiry which was held between the same parties for the same cause of action. Such an observations made by the tribunal are apparently wrong and erroneous because the previous inquiry was pertaining to the right of the petitioner under sec. 32(1B) of the Act and the second inquiry was pertaining to the rights of the petitioner in respect of his having possession after 3.3.1973 under sec. 70(b) of the Act and both inquiries were separate and independent from each other. It, therefore, cannot be held that the previous inquiry under sec. 32(1B) of the Act and the subsequent inquiry under sec. 70(b) of the Act were on the same cause of action because both inquiries were based on different cause of action. Thus, the view taken by the tribunal is erroneous and it is the basic error committed by the tribunal while rejecting the revision application filed by the petitioner and such rejection has resulted into non consideration of the prima facie good evidence produced by the petitioner before the revenue tribunal and, therefore, it is necessary that whatever evidence in respect of the right of the petitioner that he is in actual possession of the suit survey number all through out and also after 3.3.1973 are required to be considered by the tribunal and the same was not considered by the tribunal and the application of the petitioner was rejected solely on the ground of bar of res judicata and, therefore, the decision given by the tribunal in the revision application No. TEN.B.A. 548/1985 DATED 29.11.1989 annexure "C" page 53 of the petition is required to be quashed and set aside by directing the tribunal to decide the matter on merits on the basis of the documentary evidence which was produced by the respective parties before it without being influenced by this order passed by this court and also without being

influenced by the principles of res judicata.

17. In the result, this petition is allowed. The judgment dated 29.11.1989 rendered by the Gujarat Revenue Tribunal in Revision Application No. TEN.BA>548/1985 is hereby quashed and set aside and the matter is remanded back to the Gujarat Revenue Tribunal to decide the same on merits in accordance with law after taking into consideration all the evidence produced by the parties before it without being influenced by the principles of res judicata and also without being influenced in any manner by the order passed by this court in this matter. This being an old matter, the tribunal is directed to decide the said revision application as expeditiously as possible, preferably within three months from the date of receipt of writ of this court. Meanwhile earlier interim relief granted on 19.3.1990 by this Court shall remain in operation till the decision which will be taken by the Gujarat Revenue Tribunal. Rule is accordingly made absolute with no order as to costs.