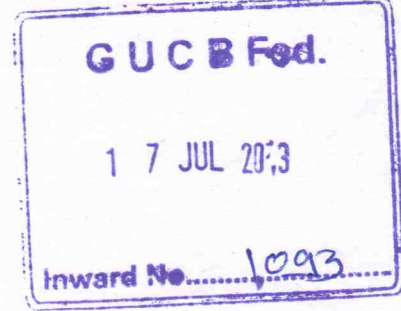


જા.નં.સખમ/૦૧/ઘ-૬/૫૧૧ /૧૩  
સહકાર કમિશનર અને રજીસ્ટ્રાર,  
સહકારી મંડળીઓ, ગુજરાત રાજ્ય,  
૧૦/૧, જીવરાજ મહેતા ભવન,  
ગાંધીનગર તા.૮/૭/૧૩

પ્રતિ,  
(૧) ચેરમેન/મેનેજીંગ ડીરેક્ટરશ્રી,  
ગુજરાત મત્સ્યોદ્યોગ કેન્દ્રીય સહકારી સંસ્થા લી.  
મોટર સેલ્સ એન્ડ સર્વિસ બિલ્ડીંગ,  
આશ્રમરોડ, અમદાવાદ.  
(૨) તમામ રાજ્ય કક્ષાની સહકારી સંસ્થાઓ.



વિષય: સ્પે.સીવીલ એપ્લી. નં. ૧૩૭૩૩/૨૦૧૨ વીથ સ્પે.સીવીલ એપ્લી.  
નં.૨૩૪/૨૦૧૩ ના કેસમાં તા.૧/૩/૧૩ ના ઓરલ જજમેન્ટ તથા ૩૭૨૭/૨૦૧૩  
તા.૮/૪/૨૦૧૩ના ઓરલ જજમેન્ટનો યુસ્તપણે અમલ કરવા બાબત.

સવિનય ઉપરોક્ત વિષય અન્વયે જણાવવાનું કે, નામ. ગુજરાત હાઈકોર્ટમાં દાખલ થયેલ  
સ્પે.સીવીલ એપ્લી. નં. ૧૩૭૩૩/૨૦૧૨ વીથ સ્પે.સીવીલ એપ્લી. નં.૨૩૪/૨૦૧૩ ના કેસમાં  
તા.૧/૩/૧૩ ના ઓરલ જજમેન્ટ તથા ૩૭૨૭/૨૦૧૩ તા.૮/૪/૨૦૧૩ના ઓરલ જજમેન્ટ મુજબ  
જે સંસ્થામાં વ્યવસ્થાપક સમિતિની મુદત પૂર્ણ થયેલ છે. પરંતુ ચૂંટણી યોજી શકાયેલ નથી તેવા  
કિસ્સામા નવીન વ્યવસ્થાપક કમિટી અસ્તિત્વમાં આવે નહિં અને ચૂંટણી યોજાય અને ચૂંટાયેલ  
વ્યવસ્થાપક સમિતિ અસ્તિત્વમાં આવે ત્યાં સુધી રાજ્ય સરકારશ્રી ધ્વારા કસ્ટોડીયન કે વહીવટદારની  
નિમણૂંક કરવાની નથી પરંતુ વ્યવસ્થાપક કમિટી રોજબરોજના રોજિંદા નિર્ણય/ વ્યવહાર કરી શકે છે.  
પરંતુ નીતિવિષયક નિર્ણય સંબંધિત રજિસ્ટ્રારની પૂર્વમંજુરી સિવાય લઈ શકશે નહીં. તો સદર  
જજમેન્ટનો યુસ્તપણે અમલ કરવા જણાવવામાં આવે છે.

સામેલ. જજમેન્ટની નકલ.

અધિક રજિસ્ટ્રાર(વહીવટ)એ  
મુસદદો મંજુર કરેલ છે.

અધિક રજિસ્ટ્રાર(વહીવટ)  
સહકારી મંડળીઓ, ગુ.રા.,  
ગાંધીનગર વતી

નકલ રવાના  
જીલ્લા રજિસ્ટ્રારશ્રી, સહકારી મંડળીઓ(તમામ)  
૨/-જાણ તથા ઘટતી કાર્યવાહી સારૂ

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 13733 of 2012

With

SPECIAL CIVIL APPLICATION NO. 234 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE JAYANT PATEL

and

HONOURABLE MR.JUSTICE MOHINDER PAL

- 
- 
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?
- 
- 

1 - KUKAVAV TALUKA SAHAKARI KHARID VECHAN SANGH LIMITED

2 - VIRJIBHAI KESHAVBHAI THUMMAR

Petitioner(s)

VERSUS

1 - STATE OF GUJARAT

3 - DISTRICT REGISTRAR

4 - DEPUTY COLLECTOR AND ELECTION OFFICER

**2 - REGISTRAR****Respondent(s)****Appearance:**

MR SHALIN MEHTA, LD SR. COUNSEL WITH MR BS PATEL, ADVOCATE  
for the Petitioner(s) No. 1 - 2

MR PK JANI, LD. GOVERNMENT PLEADER WITH MR RAKESH PATEL, AGP  
for the Respondent(s) No. 1 (in Both the Petitions)

NOTICE SERVED BY DS for the Respondent(s) No. 1 - 4

**CORAM: HONOURABLE MR.JUSTICE JAYANT PATEL  
and  
HONOURABLE MR.JUSTICE MOHINDER PAL**

Date : 01/03/2013

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE JAYANT PATEL)**

1. As in both the petitions, common issues are raised and they are also inter-connected, they are being considered simultaneously.

2. Special Civil Application No.13733 of 2012 has been preferred for the relief, inter alia, to direct respondents No.3 and 4 to hold election of the petitioner No.1 Society and it is also prayed that appropriate writ be issued prohibiting respondents No.1 to 3 from appointing any custodian in the petitioner Society.

3. In Special Civil Application No.234 of 2013, the

prayers are as under:-

"29. (A) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction declaring the action on the part of the respondent authorities, vide impugned letter dated 22.10.2012 from respondent No.2, in initiating the election process for the election of the Managing Committee/Directors of the respondent No.3, is unconstitutional and unenforceable and quashing and setting aside the same;

(AA) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent authorities not to appoint a custodian under the Gujarat Cooperative Societies Act, 1961, if the elections of the Managing Committee/Directors of the respondent No.3, are not held or conducted before expiry of its term;

(AB) Your Lordships may be pleased to issue a writ of mandamus directing or commanding the respondent No.1 to make amendment in the Gujarat Cooperative Societies Act, 1961 before 14.2.2013 to be in consonance with the provisions contained in part IX-B of the Constitution as inserted by the Constitution (Ninety Seventh Amendment) Act, 2011.

When the petitions were entertained initially notice was issued and thereafter the stay was granted against the appointment of custodian in place of the Managing Committee of the Society. Thereafter, Mr.Jani, learned Government Pleader had taken time to get appropriate instructions of the State Government as to whether the State Government is desirous to amend the Gujarat Cooperative Societies Act in conformity with the

constitutional amendment or not and whether the State Government is desirous to continue the present Managing Committee until the amendment is brought about in conformity with the constitutional amendment or not.

5. Today, learned Government Pleader has declared as under:-

(i) The State Government has already prepared an amendment in the Gujarat Cooperative Societies Act, so as to bring it in conformity with the constitutional amendment and the Bill is prepared and is to be introduced in the Assembly within a short span. However, he submits that it may take some time for completing the formality.

(ii) Until the amendment is brought about and comes into force and the elections are held as per the new Act after amendment, no Administrator or Custodian shall be appointed. However, it was submitted that the Managing Committee of the Society may continue, but may not take major policy decision. If they have to take major policy decision, prior approval of the District

Registrar concerned may be obtained.

6. In our view, the aforesaid declaration appears to be reasonable and it would take care of the interest of the petitioners also, since managing committee of the petitioners would continue to hold the office until new election is held. At the same time, as statutory period of three years is over and it is on account of the hiatus created because of the amendment to be made in the Gujarat Cooperative Societies Act, they are to continue to hold the office, they could be termed as caretaker. Therefore, it would be proper to put an embargo upon the Managing Committee not to take any policy decision unless prior approval of the District Registrar concerned is obtained.

7. Hence, the following directions are issued:-

(a) The State Government may pursue the matter for bringing about the amendment in the Gujarat Cooperative Societies Act in conformity with the constitutional amendment in accordance with law.

(b) Until the election takes place as per the

amendment, as may be made under Gujarat Cooperative Societies Act, the appointment of custodian or administrator in place of Managing Committee of the respective petitioner Society shall not be made, but with the further direction to the Managing Committee of the petitioner Society that they shall continue to look after day-to-day affairs and shall not take any major policy decision without prior approval of the District Registrar concerned.

8. The petitions are disposed of in terms of the aforesaid directions. No order as to costs.

(JAYANT PATEL, J.)

(MOHINDER PAL, J.)

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C/S/CA/3727/2013

ORDER

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3727 of 2013



PRABHUBHAI BALUBHAI PATEL &amp; 1....Petitioner(s)

Versus

STATE OF GUJARAT &amp; 5....Respondent(s)

Appearance:

MR PUSHPADATTA VYAS, ADVOCATE for the Petitioner(s) No. 1 - 2

DS AFF.NOT FILED (N) for the Respondent(s) No. 6

MR RAKESH R PATEL, AGP for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 6

CORAM: HONOURABLE MR.JUSTICE JAYANT PATEL  
and  
HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 09/04/2013

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE JAYANT PATEL)

1.The petitioners have preferred the present petition for appropriate writ to direct respondents to hold election of respondent No.6 and it is also prayed to appoint custodian/administrator in respondent No.6.

2.This matter was considered by this Court on 2.4.2013 and the following order was passed:-

It appears that, as such, the matter could



C/SCA/3727/2013

ORDER

be considered in light of the order dated 01.03.2013 passed by this Court in SCA No.13733/12 and allied matters read with the Circular of the District Registrar dated 22.03.2013 whereby the elections of all cooperative societies are to be held only after the amendment is made in the Cooperative Societies Act in conformity with the constitutional amendment. However, as one of the direction is that administrator cannot be appointed but the managing committee of the society shall continue to look after day to day affairs and shall not take any major policy decision without prior approval of the District Registrar concerned, respondent no.6 society is required to be heard.

Hence, Notice returnable on 09.04.2013. Mr.Patel, learned AGP waives notice for respondents 1 to 5. D.S. for respondent no.6.

3. On behalf of respondent No.6, Mr.N.D. Manavati, learned Sr. Counsel has appeared today and he has no objection, if similar direction is issued.
4. As such, the issue is already covered by the order dated 1.3.2013 passed by this Court in Special Civil Application No.13733 of 2012. No other adverse circumstances are brought to our notice by the learned Counsel appearing for the respective side.
5. It may be recorded that in the said order, this Court had made observations at paragraphs 5 and 6 and issued directions at paragraph 7 as under:-  
"5. Today, learned Government Pleader has



C/SCA/3727/2013

ORDER

declared as under:-

(i) The State Government has already prepared an amendment in the Gujarat Cooperative Societies Act, so as to bring it in conformity with the constitutional amendment and the Bill is prepared and is to be introduced in the Assembly within a short span. However, he submits that it may take some time for completing the formality.

(ii) Until the amendment is brought about and comes into force and the elections are held as per the new Act after amendment, no Administrator or Custodian shall be appointed. However, it was submitted that the Managing Committee of the Society may continue, but may not take major policy decision. If they have to take major policy decision, prior approval of the District Registrar concerned may be obtained.

6. In our view, the aforesaid declaration appears to be reasonable and it would take care of the interest of the petitioners also, since managing committee of the petitioners would continue to hold the office until new election is held. At the same time, as statutory period of three years is over and it is on account of the hiatus created because of the amendment to be made in the Gujarat Cooperative Societies Act, they are to continue to hold the office, they could be termed as care-taker. Therefore, it would be proper to put an embargo upon the Managing Committee not to take any policy decision unless prior approval of the District Registrar concerned is obtained.

7. Hence, the following directions are issued:-

(a) The State Government may pursue the matter for bringing about the amendment in the Gujarat Cooperative Societies Act in conformity with the constitutional amendment in accordance with law.

(b) Until the election takes place as per the amendment, as may be made under Gujarat Cooperative Societies Act, the appointment of



C/SCA/2727/2013

ORDER

custodian or administrator in place of Managing Committee of the respective petitioner Society shall not be made, but with the further direction to the Managing Committee of the petitioner Society that they shall continue to look after day-to-day affairs and shall not take any major policy decision without prior approval of the District Registrar concerned."

6. Similar direction deserves to be issued in the present petition and it is ordered as under:-

(a) The State Government may pursue the matter for bringing about the amendment in the Gujarat Cooperative Societies Act in conformity with the constitutional amendment in accordance with law.

(b) Until the election takes place as per the amendment, as may be made under Gujarat Cooperative Societies Act, the appointment of custodian or administrator in place of Managing Committee of the respective petitioner Society shall not be made, but with the further direction to the Managing Committee of the petitioner Society that they shall continue to look after day-to-day affairs and shall not take any major policy decision without prior approval of the District Registrar concerned.

7. The petition is disposed of in terms of the



23

C/SCA3727/2013

ORDER

aforesaid directions. No order as to costs.

*sd/s*  
(JAYANT PATEL, J.)

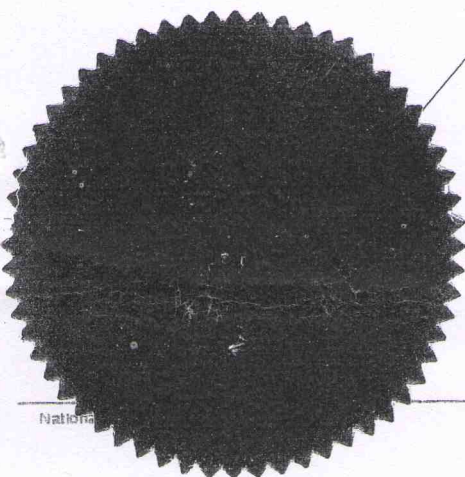
*sd/s*  
(MOHINDER PAL, J.)



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NATIONAL INFORMATICS CENTRE

LIBRO HIGH COURT



TRUE COPY

DEPUTY ASSISTANT REGISTRAR  
THIS DAY OF

*26/4/13*  
Page 5 of 5