PETITIONER:
BHAT KALIDAS SHAMJI (DEAD) BY L.RS. & ORS.

Vs.

RESPONDENT:
P.J. PATHAK & ORS.

DATE OF JUDGMENT08/09/1989

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
THOMMEN, T.K. (J)

CITATION:
1989 AIR 2214 1989 SCR Supl. (1) 78
1989 SCC Supl. (2) 134 JT 1989 (3) 606
1989 SCALE (2)595

ACT:
Saurashtra Land Reforms Act 1951/Saurashtra Land Reforms Rules 1951--Sections 2(12), 4, 5, 21, 22, 23 and 24/Rule 21--Girasdar--Allotment of land--Lesser hardship being caused to tenant-Taking of judicial notice.

HEADNOTE:
The appeallants are the tenants of certain intermediary landlords known as Girasdars. Respondents Nos. 4-5 are the legal heirs of certain Girasdars from whom some of the appellants held lands on lease. Respondent No. 9 is a Girasdar who is represented by the Assistant Custodian Evacuee Property. The other respondents, being statutory authorities are formal parties. The dispute between the parties relate to the mode of allotment to the Girasdars which has arisen in the following circumstances.

After the coming into force of the Saurashtra Land Reforms Act 1951, the respondents Girasdars, as required by the Act filled in Form I showing therein the cultivable land in the estate as 1353.34 acres. The family of the Girasdars was treated as an 'A' class Girasdar.

The Mahalkari Kutiana by his decision dated June 25, 1959 held that the entire area comprising cultivable land formed part of the joint and undivided estate of all the Girasdars and on that basis he allotted to them three economic units of land amounting to 60 acres. The Girasdars preferred an appeal against the said decision and in that appeal, the Deputy Collector, Porbander, Respondent No. 2, modified the allotment made by Mahalkari. He took the view that some of these Girasdars had separate or swang lands and thus entitled to separate allotments from swang lands, out of their swang estate.

A revision application was preferred before the Gujarat Revenue Tribunal against the decision of the Deputy Collector. The Tribunal agreed in principle with the Deputy Collector that the Girasdars were entitled to separate allotment both from the estate held jointly by them and also to separate allotments from the Estates separately by them. The Tribunal accordingly held that the Girasdars were entitled to three

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economic units out of the aforesaid cultivable lands jointly held by them and some of them were entitled to separate allotments out of the lands separately held by them but included in the aforesaid area of 1353.34 acres.

The tenants thereupon challenged the decision of the Tribunal before the High Court by means of a writ petition. The High Court held that in respect of the joint or "Majmu" estate of the concerned Girasdars, they were liable to be treated as one unit and entitled to allotment as an 'A' class Girasdars and were thus entitled jointly to three economic holdings which came to 60 acres. The High Court affirmed the decision of the Tribunal in the case of Ali Khokhar, Girasdars who had handed over 15 acres of land of the joint estate and directed that on the basis of joint holding, the Girasdars were entitled to the balance area of 45 acres. It also upheld the decision of the Tribunal that some of the Girasdars were entitled to separate allotments as 'C' class Girasdars with respect to their separate holdings. Thus the High Court treated the total holding of 1353.34 acres as partly joint and the remaining part comprised separate holdings of some of the Girasdars.

The appellants-tenants have appealed to this Court after obtaining special leave.

Dismissing the appeal, this Court,

HELD: Judicial notice can be taken that much lesser hardship would be caused to a tenant whose land holding was substantially in excess of the economic holding if a part of that land were taken for allotment to the Girasdars than to a tenant whose excess holding was only marginal if a part of his land is taken for such allotment. [85F]

The Revenue Tribunal in deciding as to whose excess land should be handed over by the tenants has proceeded on a just and equitable basis that it should touch only such tenants whose land substantially exceeds the economic holding, and smaller tenants should not be asked to surrender any part of their holdings. [85E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8 to 10 of 1972.

From the Judgment and Order dated 15.1.1970 of the Gujarat High Court in Special Civil Application Nos. 305,368, 526, 384 and 495 of 1962.

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T.U. Mehta, U.A. Rana and K.L. Hathi for the Appellants.

G.A. Shah and M.N. Shroff for the Respondents.

The Judgment of the Court was delivered by

KANIA, J. These are appeals by special leave against the judgment of a learned Single Judge of the Gujarat High Court in Special Civil Applications Nos. 305,368 and 526 of 1972.

The controversy raised in the appeal is very limited and hence, the relevant facts can be very briefly stated.

The appellants before us are the tenants of certain intermediary landlords known as Girasdars. Respondents Nos. 1 to 3 are statutory authorities, namely, the Mahalkari, Kutiana, Deputy Collector of Porbandar Division and the Gujarat Revenue Tribunal respectively. They have no interest in the result of these appeals but they are represented by counsel before us. Respondents Nos. 4-5 are the legal heirs of certain Girasdars from whom some of the appellants held lands on lease. One Respondent No. 9 is a Girasdar who is represented by the Assistant Custodian of Evacuee property

and the rest of the respondents are the remaining Girasdars from whom the appellants held lands on leases.

Before going into the facts or the arguments advanced, we propose to take note of the relevant provisions of the Saurashtra Land Reforms Act, 1951 (hereinafter referred to as "the said Act"). The said Act was enacted with the object of improvement of the land revenue administration and for ultimately putting an end to the Girasdari system and to regulate the relations between the Girasdars and their tenants. We may mention that, very briefly stated, the Girasdars were in the nature of intermediary landlords like the Zamindars. Unlike most of the land reforms acts, the object of which was to take away completely the right of the Zamindars or intermediary landlords, the said Act provided for the abolition of the Girasdars system and at the same time sought to achieve equitable distribution of land for personal cultivation between the Girasdars and their tenants.

> Sub-section (12) of section 2 of the said Act runs as follows:
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> " 'economic holding' in relation to any region speci-
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> fied in Column I of the First Schedule, means a holding of land of an area shown in the corresponding entry in Column 2 thereof."

Column 2 specifies the area of land comprised in economic holdings for the various districts to which the said Act was applicable. Sub-section (14) of section 2 lays down that "Gharkhed" means any land reserved by or allotted to a Girasdar before the 20th May, 1950 for being cultivated personally and which is in his personal cultivation. Sub-section (15) of section 2 contains the definition of the term "Girasdar" and provides that the said expression includes within its ambit a talukar, bnagdar, bhayat, cadet or mulgirasia and includes any person declared by the Government by a notification to be a Girasdar for the purposes of the said Act. Under sub-section (18) of section 2 the term "land" basically means agricultural land. Section 4 of the said Act provides that all land of whatever description held by a Girasdar is and shall continue to be liable to payment of land revenue to the State of Gujarat. Section 5 provides for classification of Girasdars. It is sufficient to note that under sub-section (1) of that section a Girasdar shall be deemed to belong to A class if the total area of agricultural land comprised in his estate exceeds eight hundred acres, to B Class if the total area of agricultural land comprised in his estate exceeds one hundred and twenty acres but does not exceed eight hundred acres and to C Class if the total area of agricultural land comprised in his estate does not exceed one hundred and twenty acres. Section 21 deals with the question of allotment of land to Girasdars of Classes A and B. For our purposes it is sufficient to note that a Girasdar of Class A is entitled to three economic holdings and a Girasdar of Class B is entitled to two economic holdings. Section 22 inter alia deals with the principles and method of allotment of land to Girasdars of A and B Classes. The relevant part of the said section for the purposes of the appeal runs as follows:

> "In making an allotment of land to any Girasdars of A Class or B Class the Mamlatdar shall have due regard to the following provisions, namely:
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> (a) firstly, such of the bid land or cultivable waste of the estate as the Girasdar wishes

to utilise for personal cultivation shall be allotted to him;
(b) secondly, if the land allotted under clause (a) is not sufficient, such agricultural land as is held by a
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tenant in excess of one economic holding shall be available for allotment."

The relevant portion of section 23 which deals with the topic of Girasdars to whom the land may be allotted runs as follows:

"23. Under the provisions of this Chapter, land shall be allotted--
(a) in the case of an undivided family of Girasdar only to the head of the family on behalf of the family; or
(b) in case of a family divided in interest only, to all the members of the family jointly as to a single unit; or
(c) in the case of a Girasdar whose land was separate from that of the other members of his family by metes and bounds before the 1st February, 1951, to such Girasdar."

Section 24 provides that agricultural land will be allotted to C Class Girasdars for being cultivated personally to the extent of one half of the total area of the land held by each of his tenants provided that the total area of the holding of a C Class Girasdar made up of Gharkhed in his estate and any bid land or cultivable waste land and other land of a kind set out in the proviso to sub-section (1) of the said section does not exceed one economic holding in the case of one in whose estate agricultural land does not exceed eighty acres and one and half economic holdings in the case of one in whose estate agricultural land exceeds eighty acres but does not exceed one hundred and twenty acres. Chapter IV of the said Act which includes sections 22 to 24 referred to earlier provides that if the land in the Girasdar or for personal cultivation of the Girasdar is less than the land he is entitled to as per the economic units allottable to him, his tenants who hold excess land, that is, in excess of an economic holding, are liable to surrender the same or a part of the same to enable the Girasdar to make up the deficit in the land which he is entitled to hold. A reading of the relevant portion of Schedule I of the said Act (under section 22) makes it clear that an A Class Girasdar in the district with which we are concerned was entitled to hold 40 acres of land. We may also at this stage take note of some of the rules framed under the said
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Act and known as "The Saurashtra Land Reforms Rules, 1951" (hereinafter referred to as "the said Rules"). Rule 50 of the said Rules provides that in making allotment of land to any Girasdar of A Class or B Class, the Mamlatdar shall have due regard to the provisions contained in section 22 and for allotment of land to a Girasdar of C Class to the provisions contained in section 24. The said rule also provides that in cases arising under section 22(b) and (e) and proviso to subsection (1) of section 24, the land will be taken from tenants proportionately to the excess or the holdings as the case may be. There is, however, a proviso to Rule 50 which states that where the proportionate excess or holding to be given by a tenant as above works hardship in any individual case, the Mamlatdar may decide the proportion of land to be given by each of the tenants in a manner just and equitable.

It was pointed out by Mr. Mehta, learned counsel for the

appellants that in the form I filled in by the Girasdars as required under the said Act, the cultivable land in the estate was shown as 1353.34 acres. The family of the Girasdars was treated as an A Class Girasdar. The Mahalkari Kutiana by his decision dated June 25, 1959 held that the entire area comprising cultivable land formed part of the joint and undivided estate of all the Girasdars and on that footing he allotted to them three economic units amounting to 60 acres. The Girasdars preferred an appeal against the said decision and in that appeal, the Deputy Collector, Porbandar, respondent No. 2, modified the allotment made under the order of Mahalkari. He held that some of these Girasdars had separate or swang lands and were entitled to separate allotments from swang lands out of their swang estate. There was a revision application preferred to the Gujarat Revenue Tribunal from the decision of the Deputy Collector. The Tribunal agreed in principle with the Deputy Collector that the Girasdars were entitled to separate allotments both from the estate held jointly by them and also to separate allotments from the estates separately held by them. In substance, it held by the Tribunal that the Girasdars were entitled to three economic units out of the aforesaid cultivable land jointly held by them and some of them were entitled to separate allotments out of the lands separately held by them but included in the aforesaid area of 1353.34 acres. This decision was assailed by way of a Special Civil Application before the Gujarat High Court. In all, five petitions were filed by tenants challenging the decision of the Gujarat Revenue Tribunal. The learned Single Judge who disposed of the said petitions held that in respect of the joint or 'Majmu' estate of the concerned Girasdars, they were liable to be treated as one unit and entitled to allotment as an A Class Girasdar and were thus entitled jointly to
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three economic holdings which came to 60 acres. However, as found by the Tribunal, one Girasdar, Ali Khokhar, had handed over possession of 15 acres of land of the joint estate and hence, on the footing of the joint holding the Girasdars were entitled to the balance area of 45 acres. Apart from this, the learned Judge upheld the decision of the Tribunal that some of the Girasdars were entitled to separate allotment as C Class Girasdars in respect of their respective separate holdings. The learned Judge clearly proceeded on the footing that out of the said total holding of 1353.34 acres was partly joint and the remaining part comprised separate holdings of some of the Girasdars.

The appellants are represented by senior counsel before us and so also the respondent nos. 1 to 3 who are formal respondents. However, the rest of the respondents, who would be really affected by the result of the appeal are not appearing although served. Mr. Mehta learned counsel for the appellants fairly conceded that he can find no fault with the judgment of the learned Single Judge in so far as he took the view that the Girasdars were entitled to separate allotments, one allotment in respect of the land held by them jointly and the separate allotments in respect of the land held by them separately if the estate held by them was partly joint and partly separate. He, however, strongly contended that the learned Single Judge had wrongly assumed that a part of the said estate was joint and the remaining part was separate. According to him, the entire estate was joint and the Girasdars were entitled only to an allotment of 60 acres in all as an A Class Girasdar. In our view, this argument cannot be entertained at this stage at all. The

finding of the Mahalkari that the estate was entirely joint was set aside by the Deputy Collector. The decision of the Deputy Collector, that some of the Girasdars were entitled to separate allotments in addition to the joint allotment as aforestated, was appealed against before the Tribunal. The Tribunal also proceeded on the same footing as the Deputy Collector and there is no challenge in the said special civil applications to the effect that the Tribunal had gone wrong in treating the estate as partly joint and partly separate. In view of this, Mr. Mehta cannot now be allowed to raise a contention that the entire estate was joint. The next submission urged by him was that, although some of the tenants of the Girasdars were in the village Mal, none of them has been asked to make any contribution to make up the land liable to be allotted to the Girasdars. As pointed out by learned Single Judge that the contention was not urged before the Revenue Tribunal at all and hence, it was not open to the appellants to raise this contention before the High Court nor is it open to them to raise it before us. It is significant that none of the

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tenants of the said Girasdars in Mal village has joined as a respondent to the present appeal and it appears that this argument is nothing more than an after-thought.

The last submission of Mr. Mehta is that, as it was found that certain lands were liable to be allotted to the Girasdars to make up the land allottable to them for personal cultivation, the said land should have been made up by calling upon or directing all the tenants who had excess land, that is, in excess of the economic holding, to surrender a proportionate part of the excess land. To appreciate this contention,one must notice that Mr. Mehta represents the larger tenants who have been asked to surrender a portion of their land whereas the tenants whose holdings were only marginally in excess of the economic holding have been spared. It was urged by Mr. Mehta that this is against the provisions of Rule 50 of the said Rules which we have already set out earlier and which provides for taking lands from tenants proportionately to the excess of land, that is, land in excess of the economic holding which they were entitled to hold. He, however, forgets that there is a proviso to this Rule which we have referred to earlier which provides that where taking of such proportionate excess land would lead to hardship, in that case, the Mamlatdar can decide the proportion of land to be given by each of the tenants. As pointed out by the learned Single Judge of the Revenue Tribunal in deciding as to the excess land to be handed over by the tenants has proceeded on a just and equitable basis that it should touch only such tenants whose land substantially exceeds the economic holding and smaller tenants should not be asked to surrender any part of their holdings. Judicial notice can be taken that much lesser hardship would be caused to a tenant whose land holding was substantially in excess of the economic holding if a part of that land were taken for allotment to the Girasdar than in the case of a tenant whose excess holding was only marginal.

In view of this, we find that no fault can be found with the decision of the Tribunal or the High Court.

In the result, the appeals fail and are dismissed with no order as to costs.

Y. Lal Appeals dismissed.

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