

**IN THE HON'BLE COURT OF
PRINCIPAL DISTRICT JUDGE,
JUNAGADH.**

Exh.:- _____

<u>Appellants (Original Plaintiffs) :</u>				
	Heirs of deceased Kantilal Karshanbhai Patel:	—	—	
1	Sureshbhai Kantilal Patel	74	Business/ Retired	Near Bus Station, Mendarda, Tal. Junagadh
2	Kiritbhai Kantilal Patel	69	Business/ Retired	“Purnima”, Near Gandhigram T.V. Station, Gandhigram, Junagadh
3	Heirs of deceased Rajeshbhai Kantilal Patel: Joined vide application at Exh.10			
3/1	Bharatiben W/o.Rajeshbhai Amrutiya	58	Housewife	Meghaninagar, L/15, Opp. Haju Bungalow, Junagadh
3/2	Darshitbhai Rajeshbhai Amrutiya	40	Business	Meghaninagar, L/15, Opp.Hajur Bungalow, Junagadh

3/3	Niraliben Rajeshbhai Amrutiya	30	Housewife	Behind Khodasur Stuti, Near P. T. Pandya College, Dharmbhoomi Society, Ahmedabad
3/4	Jagdishbhai Kantilal Patel	65	Business	Meghani Nagar, L/6, Junagadh
3/5	Harsibhai Kantilal Patel	64	Business	“Purnima”, Opp. Gandhigram T.V. Station, Gandhigram, Junagadh
3/6	Heirs of deceased Kishorbhai Kantilal Patel: Ushaben Kishorbhai Patel	55	Household work	Bhavnath and Junagadh “Purnima”, Opp. Gandhigram T.V. Station, Gandhigram, Junagadh
<u>VERSUS</u>				
<u>Respondent (Original Defendant) :</u>				
The State of Gujarat, Through: The Collector, Junagadh District		—	—	Rangmahel, Limda Chowk, Junagadh

Appearance :-

Ld. Advocate **Mr. S. D. Chaglani** for appellants.

Ld.AGP **Ms. M. P. Vaghela** for respondent.

-:: JUDGMENT ::-**1 The facts of the case of the plaintiffs :-**

1.1 Herein, parties are referred as plaintiffs or defendant as they stood in Regular Civil Suit No.470/2004.

- 1.2 It is pleaded that since the period of the former Junagadh State, the policy was that persons who planted fruit-bearing trees, upon payment of the prescribed dasturi (customary assessment/fee), would retain ownership of such fruit-bearing trees, as well as the fences, walls, houses, and other structures erected for their protection. The ownership thereof would remain with the person who planted and nurtured the fruit-bearing trees and with his successors who continued to enjoy and possess the same. Further, so long as the dasturi was paid, the Government was not entitled to resume the land. In this manner, the suit land has been granted to the plaintiff and his predecessors for the purpose of cultivating fruit-bearing trees.
- 1.3 It is further pleaded that after the Junagadh State, followed by the State of Saurashtra, thereafter the bilingual State of Bombay, and subsequently the State of Gujarat, no governmental authority ever passed any order for resumption of the said land until the unconstitutional exercise of power and wholly illegal order passed by the Collector. There exists no provision of law authorizing the Government to resume land on which fruit-bearing trees have been planted and nurtured, so long as such trees exist and the prescribed dasturi is regularly paid. Nevertheless, in violation of law and constitutional provisions, without affording the plaintiffs an opportunity of being heard, by non-application of mind, and by passing a unilateral order contrary to the rule of law and the Constitution, the Collector passed an illegal order.
- 1.4 It is further pleaded that thereafter, the Additional

Secretary, Revenue Department (Appeals), Ahmedabad, also, by non-application of mind, passed an order in violation of the law and constitutional provisions. The present suit is therefore filed seeking cancellation of both the aforesaid orders and for a permanent injunction restraining the defendant Government and its revenue authorities from dispossessing the plaintiff of the land upon which the fruit-bearing trees have been planted, grown and are standing, and from taking possession of the said land, trees, and the produce thereof, together with a prayer for interim injunctive relief.

- 1.5 It is further pleaded that the impugned orders are ex facie violative of the Constitution of India, wholly illegal, without jurisdiction, perverse, null and void ab initio. Since the impugned actions of the defendant are arbitrary, unjust, unauthorized, and constitute a colourable exercise of power, and since the orders are harsh and liable to be implemented immediately and urgently, and as the order of the Additional Secretary has only recently been received by the plaintiffs, there is no legal requirement to serve a statutory notice upon the defendant before institution of the suit. Moreover, the defendant seeks to take possession of the fruit-bearing trees and derive income and undue benefit therefrom, completely disregarding the continuous labour, efforts, and expenses incurred by the plaintiffs and their predecessors over generations in cultivating and maintaining the said trees.
- 1.6 It is further pleaded that consequently, the plaintiffs are likely to suffer grave, urgent, and irreparable loss and

injury which cannot be adequately compensated in monetary terms. If possession is taken by the defendant, it would also result in multiplicity of proceedings and cause immense hardship, inconvenience, and complications. In these exceptional circumstances, necessitating immediate legal action, the present urgent suit has been instituted. Service of statutory notice is neither required in the circumstances nor practicable in view of the urgency. Nevertheless, to avoid any technical objection at the time of filing the suit, a separate application seeking waiver of notice under Section 80(2) of the Code of Civil Procedure has been filed along with the present suit.

- 1.7 It is further pleaded that in view of the aforesaid facts, since the period of the former Junagadh State, rights in respect of the suit fruit-bearing trees and land have been recognized under Appendix “E” to Section 55 of the Junagadh State Revenue Law. The Junagadh State had also issued a circular regarding rights over fruit-bearing trees, under which such trees could be sold or mortgaged. Accordingly, the plaintiffs have acquired lawful possession and enjoyment of the said property by succession and inheritance. The plaintiff’s father had obtained the said rights from the former Nawab of Junagadh State. Therefore, the plaintiff is in lawful possession of the property. Such possession is in accordance with the laws and regulations prevailing from time to time and is neither illegal nor unauthorized.
- 1.8 It is further pleaded that the ownership of the land has always remained with the Government, which is why the

defendant continues to collect revenue/dasturi. There has never been any transfer, change, or alienation of ownership of the land itself. Therefore, the allegation and interpretation made by the defendant that the plaintiffs have illegally or unauthorizedly appropriated Government land is wholly illegal and unconstitutional. Even assuming, without admitting, that the defendant has any right to resume the land, taking possession of the disputed land and fruit-bearing trees without payment of compensation would itself be unconstitutional. Further, Section 79A of the Bombay Land Revenue Code, 1879, is in no manner applicable to the present case. Consequently, the use of the said provision for resumption of the land and fruit-bearing trees is wholly illegal, unconstitutional, vague, passed without application of mind, and amounts to a perverse exercise of power based on whims rather than law. Therefore, the impugned orders are null and void ab initio. They are incapable of lawful implementation and are liable to be quashed at the threshold.

- 1.9 It is further pleaded that under the laws prevailing during the Junagadh State, transfer of such fruit-bearing trees was permissible through registered instruments. Apart from payment of dasturi, no other condition was attached to the grant. Hence, both the impugned orders purporting to cancel the grant on the ground of breach of conditions are without jurisdiction and authority.
- 1.10 It is further pleaded that the aforesaid facts further show that possession of the mango orchard and other trees situated in Survey No. 35 has remained continuously with

the plaintiffs and their predecessors for more than eighty years. The plaintiffs' father had purchased the said trees under a registered sale deed bearing Serial No. 938 dated 12.03.1990. Since then, the said trees have remained in the ownership, possession, and enjoyment of the plaintiffs. The plaintiffs are thus in lawful possession and enjoyment thereof. The mango orchard was developed only after considerable labour, expenditure, care, and maintenance over a long period of time. The plaintiffs have also regularly paid the prescribed dasturi (revenue) in accordance with law. No condition other than payment of dasturi was ever attached to the grant.

- 1.11 It is further pleaded that the total area of Survey No. 35 is approximately 1 acre and 24 gunthas, equivalent to 4 bighas. The revenue records describe the mango orchard as being held under "old rights" and on a "permanent basis." Thus, the land containing the fruit-bearing trees was granted on a permanent basis. Nevertheless, the defendant seeks to auction the land in order to generate greater revenue and, disregarding the labour and expenses incurred by others, seeks to take over the mature mango and other fruit-bearing trees without payment of any compensation. Even though the defendant possesses no legal right to do so, the impugned orders have been passed. Such orders cannot withstand scrutiny before a court of law and are null and void.
- 1.12 It is further pleaded that the plaintiffs have regularly paid the prescribed dasturi and have not violated any condition of the grant. It is indeed surprising that the Collector of

Junagadh had, during the relevant period, granted similar lands permanently for cultivation of fruit-bearing trees in Junagadh itself, whereas in the present case the defendant seeks to dispossess the plaintiffs of the land together with the fruit-bearing trees despite the permanent nature of the grant.

- 1.13** It is further pleaded that from the issuance of notice until the passing of the impugned orders, the defendant has never specified which particular condition of the grant relating to the land allotted on payment of dasturi was allegedly breached, nor has any clause of the grant been pointed out. The impugned orders have been passed in disregard of Government revenue records and contrary to the provisions of the revenue laws, without following due process of law. They are arbitrary, superficial, contrary to law, mechanical in nature, and passed without application of mind. Consequently, they are liable to be set aside. The plaintiffs have neither derived nor attempted to derive any unlawful benefit. There is no law permitting the defendant to summarily evict the plaintiffs and take possession of the property. The plaintiffs are not trespassers, and their possession cannot be treated as unauthorized occupation of Government land.
- 1.14** It is further pleaded that the possession of the suit land containing the fruit-bearing trees is with the plaintiffs, and such possession and enjoyment are lawful. In view of the facts stated above, no order could legally have been passed directing that the mango orchard be put to annual auction or that the land be auctioned in any manner whatsoever.

Such an order is not supported by law, nor is there any legal provision authorizing or justifying it.

- 1.15** It is further pleaded that in the Collector's impugned order, it is stated that possession of the land has reverted to the Government. The ownership of the land, according to the revenue records, vests in the Government. (The plaintiffs have no dispute or objection regarding the Government's ownership of the land. Their grievance is only that the land was granted for planting and nurturing fruit-bearing trees, and that so long as the trees are maintained and the prescribed dasturi is paid, possession of the land should not be taken away and subjected to annual auction.) The order further states that permission had not been obtained for the sale deeds. However, under the laws of the former Junagadh State, transfer through sale deeds was permissible. That law has never been repealed and replaced by any law of the present Government prohibiting such transfers or requiring prior permission in respect of lands of this nature. Even if such a law had subsequently been enacted, it could not be given retrospective effect.
- 1.16** It is further pleaded that the defendant itself has relied upon and accepted the resolutions and policies of the former Junagadh State and has also accepted the purpose underlying those laws. In fact, the impugned order itself records that the purpose of granting ownership rights over the trees, subject to payment of fruit-tree dasturi, was to avoid the necessity of conducting annual auctions of trees standing on Government land. The mango orchard in possession of the plaintiff has devolved upon him by

inheritance, and the plaintiffs have been in lawful possession thereof for a very long time. Nevertheless, without proper interpretation of the applicable law and facts, and in a wholly superficial and mechanical manner, the impugned orders have been passed.

- 1.17 It is further pleaded that the Collector, in the impugned order, has substantially accepted the submissions made by the plaintiff. The only contrary finding is the inference regarding the purpose of the Junagadh State policy as stated above. Such inference is arbitrary and unsupported. The order does not disclose any legally sustainable method of interpretation, does not consider the scheme of the law as a whole, and does not assign valid reasons for arriving at such a conclusion. The historical circumstances prevailing for decades have not been properly appreciated. Nor has the order demonstrated how the applicable law is attracted to the facts of the case. The facts have been misappreciated, the law has been misconstrued, and a perverse interpretation has been adopted solely to show that the plaintiff's rights against the Government stand extinguished. (As observed in Joshi Saheb's commentary on the Bombay Land Revenue Law, 1989, at page 556: "Revenue authorities have no authority in law to pass such executive orders" – 18 G.L.T. 427, Special Civil Application No. 761 of 1977, decided on 17.07.1981.)
- 1.18 It is further pleaded that Section 40 of the Land Revenue Law specifically deals with Government rights in relation to trees of this nature. The provision recognizes that rights over such trees belong to the cultivator and not to the

Government. The Government is empowered only to reserve certain specified species of trees, such as teak, sisam, and sandalwood, by issuing a notification. Except for such reserved trees, the rights over trees standing on the land vest in the occupant/holder. Despite this legal position, both authorities, in the impugned orders, have proceeded to direct resumption of possession without citing any statutory provision. They have remained completely silent regarding the fate of the trees. The trees are standing on and attached to the land. By directing resumption of possession of the land without addressing the rights in the trees, the authorities have effectively sought to take over the trees as well. Such orders are arbitrary, unsupported by any legal provision, and wholly illegal.

- 1.19** It is further pleaded that in the Collector's order, a finding has been recorded that "the legality of the possession of such land containing fruit-bearing trees is required to be examined." In this context, reference has been made to Government of Gujarat resolutions dated 11.11.1966 and 01.01.1987 concerning the grant of land on lease for cultivation of fruit-bearing trees. According to those resolutions, transfer or alienation of land granted for fruit trees is not permissible. It is further observed that the Government of Gujarat has made adequate provisions governing lands granted for fruit trees and, therefore, those provisions should also be applied to lands held on payment of dasturi. On that basis, it is concluded that transfers of dasturi lands without prior permission are not lawful. It is

further stated that the provisions prevailing at the relevant time recognized rights only in respect of the trees and not in respect of the land itself, and that although no ownership or proprietary rights over the land were conferred, possession of the land has continued to be transferred along with ownership of the trees. In these circumstances, the Collector has observed that continuation of the fruit-tree dasturi arrangement is no longer appropriate and that the rights in the trees should be terminated. It has also been noted that the applicant seeks permanent allotment of the land, whereas there is no Government policy for granting such land on a permanent basis. Consequently, the Mamlatdar, Junagadh, was directed to take back actual possession of the land admeasuring 1 acre and 24 gunthas, to conduct annual auctions of the land every year, and to close the fruit-tree dasturi account.

- 1.20** It is further pleaded that reference has already been made to the aforesaid findings. However, upon examining the reasons stated in Paragraph 11 of the impugned order and upon considering the commentary of Shri Joshi on the Land Revenue Code, particularly in relation to Government Resolution No. JMN-3986-2226-A dated 01.01.1987 concerning grant of land for cultivation of fruit trees and other trees, it becomes apparent that the Government policy contained therein was intended to govern the disposal of Government waste land for cultivation of fruit trees and forestry purposes prospectively. The resolution itself lays down guidelines for future disposal of land for such purposes. Therefore,

the provisions of the said Government Resolution apply only to lands granted after the date of the resolution and operate prospectively. They do not have retrospective effect. Consequently, the resolutions dated 11.11.1966 and 01.01.1987 relied upon by the Collector cannot be applied to the plaintiffs' land containing fruit-bearing trees, which was granted during the period of the former Junagadh State.

- 1.21** It is further pleaded that the disputed land and trees were granted during the regime of the former Junagadh State. Therefore, the relevant considerations are: what were the conditions attached to the grant at the time it was made; whether any such condition has been violated; and what provisions existed under the laws of the Junagadh State regarding consequences of breach of conditions. The land in question is a permanent grant originating from the former princely State and is not a grant made by the present Government. It is not subject to any term-based restrictions such as 15-year or 30-year grants as are presently made.
- 1.22** It is further pleaded that the land itself was not granted afresh for cultivation of fruit trees under any current Government scheme. Under the laws prevailing at the relevant time, once land was granted for fruit-bearing trees and the prescribed dasturi was fixed, there was no resolution or provision of the former Junagadh State authorizing resumption of the land so long as the dasturi continued to be paid. After formation of the present State Government, no policy decision has been taken, nor has

any law been enacted, prescribing the treatment of lands containing fruit-bearing trees that had been granted during the administration of the former princely States. If the facts and law applicable to the present case are properly interpreted, neither the Collector's order nor the order of the Additional Secretary contains any rational, reasonable, or legally sustainable justification apart from merely affirming the Collector's decision.

1.23 It is further pleaded that both the impugned orders seek to deprive the plaintiff of fruit-bearing trees that have been lawfully possessed and maintained through generations of labour, effort, and expenditure. Such property cannot be taken away without payment of compensation in accordance with the provisions of the Constitution of India. Although there is no provision authorizing annual auction of the land, the authorities have arbitrarily and capriciously directed that course of action. Such action is wholly illegal. Since the time of the Junagadh State, the authorities have continuously collected dasturi and revenue in respect of the land. Thereafter, during the periods of the State of Saurashtra, the bilingual State of Bombay, and subsequently the State of Gujarat after 1960, the arrangement was never treated as objectionable. After such an extraordinarily long period, the defendant's action is barred by the doctrines of promissory estoppel, laches, and waiver. Accordingly, the orders passed by the Collector and the Additional Secretary are arbitrary, unjust, illegal, and liable to be quashed and set aside.

1.24 Thus, in view of the entire factual and legal position, it has

become necessary to seek a declaration that both the impugned orders of the defendant Government, as well as all proceedings initiated for taking possession of the land, are illegal, unconstitutional, arbitrary, unjust, null and void, and liable to be cancelled and set aside.

1.25 It is further pleaded that the well constructed in the plaintiff's mango orchard was dug specifically for the purpose of irrigating the mango and other fruit-bearing trees. The plaintiff has already applied to the defendant authorities for grant of permanent rights in respect of the land underlying the fruit-bearing trees. The plaintiff was and continues to be willing to pay such amount as may be prescribed under the applicable Government policy. Furthermore, even during the pendency of the present suit, the plaintiff undertakes to pay such amount as may be determined by the Government. These facts clearly establish that the plaintiff has a strong prima facie case. No loss whatsoever would be caused to the defendant. The sole object of the defendant appears to be to obtain a higher monetary return; no other purpose is discernible. Since the plaintiff's request for regularization/permanent grant is already pending before the Government, the defendant would suffer no prejudice.

1.26 It is further pleaded that if the land had always been subject to annual auction, no person would ever undertake the enormous effort and expense required for cultivation of fruit-bearing trees. No person would plant and nurture mango or other fruit trees, incur expenditure on fertilizers, pesticides, irrigation wells, electric connections, fencing

and protective structures, engage watchmen or servants for protection and maintenance, and devote years of labour and resources to such cultivation.

- 1.27** It is further pleaded that the Government Resolution of 1987 itself refers to the national campaign promoted by the Central Government and the Prime Minister encouraging large-scale plantation and preservation of trees. In light of that objective, the impugned decision directing annual auction is wholly inconsistent with the very policy underlying promotion of tree cultivation. After decades of labour and investment, if fruit-bearing trees are subjected to such treatment, the persons who incurred the expenditure and maintained the trees would be ruined. Thereafter, no one would have any incentive to maintain or protect such trees, leading to their destruction and ultimately causing loss not only to the Government but also to the public at large.
- 1.28** It is further pleaded that a consideration of the entire matter reveals that the case of the defendant is founded solely upon an allegation of breach of conditions. Unless a breach of conditions is established, both impugned orders are unauthorized, without jurisdiction, null and void. The most significant question is: what condition was attached to the grant when the land was originally allotted by the former State and, if applicable, by the present Government? What were the terms governing the land? Where are such conditions recorded? Which specific condition is alleged to have been violated? What consequence was prescribed in the event of breach? Under

which condition is annual auction contemplated? Neither of the impugned orders identifies any such condition. The orders do not specify the basis on which breach of condition is alleged. Moreover, where land is granted for cultivation of fruit-bearing trees, the rights and obligations of the parties must necessarily be governed by the agreement or grant and the conditions expressly contained therein. Mere assumptions or conjectures regarding the intention of the grantor cannot form a valid legal basis. Under the principles governing interpretation of statutes and facts, and as recognized in decisions of the Gujarat High Court, revenue authorities have no jurisdiction to undertake such arbitrary interpretation.

- 1.29 It is further pleaded that accordingly, the defendant is called upon and requested to place on record before this Hon'ble Court the material and legal basis supporting its action and to prove the same, so that the Court may determine the legality of the defendant's conduct.
- 1.30 It is further pleaded that the former State of Junagadh was a princely State ruled by the Nawab. When the Nawab left for Pakistan, he appointed Harvey Jones as the Administrator and supreme authority of the State. Thereafter, the democratic State of Saurashtra was constituted through the integration of several princely States. Even in February 1948, the State of Junagadh continued to exist in its original form. Subsequently, in September 1949, Harvey Jones entered into a Covenant for the merger of Junagadh with the State of Saurashtra. Other princely States also merged into Saurashtra through similar

Covenants. Under those Covenants, the successor State was not empowered to alter rights created under the laws, rules, and orders that had been validly enacted and enforced during the administration of the erstwhile princely States. Therefore, where land containing fruit-bearing trees had been granted to individuals during the Junagadh State period, the State Government cannot unilaterally alter such grants or cancel them. For this reason also, in the absence of legislative sanction and statutory authority, the Collector has no jurisdiction to cancel the plaintiff's grant.

- 1.31** It is further pleaded that the Collector of Junagadh himself has, in several similar cases within Junagadh, granted permanent rights in respect of lands containing orchards and fruit-bearing trees and has regularized such holdings along with the land. The records relating to such grants are available in the office of the Collector. Therefore, the plaintiff respectfully calls upon the Collector to furnish details of such cases, including the names and addresses of the beneficiaries, the extent of land granted in acres and gunthas, and the consideration amount recovered by the Government. It is further submitted that discrimination between citizens similarly situated is impermissible in law, and equal treatment must be accorded to all persons placed in comparable circumstances.
- 1.32** It is further pleaded that under Paragraph 2 of Circular No. 2472 dated 26.03.1912 issued by the former Junagadh State, it was provided that in respect of lands containing fruit-bearing trees, the persons holding rights therein

would be permitted to enjoy and possess such trees so long as they continued to pay the prescribed assessment (akar/dasturi), and the Government would not assert ownership rights over the trees. Such persons were also permitted to deal with their possessory rights according to their own wishes through registered instruments.

- 1.33** It is further pleaded that under Paragraph 3(b) of the said Circular dated 26.03.1912, any person desirous of planting fruit-bearing trees on Government land could do so after obtaining permission from the competent Revenue Officer. Such person would be allowed to enjoy and possess the trees subject to payment of the Government dues (dasturi). The holder of such rights was also entitled to mortgage, sell, or otherwise transfer the same through a registered document according to his own discretion. Under Paragraph 3(c), it was directed that all such deeds of sale and mortgage should be executed and registered within six months from the date of the Resolution.
- 1.34** It is further pleaded that as the former Junagadh State considered it necessary to encourage large-scale cultivation of fruit-bearing trees and to provide the public with adequate opportunity and incentive to participate in tree-growing activities, the State, through its Chief Diwan, issued Resolution No. 2492/84 dated 05.06.1928. Under the said Resolution, rights in fruit-bearing trees were granted to the subjects of the former Junagadh State upon payment of the prescribed dasturi.
- 1.35** It is further pleaded that according to Paragraph 5 of the aforesaid Resolution dated 05.06.1928, land earmarked for

orchards and fruit-bearing trees was to be allotted on payment of an assessment (dasturi) of two annas. The Resolution further permitted the construction of huts or sheds on such lands and allowed cultivation of grass, fodder, or crops thereon. However, construction of permanent structures was required to be undertaken only after obtaining the prescribed permission from the State authorities.

- 1.36 It is further pleaded that under Paragraph 6 of the said Resolution, the owners of fruit-bearing trees were expressly granted rights to transfer, sell, mortgage, or otherwise deal with such orchards and fruit-bearing trees through registered documents. Thus, the proprietary and possessory rights relating to the fruit-bearing trees were recognized and protected under the Resolution.
- 1.37 It is further pleaded that the cause of action for the present suit arose from the order dated 15.04.2002 passed by the Collector directing closure of the dasturi account and resumption of possession. Against that order, the plaintiffs preferred Revision Application No. 31 of 2002 before the Additional Secretary, Revenue Department (Appeals), Ahmedabad. The Additional Secretary passed an order dated 30.06.2004, which was signed on 30.09.2004. The said order was received by the plaintiffs only a few days prior to the institution of the present suit. Thereafter, on 10.12.2004, an employee of the defendant's office orally informed the plaintiffs to hand over possession of the mango orchard. Accordingly, the cause of action first arose on the aforesaid dates and has continued thereafter, lastly

on 10.12.2004, within the jurisdiction of this Hon'ble Court. The present suit has therefore been filed within the prescribed period of limitation.

- 1.38** It is further pleaded that proceedings under Section 79A for closure of the dasturi account were initiated by the Collector in the year 2001 against the father of the present plaintiffs. However, Shri Kantilal Karshanbhai Amrutiya (Patel) had already expired on 15.03.1995. Consequently, the proceedings initiated against a deceased person, and the order passed by the Collector as well as the subsequent order passed by the Additional Secretary founded upon such proceedings, are illegal, void, and a nullity in the eyes of law.
- 1.39** Therefore, the plaintiffs have sought the reliefs more specifically sought in para 27 of the suit plaint wherein, the plaintiff sought the relief to declare that the order bearing No. Land/3/C/04/2001 dated 15.04.2002 passed by the Collector, Junagadh, directing closure of the plaintiff's annual dasturi (revenue) account, resumption of possession of Survey No. 35 admeasuring 1 acre and 24 gunthas (equivalent to 4 bighas), together with the fruit-bearing trees standing thereon, from the plaintiff, and directing annual auction of the said land, as well as the order passed by the Additional Secretary, Revenue Department (Appeals), in Revision Application No. M.V.V./Jaman/Junadh/31/02 dated 30.06.2004 (signed on 30.09.2004), whereby the revision application preferred by the plaintiff was dismissed and the Collector's order dated 15.04.2002 was confirmed, are without jurisdiction and

authority of law, unconstitutional, null and void, perverse, passed without application of mind, passed mechanically, contrary to the principles of natural justice, arbitrary and improper, passed without granting the plaintiff a reasonable opportunity of being heard, based upon ex parte proceedings, passed without recording or considering evidence, passed without supplying copies of the proceedings, inspection reports, and other relevant documents relied upon, wholly illegal, unenforceable, and without lawful authority. Additionally, the plaintiffs have prayed to declare that the plaintiff is in lawful possession and enjoyment of the fruit-bearing trees standing on Survey No. 35 admeasuring approximately 1 acre and 24 gunthas (4 bighas), and to grant a permanent injunction restraining the defendant, its officers, servants, agents, representatives, or any person acting under its authority from taking possession of the said land or trees from the plaintiff, dispossessing the plaintiff therefrom, or causing any interference, obstruction, hindrance, or disturbance whatsoever in the plaintiff's lawful possession and enjoyment of the said property and also prayed for any other relief which deems fit.

2 Defense of the defendant:

- 2.1** The defendant has appeared through Ld. AGP and filed a written statement at **Exh. 15**, in which most of the facts presented in the plaint have been denied.
- 2.2** It is contended that the suit is neither true nor maintainable in law and that the suit, in its present form, is not tenable.
- 2.3** It is further contended that the suit is not maintainable for

want of issuance of notice u/s.80 of the Code of Civil Procedure, 1908 and want of payment of Court Fees and is barred by limitation.

- 2.4** It is further contended that the plaintiffs himself has stated in the plaint that the property was purchased vide Registered Sale Deed No. 938 dated 12.03.1990. Therefore, the contention that the land has been in possession of the plaintiffs' ancestors since time immemorial is not correct, and no evidence has been adduced by the plaintiffs in support thereof.
- 2.5** It is further contended that the Land Revenue Code, 1879 governs matters relating to land and provides the procedure for disposal thereof. Any decision regarding execution of deeds concerning rights attached to land is required to be taken strictly in accordance with the provisions of law and not arbitrarily. The competent authority is required to take such decisions on behalf of the State after considering the provisions of the Land Revenue Code. However, the plaintiffs is attempting to mislead the Hon'ble Court by presenting an incorrect interpretation of the legal position.
- 2.6** It is further contended that, as stated by the plaintiffs himself, the Constitution of India recognizes the applicability of the Land Revenue Code, 1879, and under the said Code, the State is empowered to take action against any person in accordance with law. Therefore, the State possesses the authority to resume land granted to any person in appropriate cases.
- 2.7** It is further contended that the plaintiffs has failed to join

the Additional Secretary, Revenue Department, Ahmedabad, as a party to the suit and, therefore, both the suit and the application for injunction are not maintainable.

- 2.8** It is further contended, with respect to paragraph 3 of the plaint, that the Land Revenue Code of the erstwhile Junagadh State is no longer in force. Upon the merger of the Princely State, the said laws stood repealed, and the Land Revenue Code, 1879 was made applicable to the Saurashtra region vide Ordinance No. 2 of 1959 dated 20.05.1959. There is no provision regarding Dasturi (Revenue) of fruit-bearing trees under the Land Revenue Code, and therefore, it is evident that the earlier law stood repealed.
- 2.9** It is further contended that, as per the Government Circulars dated 11.11.1966, 01.01.1987 and 10.06.2003, the Collector is required to take possession of disputed Government land. The suit land is situated adjacent to the forest area and, owing to its development, there is a likelihood of loss to the State revenue. Accordingly, the Government decided to close the land account. However, the plaintiffs has taken shelter under proceedings before the Hon'ble Court and has instituted the present suit only to continue his occupation of the suit land. Hence, the suit is liable to be dismissed.
- 2.10** It is further contended, with respect to paragraph 4 of the plaint, that the State has not executed any such deed and, therefore, any deed executed inter se between private parties is neither legal nor binding upon the State. Moreover, no prior permission was obtained before

execution of such deeds and, therefore, the suit is liable to be dismissed.

- 2.11** It is further contended, with respect to paragraph 5 of the plaint, that the plaintiffs has presented facts contrary to the revenue record. As per the Revenue Account Manual, Village Form No. 2 is a register of permanent yields and there is no requirement for preparation of any water statement therein.
- 2.12** It is further contended, with respect to paragraph 6 of the plaint, that upon verification of the revenue record and in view of the provisions of the Land Revenue Code, 1879 and the Revenue Account Manual, Village Forms No. 7/12 and 8A reflect the suit land in the name of the Government. There is no entry indicating the existence of any mango orchard (Ambadiyu). Therefore, no order recognizing any such right has been passed under the Land Revenue Code. On the contrary, proceedings under Section 79A of the Land Revenue Code, 1879 were initiated for removal of unauthorized possession from Government land. Hence, the present suit has been filed only to delay lawful proceedings and waste the valuable time of the Hon'ble Court.
- 2.13** It is further contended, with respect to paragraph 7 of the plaint, that the Land Revenue Code, 1879 governs the disposal of Government land and confers the requisite authority upon the State for such disposal. Therefore, the State is fully empowered to deal with and dispose of such land in accordance with law. Hence, the suit deserves to be dismissed.

- 2.14** It is further contended, with respect to paragraph 8 of the plaint, that the plaintiffs have not given other details before the Collector Court and therefore it's not an appeal and the plaintiffs have narrated the facts contrary to it's existence at the place.
- 2.15** It is further contended that the laws of the erstwhile Junagadh State are no longer in force. The State has never accepted the interpretation sought to be placed by the plaintiffs upon the order of the Hon'ble Court. Moreover, there is no application or representation on record supporting such a claim. Therefore, the plaintiffs is attempting to mislead the Hon'ble Court by placing an erroneous interpretation upon the order of the Court.
- 2.16** It is further contended, with respect to paragraph 9 of the plaint, that the plaintiffs has not produced any evidence in support of the submissions. In any case, such submissions are contrary to the applicable rules and law and are, therefore, not tenable.
- 2.17** It is further contended, with respect to paragraph 10 of the plaint, that although the plaintiffs has relied upon Section 40 of the Land Revenue Code, the facts referred to therein pertain to the period prior to settlement, and the trees in question belong to the State as part of the land.
- 2.18** It is further contended that, as per the Measurement Register, the disputed land belongs to the State and there is no entry whatsoever indicating the existence of any trees thereon.
- 2.19** It is further contended, with respect to paragraph 11 of the plaint, that the Circulars dated 11.11.1996, 01.01.1987 and

10.06.2003 relate to the identification of wastelands for plantation and cultivation of trees. The said circulars apply only to Government wasteland, sandy land, saline wasteland and land with uneven boundaries. However, the plaintiffs has sought to present the contents of the said circulars in a distorted manner. The suit land does not fall within the category of open wasteland covered by the said circulars. No right can be claimed merely by filing a suit before the Hon'ble Court, and the plaintiffs has misrepresented the true facts of the case and the defendant has produced the copy of circular dated 10.06.2003 and the plaintiffs have asserted the facts contrary to record and thus, not tenable.

2.20 It is further contended, with respect to paragraph 12 of the plaint, that as per the Government Notification, land is required to be allotted to eligible individuals according to the prescribed category. If the plaintiffs is not eligible, he cannot claim allotment of the same. The plaintiffs himself has admitted that he has encroached upon and fenced the Government land. By taking shelter under the proceedings before the Hon'ble Court, implementation of the Government Circular cannot be obstructed. Thus, the plaintiffs has illegally encroached upon and fenced the Government land and, relying upon the tree revenue (Dasturi), has preferred an appeal before the Hon'ble Court, which is not maintainable and is therefore liable to be dismissed.

2.21 It is further contended, with respect to paragraph 13 of the plaint, that the plaintiffs have asserted the lands of Forest

and Revenue Department and fruit revenue was prevailing in the erstwhile State for the fruit bearing trees only and not permanent and not transferrable and herein the plaintiffs have possessed the land by sale deed no.938 dated 12.03.1990 and therefore, it cannot be said that the plaintiffs are having the land since the time of erstwhile State and the plaintiffs have not produced the rules in case of breach of conditions prevailing at the time of State and the plaintiffs have tried to drag the Hon'ble Court on wrong path because the Collector, Junagadh has not raised the issue of breach of condition but the plaintiffs have presented the facts in distorted manner.

- 2.22** It is further contended, with respect to paragraph 14 of the plaint, that the plaintiffs has sought to rely upon the laws of the erstwhile Junagadh State, despite being fully aware that no such provision existed and that neither the Nawab State nor the authorities of the Junagadh State had executed any contract or agreement of the nature alleged by the plaintiffs.
- 2.23** It is further contended, with respect to paragraph 15 of the plaint, that the orders in question were passed by the competent authorities in their representative capacity on behalf of the Government. Mere cancellation of such orders does not confer any right upon the plaintiffs to encroach upon Government land. Moreover, as the plaintiffs has failed to join the Additional Secretary, Revenue Department, Ahmedabad, as a party to the suit, the suit is liable to be dismissed.
- 2.24** It is further contended, with respect to paragraph 16 of the

plaint, that the land belongs to Revenue and Forest Department as stated by the plaintiffs in the suit and Government is not entitled to compensate the person who has expensed for unauthorized land and the said fact is within knowledge of the plaintiffs but filed the suit just to waste the time of the Hon'ble Court.

- 2.25** It is further contended, with respect to paragraph 17 of the plaint, that neither the Nawab State nor the Government ever executed any agreement or contract in respect of the disputed land. There existed only a provision regarding collection of revenue for cultivation and maintenance of trees on Government land. The same has no application to the present case, as no agreement was ever executed by either the Nawab State or the Government. Therefore, no question arises regarding execution of any agreement, and the plaintiffs is fully aware that the disputed land belongs to the Government.
- 2.26** It is further contended, with respect to paragraph 18 of the plaint, that the plaintiffs have frequently the raised the dispute of breach of condition which itself shows that the version of the plaintiffs is not true and liable to be dismissed.
- 2.27** It is further contended, with respect to paragraph 19 of the plaint, that the plaintiffs have asserted the issue in their own way and not produced the proof for the valuable land and thus, suit is liable to be dismissed.
- 2.28** It is further contended, with respect to paragraph 20 of the plaint, that at present the Circular No.2472 dated 23.03.1912 of Junagadh State is not in existence and

hence, issue raised by the plaintiffs is liable to dismissed.

- 2.29** It is further contended, with respect to paragraph of the plaint, that no such land of fruit bearing trees having Dasturi is allotted and therefore, it is not possible to interpret the said circular and the plaintiffs are having malafide intentions to grab the land taking base of the guidelines of the said circular.
- 2.30** It is further contended, with respect to paragraph 23 of the plaint, that the plaintiffs have taken the defence of the Circular of the erstwhile State and raised the issue citing the circular No.2492/84 dated 05.06.1928 and 05.01.2028 citing para 5 but by the said Circular it was allotted to the original allottee and not to the plaintiffs and therefore, it cannot be applied to the fruit bearing trees purchased by the plaintiffs.
- 2.31** It is further contended, with respect to paragraph 24 of the plaint, that the Collector, Junagadh by order dated 15.04.2004, confiscated the land and the Circle Officer vide letter No.S.O.-2/9-5-02 had intimated the same and was not orally informed and the plaintiffs have filed the revision application before the Secretary (Appeal), Ahmedabad on 07.05.2020 as informed by the plaintiffs through their Ld. Advocate Shri H. M. Meghnathi by letter dated 23.07.2002 and sought the injunction and as one month time was sought by the plaintiffs, they had not taken the possession and pursuant to the revision preferred by the plaintiffs before the Additional Secretary, Revenue (Dispute), Gujarat State, Ahmedabad as per the order dated 27.09.2004, no notice from the defendant was received and

the plaintiffs very well knows that the Hon'ble High Court has right against the order passed by the Additional Secretary and suit is not tenable before the Trial Court but taking the advantage of the earlier notice issued, filed the present suit and thus, suit is not tenable.

2.32 It is further contended as Additional Secretary (Dispute), Ahmedabad has not been impleaded as party , the suit is not tenable.

2.33 It is further contended, with respect to paragraph 25 of the plaint, that as the plaintiffs have not provided the documents produced with the documentary evidence list to the defendant, same are not admitted.

2.34 Thus, it is prayed to dismiss the suit of the plaintiffs.

3 Evidence of the parties :

3.1 It is pertinent to note here that as per the order passed below Exh.54 in Regular Civil Suit No.470/2004, the other suits i.e. Regular Civil Suit Nos.308/2004, 358/2004, 397/2004, 425/2004, 456/2004, 470/2004, 442/2005 were consolidated with Regular Civil Suit No.470/2004 and it was ordered to record the evidence in Regular Civil Suit No.470/2004.

3.2 The following evidence has been presented by the plaintiffs in both oral and documentary forms as shown in Judgment of the Trial Court in para-5:-

3.3 Oral evidence of the plaintiffs:

Exh.60	Deposition of plaintiff No.4 – Jagdishbhai Kantilal Patel (In RCS No.470/2004)
Exh.67	Deposition of plaintiff No.3 – Rajeshbhai Kantilal Patel

3.4 Documentary evidence of plaintiffs (RCS No.470/2004):-

Exh.42	True copy of sale deed no.580 dated 20.12.1950 executed by Abdul Salim Shekh in favour of Tribhuvanray Ambashanakr Dhebar
Exh.43	True copy of No.650 dated 27.05.1968 executed by Shumara Hashay Juma in favour of Ravaji Ramji for 10 Mango trees of Survey No.35 within the Junagadh City Municipality limits
Exh.44	True copy of sale deed no.938 dated 12.03.1990 executed by Dhobi Ravji Ramji in favour of Patel Kantilal Karshanji for fruit bearing Mango trees having Dusturi rights in Junagadh City
Exh.45	Village Form no.6 showing entry No.4964 giving effect of sale deed no.938 dated 12.06.1990
Exh.46	Village Form No.2 showing entry Nos.721 and 722
Exh.47	Tax payment receipt of account no.277 showing name of Patel Kantilal Karshanji
Exh.48	True copy of Death Certificate of decd. Kishorchandra S/o.Kantilal Karshanji Amrutiya showing date of death as 22.02.04
Exh.49	Copy of Death Certificate of decd. Kantilal Karshanjibhai Amrutiya showing date of death as 15.03.95
Exh.50	No Due Certificate dated 15.03.1992 issued by City Talati-1, Junagadh in respect to Kantilal Karshanji in account of fruit bearing trees
Exh.51	Certificate dated 27.03.1992 issued by City Talati-1, Junagadh
Exh.52	Certificate dated 31.03.2001 issued by City Talati-1, Junagadh
Exh.53	Agreement executed between Jagdishchandra Kantilal and Balubhai Dudabhai Barvad for deepening the well
Exh.54	Payment receipt of Rs.16,500/- showing expenses towards wire fencing showing name of Kiritchandra Kantilal Amrutiya
Exh.55	Computerized estimate for barbed wire fencing works 2001-02
Exh.56	Bill dated 16.03.2002 issued by Yogi Cement Process for purchase of 111 cement poles
Exh.57	Bill dated 19.08.2009 for purchase of saplings

Exh.58	Bill dated 21.09.2006 for purchase of saplings
Exh.59	Drip Irrigation System – Junagadh Data Sheet
Exh.60	Bill issued by Vishal Irrigations showing name of Kantilal Karsanji
Exh.61	Bill dated 27.09.1996 issued by Shri Laxmi Roadways
Exh.62	Receipt issued by Dy. Executive Engineer, Junagadh
Tentative Exh.69	Copy of order dated 29.5.82 passed by the Collector, Junagadh (produced by plaintiff No.3)
Tentative Exh.70	Resolution No.2492/84 passed by Chief Diwan, Junagadh State
Exh.144	Copy of Order dated 15.04.2002 passed by the Collector, Junagadh
Exh.145	Copy of order dated 30.09.2004 passed by the Revenue Department
Exh.146	Copy of order dated 10.07.2002 passed by the Revenue Department
Exh.147	Copy of sale deed No.938 dated 12.03.1990
Exh.148	Copy of Death Certificate of Kantilal Karshanbhai Amrutiya
Exh.149	Copy of Death Certificate of Mangalagauri Kantilal
Exh.150	Copy of Death Certificate of Kishorchandra Kantilal
Exh.151	Copy of revenue tax payment receipt
Exh.152	Copy of village Form No.6 showing entry No.4964
Exh.153	Copy of Village Form No.2 showing entry No.721/722
03.08.17	Closing purshis

3.5 Documentary evidence of plaintiffs (RCS No.356/2004):-

Exh.160	True copy of order dated 19.05.2018 passed by the Collector, Junagadh in respect to renewal of lease for fruit bearing trees of Survey No.36/1/Paiki 2, 34/Paiki-2 in the name of heirs of decd. Mohanbhai Virjibhai Vaja: Nandkishorbhai Mohanbhai Vaja etc.8 (Produced in R.C.S. No.356/2004)
Exh.161	True copy of letter dated 27.06.2018 written by Mamlatdar, Junagadh City addressed upon Nandkishorbhai Mohanbhai Vaja in respect to ancestral entry in respect to lease of land for cultivating fruit bearing trees

	(Produced in R.C.S. No.356/2004)
Exh.162	True copy of order dated 19.06.2009 passed by the Collector, Junagadh in respect to extension of lease of land for cultivating fruit bearing trees in Survey No.36 of Junagadh in respect to Mohanbhai Virjibhai Dhobi, Junagadh (Produced in R.C.S. No.356/2004)
Exh.163	True copy of order dated 31.03.87 passed by the Dy. Collector, Junagadh Division, Junagadh in respect to selling of Government mango trees in respect to Mohanbhai Virjibhai Dhobi (Produced in R.C.S. No.356/2004)
Exh.164	True copy of letter dated 18.05.2018 written by Nandkishor Mohanbhai Vaja addressed upon the Collector, Junagadh seeking extension of lease for land for cultivating fruit bearing trees (Produced in R.C.S. No.356/2004)
Exh.165	True copy of form showing the statement of rent for service connection of electricity (Produced in R.C.S. No.356/2004)
Exh.166	True copy of payment receipt dated 24.03.2017 in the name of Mohanbhai Virjibhai Vaja through Nandkishorbhai Mohanbhai Vaja towards lease of fruit and trees (Produced in R.C.S. No.356/2004)
Exh.167	True copy of payment receipt dated 24.03.2017 in the name of Mohanbhai Virjibhai Vaja through Nandkishorbhai Mohanbhai Vaja towards lease of fruit and trees (Produced in R.C.S. No.356/2004)
Exh.168	True copy of extract of register showing the name of Dhobi Mohanbhai Virjibhai (Produced in R.C.S. No.356/2004)
Exh.169	True copy of receipt book in the name of Dhobi Dhanji and Odhavji and Mohan Virji showing account No.283 (Produced in R.C.S. No.356/2004)
Exh.170	Copy of order dated 15.04.2002 passed by the Collector, Junagadh in respect to unauthorized possession of land having fruit revenue showing name of Faruk Nurmamad Durvesh of Junagadh (Produced in R.C.S. No.356/2004)

Exh.171	True copy of order dated 30.06.2003 passed by the Additional Secretary, Revenue Department (Dispute), Ahmedabad in revision application u/s.211 of Land Revenue Code preferred by Faruk Nurmamad Durvesh whereby the said revision was rejected (Produced in R.C.S. No.356/2004)
Exh.172	True copy of registered sale deed No.266 dated 07.02.1986 executed by Hushen Keshar in favour of Faruk Nur Mahmad Durvesh for Ambavadiyu situated outside Majevari Gate on Khamdhrol Road within the limits of Junagadh Nagarpalika (Produced in R.C.S. No.356/2004)
Exh.173	True copy of Village Form No.6 showing entry No.1893 dated 10.02.86 giving effect of registered sale deed No.266 dated 07.02.1986 which was certified on 30.04.1986 by Dy. Mamlatdar (Produced in R.C.S. No.356/2004)
Exh.174	True copy of Village Form No.2 showing entry No.733 (Produced in R.C.S. No.470/2004)
Exh.175	True copy of map showing the possession of Faruk Nurmohmad Durvesh of Survey No.56 Paiki (Produced in R.C.S. No.356/2004)
Exh.176	True copy of application dated 09.09.2004 written Faruk Nurmohmad Durvesh addressed upon the Dy. Secretary, Revenue Department, A-Branch, Sachivalay, Gandhinagar requesting for permanent transfer of land of Ambadiyu at simple rate (Produced in R.C.S. No.356/2004)
Exh.177	True copy of letter dated 10.07.2002 written by Revenue Department (Dispute), Ahmedabad addressed upon Faruk Nur Mamad Durvesh (Produced in R.C.S. No.356/2004)
Exh.178	Attested copy of order dated 29.05.1982 passed by the Collector, Junagadh in respect to permanent transfer of land of Ambadiyu of Survey No.19 Paiki of Junagadh (Produced in R.C.S. No.356/2004)
Exh.179	True copy of letter dated 11.11.2004 written by the Section Officer, Revenue Department addressed upon Faruk Nurmahmad Durvesh in respect to permanent transfer of land of Ambadiyu of Survey No.56 Paiki at simple rate

	(Produced in R.C.S. No.356/2004)
Exh.180	True copy of payment receipt dated 08.02.87 (Produced in R.C.S. No.356/2004)
Exh.181	True copy of payment receipt dated 11.03.1998 for payment of education cess showing name of Faruk Nurmamad (Produced in R.C.S. No.356/2004)
Exh.182	True copy of letter dated 04.03.2016 written by the Collector, Junagadh addressed upon the Dy. Secretary, Revenue Department, L-Branch, Gandhinagar in respect to reconsideration of possession of land of Survey No.15 Paiki showing name of heirs of decd. Hirabhai Sidibhai: Naranbhai Hirabhai Kodyatar etc. (Produced in R.C.S. No.356/2004)
Exh.183	True copy of letter dated 16.07.2015 written by the Collector, Junagadh addressed upon the Dy. Secretary, Revenue Department, L-Branch, Gandhinagar in respect to reconsideration of possession of land of Survey No.15 Paiki showing name of heirs of decd. Hirabhai Sidibhai: Naranbhai Hirabhai Kodyatar etc. (Produced in R.C.S. No.356/2004)
Exh.184	True copy of statement showing the rates for service connection showing name of Faruk Nurmohmad Durvesh (Produced in R.C.S. No.356/2004)
Exh.185	True copy of payment receipt nos.85015 and 85016 issued by Gujarat Electricity Board showing name of Faruk Nurmahmad (Produced in R.C.S. No.356/2004)
Exh.186	True copy of Electricity Bill of October, 87 showing name of Farukbhai Nurmahmad Durvesh (Produced in R.C.S. No.356/2004)
Exh.187	True copy of payment receipt dated 09.12.1987 issued by Gujarat Electricity Board in then name of Farukbhai Nurmahmad (Produced in R.C.S. No.356/2004)
Exh.188	True copy of electricity bill of July, 2018 issued by Pashchim Gujarat Vij Company Limited showing name of Farukbhai Noormahmad Durves (Produced in R.C.S. No.356/2004)
Exh.189	True copy of payment receipt No.WF 186844 issued by P.G.V.C.L. showing name of Farukbhai Noormhmad

	Durvesh (Produced in R.C.S. No.356/2004)
Exh.190	Attested copy of Judgment dated 30.03.1998 passed by 5 th Joint Civil Judge (S.D.), Junagadh in Regular Civil Suit No.425/91 (Produced in R.C.S. No.356/2004)
Exh.191	True copy of bill dated 01.04.1998 issued by Varam Bag & Nursery in the name of Sabir Nurmohmad Durvesh (Produced in R.C.S. No.356/2004)
Exh.133	Closing purshis

3.6 Oral evidence of the defendant:

Exh.76	Deposition of defendant's witness – Rekhaben Naranji Modha Mamlatdar, Junagadh
Exh.136	Deposition of defendant's witness – Patel Kalidas Somdas Mamlatdar, Junagadh City (Produced in R.C.S. No.470/2004)

3.7 Documentary evidence of defendants:-

Exh.138	Copy of order dated 25.11.2005 passed by the Hon'ble High Court of Gujarat in Special Civil Application No.21705/2005 preferred by Mayur Ratilal Dave (Produced in R.C.S. No.356/2004)
Exh.139	Copy of resolution dated 22.08.2014 passed by General Administrative Department, Gandhinagar in respect to implementation of Judgment passed by the Hon'ble Courts in similar cases (Produced in R.C.S. No.356/2004)
Exh.140	Copy of resolution dated 01.01.1987 passed by the Revenue Department in respect to National Scheme of development of non-irrigated Government waste land (Produced in R.C.S. No.356/2004)
Exh.141	Copy of resolution dated 10.06.2003 passed by Revenue Department for National Scheme for development of non-irrigated Government waste lands (Produced in R.C.S. No.356/2004)

Right of the defendant was closed by noting in the

proceeding on 05.12.2019.

4 Issues framed by the court below.

4.1 After considering the material proposition of facts as well as law and at where parties are at variance following issues have been framed vide **Exh.21** under the Order 14 of the Code of Civil Procedure Code, 1908 (*hereinafter be referred as 'the Code'*).

1. Whether the plaintiffs proves that they are owners and in actual possession of suit property?
2. Whether the plaintiff proves that the order in revision No.મ.વિ.વિ./ જમન/ જનક/ ૩૧/૦૨ dt.30/06/2004 dt. 30/09/2004 is unconstitutional, null and void, perverse, with non application of mind & against natural justice and illegal?
3. Whether the plaintiff is entitled to get relief as prayed for?
4. Whether the plaintiffs suit is maintainable?
5. Whether the plaintiff is entitled to get injunction as prayed for?
6. What order and decree?

5 Findings of the Ld. Trial Court on above issues are as under.

1. In Negative.
2. In Negative.
3. In Negative.
4. In Affirmative.

5. In Negative.

6. As per final order.

6 After considering the materials which are available on record, the suit was **rejected** by the Ld. Principal Senior Civil Judge, Junagadh (hereinafter referred to as the “**Ld. Trial Judge**”) via Judgment and Decree dated 17.03.2020. Being aggrieved and dissatisfied with this Judgment and Decree, the plaintiffs has filed this appeal.

7 Since appeal was not dismissed under the Order 41, Rule 11 of the Code of Civil Procedure therefore notice as contemplated under the Order 41, Rule 14 of the Code have been issued to respondents.

8 **Point for determination :-**

I have perused the entire record of the court below, heard arguments of Ld. Advocates of the parties and considering the matter, following points under Order 41, Rule 31 of the Code of Civil Procedure, 1908 are arose to decide present appeal.

8.1 Whether the judgment & decree of Regular Civil Suit No.470/2004 which is in question is arbitrary, capricious, perverse and illegal, and judgment & decree required to be interfered ?

8.2 Whether the trial court failed to decide the issues in the proper perspective?

8.3 Whether the trial court failed to consider the documentary evidence in the proper perspective?

8.4 Whether the Trial Court failed to provide adequate reasoning while discussing the issues?

8.5 Whether the Trial Court misinterpreted the evidence concerning the Circular No.2472 dated 05.03.12?

8.6 What order should be passed in this matter?

9 Reply of the said points under Order 41, Rule 31 of Code of Civil Procedure, 1908.

9.1 In Negative, as discussed.

9.2 In Negative, as discussed.

9.3 In Negative, as discussed.

9.4 In Negative, as discussed.

9.5 In Negative, as discussed.

9.6 As per final order.

As to maintainability of appeal :

10 General provision as to file first appeal has been provided in Sec.96 of the Code of Civil Procedure, 1908. Sec.96 says that, *'Save where otherwise expressly provided in the body of this code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court.'*

10.1 Further neither decree under challenge has not been passed by the consent of the parties nor it is decree of suit of the nature cognizable by the Courts of Small Cause prescribed in sub-section (2) and (3) of the Section 96 of the Code of Civil Procedure, 1908, and therefore the present appeal is maintainable and under the Gujarat Civil Court Act, 2005 this court is empowered to hear first appeal in present case.

THE POWER OF APPELLATE COURT AS

**PROVIDED UNDER THE ORDER 41 RULE 33
OF THE CODE OF CIVIL PROCEDURE, 1908:-**

Under O-41 Rule-33 of the Code of civil procedure, 1908, the power of court of appeal has been provided and it is reproduced herein as under-

" 33:Power of Court of Appeal-

The Appellate Court shall have power to pass any decree and make any the order which ought to have been passed or made and to pass or-make such further or other decree or the order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favor of all or any of the respondents or parties, although such respondents or parties, may not have filed any appeal or objection 1.1. Ins. by Act 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977). [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees] : ”

- 10.2** Therefore, by reading said provision then it is quite clear that the court of appeal can pass any order or decree which ought to have been passed and such power can be exercised against any party to the proceedings.

Standard of proof :

- 11** The Evidence Act, 1872 provides as regards how evidence becomes admissible, impact of evidence and how and when any fact can be said to be proved. In interpretation clause of The Evidence Act, 1872, the interpretation of proved has been given as under :-

proved – “A fact is said to be proved when, after considering the matter before it, the Court either believes it to exists, or considers its existence so

probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

- 11.1 Second part of said clause says as to standard of prudent man and it is settled proposition of civil jurisprudence that standard of proof in civil matter is preponderance of probability. It means such degree of probability as would satisfy the mind of a reasonable man as to the existence of a fact. Thus herein also court has to keep said standard in mind while evaluating the evidence.

12 Arguments of the appellant/original plaintiffs’ side:

- 12.1 The learned advocate for the original plaintiffs has argued out the matter encircling the stand taken in the suit before the Trial Court and averments made in the memo of appeal.
- 12.2 It is argued out that the judgment and decree passed by the learned Trial Court are erroneous, contrary to the facts and law, unjust, illegal, perverse, and against the evidence on record as well as the settled provisions of law, and therefore deserve to be set aside by this Hon’ble Appellate Court.
- 12.3 It is further argued out that since the period of the erstwhile Junagadh State and the rule of the Nawab, the wastelands and uneven lands containing pits and mounds situated outside the village were allotted by the State on the condition that such lands would be levelled and fruit-bearing trees would be planted thereon, and that customary dues/revenue would be paid once the trees started yielding fruits. Subject to payment of such customary tax (Dasturi),

the erstwhile State had allotted such wastelands. Thereafter, individuals invested years of labour and substantial expenditure in developing orchards and planting fruit-bearing trees, and Dasturi/revenue has been continuously paid for the last six to seven decades.

12.4 It is further argued out that by virtue of successive registered sale deeds since the year 1950, the plaintiffs-appellants' father acquired possession of the mango orchard trees through Registered Sale Deed No. 938 dated 12.03.1990, produced at Exhibit 44. Mutation Entry No. 4964 has been recorded in the defendants' record in Village Form No. 6 (Record of Rights), produced at Exhibit 45. Further, entries have also been made in Village Form No. 2 in the name of the plaintiffs' father, as evidenced by Exhibit 46. Receipts evidencing payment of revenue have been produced at Exhibit 47. The documents produced by the plaintiffs from Exhibits 42 to 69 unequivocally establish, even according to the defendants' own records, that the plaintiffs are in settled and lawful possession.

12.5 It is further argued out that according to the deposition at Exhibit 136 of the defendants' own officer, Mamlatdar Shri Patel Kalidas Somdas:

"એ વાત ખરી છે કે, જુનાગઢ સ્ટેટના વખતના જુના ઠરાવ મુજબ દસ્તુરીના ઝાડની માલીકી જે તે ખેડુત ની રહે અને જમીનની માલીકી સરકાર ની રહે તેવી જોગવાઈ કરવામાં આવેલી હતી. એ વાત ખરી છે કે, દસ્તુરીના ઝાડનુ વેચાણ થઈ શકતુ હતુ. એ વાત ખરી છે કે જ્યારે દસ્તુરીના ઝાડનુ વેચાણ થાય ત્યારે તેની નોંધ દસ્તુરી રજીસ્ટરમાં કરવામાં આવતી અને ઝાડ લેનારનુ નામ રજીસ્ટરમાં લખવામાં આવતુ. એ વાત ખરી છે કે આ બધા દાવા વાળી આંબાવાડીયા વાળી

જમીન જુનાગઢ ના નવાબ સ્ટેટના વખત થી દસ્તુરી ભરવાની શરતે જમીનો અપાયેલી છે. ફળાઉ ઝાડ ના હક્ક અપાયેલ છે. જમીન અપાયેલી નથી. એ વાત ખરી છે કે જુનાગઢ રજવાડા પાસે થી નવી સરકાર આવી ત્યારે નવાબી સ્ટેટ વખતનું તમામ રેકર્ડ નવી સરકારને મળેલ છે. એ વાત ખરી છે કે જુના રજવાડા અને નવી સરકાર વચ્ચે આ બધો વહીવટ નવી સરકારએ સંભાળ્યો ત્યારે બન્ને વચ્ચે એક કરાર થયેલો છે. XXXX XXX ઉતરોતર બ્રહ્મ મુંબઈ રાજ્ય, સૈરાઈ સરકાર અને ત્યારબાદ ગુજરાત સરકારએ સંભાળેલ છે અને તે ઉતરોતર વ્યવસ્થા જેમની તેમ ચાલુ રહેલી. એ વાત ખરી છે કે દસ્તુરી એટલે હાલ જમીન વહેસુલ કહીએ છીએ તે જાતનો એક વેરો હતો. એ વાત ખરી છે કે આવી વ્યક્તિઓ દસ્તુરી ભરે ત્યાં સુધી તે ઝાડોની માલીકી અને તેની ઉપજ તેને લેવાની હતી. XXXX XXXX મુંબઈ લેન્ડ રેવન્યુ કોડ ની કલમ ૬૧, ૭૯(એ), ૨૦૨ વિગેરે અંગેની કાર્યવાહી સરકારશ્રી ની પરવાનગી કે હુકમ વગર પેશકદમી કરી લીધેલ હોય તેવી વ્યક્તિઓ સામે કરવાની જોગવાઈ છે. એ વાત ખરી છે કે હાલના વાદીઓ એ જમીન ઉપર કોઈ પેશકદમી કરેલી નથી. "

- 12.6** It is further argued out that from the aforesaid oral and documentary evidence, it stands conclusively established that the ownership and possession of the fruit-bearing mango trees situated on Survey No. 35, admeasuring 1 Acre and 24 Gunthas, vest with the plaintiffs. Even the revenue records of the present Government of Gujarat contain corresponding entries in various records of rights. Dasturi/revenue was also continuously recovered from the plaintiffs until the impugned order came to be passed.
- 12.7** It is further argued out that despite the aforesaid evidence, the learned Trial Court committed a grave error in holding that the plaintiffs' possession was illegal and that the plaintiffs had failed to establish lawful possession. Even

according to the testimony of the Mamlatdar himself, there was no encroachment. Nevertheless, contrary to the record, the learned Trial Court erroneously held that the plaintiffs were not in lawful possession.

12.8 It is further argued out that the defendants have, in similar cases, passed orders conferring permanent rights in respect of such mango orchards. The plaintiffs have also applied for conferment of permanent rights in respect of their orchard. Even in the deposition at Exhibit 136 of the defendants' officer, it has been admitted that the present plaintiffs had applied for permanent rights. However, for reasons unknown, the lands of certain persons containing mango orchards have been regularized and made permanent, whereas no decision has been taken regarding the plaintiffs and other similarly situated claimants. No explanation has been furnished by the Government in this regard. The learned Trial Court has failed to consider and appreciate this highly material and significant fact.

12.9 It is further argued out that the plaintiff is in possession and enjoyment of mango trees and other fruit-bearing trees standing on Survey No. 35, admeasuring 1 Acre and 24 Gunthas, classified as Class-4 land. The possession and enjoyment thereof are with the plaintiff, and even the defendant has no dispute regarding such possession. Further, the said mango orchard property has been continuously recorded in the revenue records of the defendant-Government, and corresponding revenue entries have been made from time to time. Thus, there is no dispute regarding possession. However, where a party

claims possession, such party is required to establish by evidence that the possession is lawful.

12.10 Merely because the defendant's witness, during cross-examination, has stated that the plaintiff has not made any encroachment, it cannot be said that there was no encroachment solely on that basis. However, this witness is none other than the Mamlatdar himself, and he has made a clear admission. Apart from this, numerous documents produced by the plaintiff and the revenue records of the defendant clearly establish that the plaintiffs have been in settled, continuous, uninterrupted, and acknowledged possession without any interference whatsoever. Such possession is further proved through legally registered documents and public documents.

12.11 It is further argued out that in such circumstances, proceedings under Section 79(A) of the Bombay Land Revenue Code are merely summary in nature, wherein neither examination nor cross-examination of witnesses takes place, nor is evidence recorded. Furthermore, there exists no provision of law authorizing the defendant to discontinue the Dasturi in such a manner. The proceedings initiated by treating the matter as one of encroachment under Section 79(A), contrary to the provisions of the said section, and the orders passed therein, are clearly unauthorized and illegal. The plaintiffs have also produced citations of the Hon'ble High Court on this issue. The learned Trial Court has failed to consider the same and has also ignored the aforesaid legal provisions. Consequently, the order dismissing the suit is wholly erroneous and

illegal.

12.12 It is further argued out that the mango trees and other fruit-bearing trees situated in the plaintiff's mango orchard have been developed over a period of six to seven decades through substantial expenditure and hard labour. The income and livelihood of the plaintiff and his family depend upon the produce and fruits derived from the said orchard. The plaintiff thus has a constitutional right in respect of the said property.

12.13 It is further argued out that despite the fact that Section 79(A) is ex facie inapplicable, proceedings have been initiated against the plaintiff's property by way of a colourable exercise of powers. Further, the order passed by the Secretary, Disputes, contains no findings or conclusions whatsoever. Therefore, both the impugned orders are unauthorized, illegal, unjust, and contrary to the settled legal position, and are liable to be quashed and set aside by this Hon'ble Appellate Court.

12.14 It is further argued out that the plaintiffs have produced at Exhibit 70 a copy of the Resolution dated 05.06.1928 issued during the period of the erstwhile Junagadh State. The original of the said Resolution is admittedly in the custody of the defendant, and the plaintiff has produced a xerox copy thereof at Exhibit 70. The plaintiff had also requested the defendant to produce the original Resolution. As per the said Resolution, such mango orchards constitute property capable of transfer, inheritance, succession, and mortgage.

12.15 It is further argued out that the original Resolution is in the

possession of the defendant, and the plaintiff has produced its xerox copy at Exhibit 70. The defendant has not disputed either the existence or the authenticity of the said Resolution. Nevertheless, the learned Trial Court has held that the Resolution has not been properly proved, that it is not clear, and that it does not specify the particular land in question. The Court has further observed that, in relation to the plaintiff's land, the document does not identify or describe the disputed property involved in the present suit.

12.16 It is further argued out that however, the document in question is a general Resolution applicable to all Dasturi lands, and there was no reason for it to contain the particulars and description of every individual parcel of land. The Resolution governs all lands of the Dasturi category. The plaintiff's successive title documents produced at Exhibits 42 to 44 specifically mention the survey number, description, and particulars of the land. The learned Trial Court has therefore committed a grave error in failing to properly appreciate that the Resolution dated 05.06.1928 applies to such Dasturi lands and in misconstruing its true meaning and effect.

12.17 It is further argued out that the findings recorded by the learned Trial Court in Paragraph 10.4 are erroneous and contrary to the record. The Court has observed that no fact establishing any lawful ownership right either over the suit property or over the fruit-bearing trees standing thereon has been proved on record. The plaintiff has produced revenue documents at Exhibits 46, 47 and 51. Further, the certificates produced at Exhibits 50, 51 and subsequent

exhibits are certificates issued on plain paper bearing the seal of the City Talati and containing written endorsements. However, the learned Trial Court has observed that it cannot be presumed from the face of those documents that the person issuing such certificates, in the capacity of City Talati, was duly authorized to issue the same.

12.18 It is further argued out that there is, however, no dispute raised by the defendant regarding the aforesaid documents. No objection whatsoever has been taken against them. Further, none of the revenue entries have been cancelled either by any Revenue Officer, any competent Court, or any other authority. Despite the existence of such numerous public documents, the learned Trial Court, without any foundation whatsoever, concluded that no fact establishing a lawful ownership right over the fruit-bearing trees emerges from the record. Such a finding is contrary to the evidence and the record.

12.19 It is further argued out that not only this, but even the orders passed by the Collector and the Secretary (Appeals) acknowledge that the ownership of the mango orchard trees vests in the plaintiff. Despite such admissions, the learned Trial Court has held that neither ownership nor possession of the mango orchard trees has been established. Such a conclusion has been arrived at without any basis or foundation and is directly contrary to the record. Therefore, the judgment and decree of the learned Trial Court are contrary to the evidence on record and are illegal.

12.20 It is further argued out that the learned Trial Court has failed to frame issues in accordance with the pleadings of the parties, particularly Issue No. 11. The issues have not been framed in consonance with the pleadings, affidavits, and documentary evidence produced on record. Further, the learned Trial Court has committed a serious error in holding that the orders passed by the defendants alleging encroachment by the plaintiff were proper and legal.

12.21 It is further argued out that the impugned orders of the defendants themselves, the defendants' own records, and the oral evidence led on behalf of the defendants clearly establish that the plaintiffs had not committed any encroachment and that the suit property has continuously remained in the possession and enjoyment of the plaintiffs through successive title documents. Despite this, the learned Trial Court has erroneously held that the proceedings initiated under Section 79(A) relating to encroachment were valid and has thereby dismissed the suit. Such a finding constitutes a grave error.

12.22 It is further argued out that the plaintiff's mango orchard has devolved through successive registered sale deeds beginning with the document dated 20.12.1950 produced at Exhibit 42. Thereafter, successive registered sale deeds have been executed, and corresponding mutation entries have been recorded in Village Form No. 6 (Record of Rights) maintained in the revenue records of the defendant. Revenue has also been continuously recovered on the basis of such entries.

12.23 It is further argued out that none of these documents have

been cancelled or set aside by any Revenue Authority, any competent Civil Court, or any Hon'ble High Court. In the face of such registered documents and public records, the learned Trial Court had no basis or justification to draw adverse inferences unsupported by any evidence. It is a settled legal position that a registered sale deed remains valid and lawful unless and until it is set aside by a competent Court. The learned Trial Court has committed a serious error in disregarding this settled legal principle and in arriving at findings to the contrary.

12.24 It is further argued out that the impugned judgment and decree passed by the learned Trial Court are contrary to the principles of justice and settled legal procedure, erroneous, unjust, and against the record, evidence, documentary material, and applicable provisions of law. Therefore, considering the entire oral and documentary evidence on record, as well as such further grounds as may be urged at the time of personal hearing, this Hon'ble Appellate Court may be pleased to allow the present appeal. It is further argued that the plaintiffs have produced the relevant resolutions before the Trial Court. According to the said resolutions, the ownership of the trees would vest in the occupants. It is submitted that the initial resolution provided that, until the trees were grown and crops were harvested, the produce would belong to the occupants; however, upon the trees drying up, the ownership of the dried wood would vest in the Government. It is further submitted that, since people were not cultivating crops, a subsequent resolution was issued providing that the trees

for which the occupants had incurred expenses would belong to the occupants.

12.25 It is further argued that three resolutions were relied upon by the plaintiffs and were also referred to in the judgment itself. However, the Trial Court observed that no details regarding the four boundaries, location, etc. were specified in the said resolutions. The learned Advocate has relied upon the compilation/book containing the said Government resolutions.

12.26 It is further argued that the said resolutions were considered in the orders passed by the Collector and the Secretary, Revenue Department (Disputes), wherein it was held that the ownership of the trees belonged to the plaintiffs. However, the authorities subsequently ordered confiscation under Section 79 of the Act. Reliance has also been placed upon a decision of the Hon'ble Supreme Court, wherein it has been held that if the trees belong to the occupants, the Government cannot take possession thereof in a summary manner and compensation is required to be awarded in accordance with the provisions of the Land Acquisition Act. It is submitted that possession cannot be taken without payment of such compensation. It is further contended that, without considering the principle laid down in the said judgment, the Trial Court observed that it would not be proper to extend the benefit of the said judgment to the plaintiffs. The learned Advocate has drawn the attention of this Court to the said observation.

12.27 It is further argued that the Trial Court has recorded findings contrary to the Government resolutions and the

revenue record.

12.28 It is further argued that the names of all subsequent purchasers were duly entered in the revenue record and that the entry in favour of the plaintiff was made in the year 1980. It is submitted that neither at that time nor thereafter has any objection been raised by the Government.

12.29 It is further argued that the Trial Court has recorded an unusual finding regarding possession of the suit land, and reliance has been placed upon the said findings.

12.30 It is further argued that the title of the sale deed itself indicates that the transaction pertained to the sale of trees. It is specifically stated therein that the sale was only in respect of the trees. The Mamlatdar, Junagadh, has also admitted in his cross-examination that the sale pertained only to the trees. He further admitted that all subsequent sale deeds were considered and Dasturi was recovered thereon. Therefore, it is submitted that the finding recorded by the Trial Court is wholly erroneous.

12.31 It is further argued that the Trial Court has failed to consider the certificates produced by the plaintiffs on record, such as permissions granted for deepening of the well and other permissions issued by the Talati.

12.32 It is further argued that the Trial Court observed that the payment receipts do not disclose title. However, the plaintiffs have never claimed title over the suit land and have filed the suit only for declaration of ownership of the trees.

12.33 It is further argued that the resolutions relied upon are

Government resolutions and that the Mamlatdar has not denied the same. On the contrary, the resolutions have been admitted by the Mamlatdar during cross-examination.

12.34 It is further argued that the Trial Court observed that the resolutions were not proved. It is submitted that Government resolutions, being public documents, do not require proof in the manner contemplated by the Trial Court. Reliance is therefore placed upon the compilation/book containing such resolutions.

12.35 It is further argued that revenue entries carry a presumption of correctness under Section 135J of the Act and that it was for the Government to rebut the same. It is submitted that the Government officials have not denied the said entries.

12.36 It is further argued that the Trial Court held the possession of the plaintiffs to be unlawful and relied upon Section 37(2) of the Bombay Land Revenue Code. It is submitted that the procedure prescribed under Section 37(2) is required to be followed and that proceedings under Sections 79, 61 and 202 can be initiated only in cases of encroachment.

12.37 It is further argued that the relevant resolution specifically provides that Section 37(2) applies in cases where a suit is filed by or against the Government in respect of Government property, so that evidence may be recorded and the Court may adjudicate the dispute. Reliance is also placed upon Section 37 of the Act, which pertains to land and rights over land.

12.38 It is further argued that the Trial Court considered the

provisions of Section 79, whereas Section 79A pertains only to encroachers.

- 12.39** It is further argued that the Deputy Collector had suo motu initiated proceedings for confiscation of the land but failed to specify which condition had been breached. It is further submitted that the procedure prescribed for conducting the inquiry was not followed by the authorities, though a regular and formal inquiry was required. Reliance has been placed upon the relevant judgment as well as the pleadings in the suit.
- 12.40** It is further argued that it is specifically pleaded by the plaintiffs that Section 79A pertains to encroachment. To establish possession, the plaintiffs have produced documentary evidence such as revenue receipts, tax payment receipts, etc. It is further submitted that all improvements to the land were carried out with the permission of the authorities and that the Government never objected thereto. Therefore, it is contended that a regular inquiry was required to be conducted under Rules 196 and 197.
- 12.41** It is further argued that a suggestion was put to the Mamlatdar during cross-examination regarding the fact that no reply had been given to the applications submitted for regularisation of the land, and the Mamlatdar answered the same in the affirmative.
- 12.42** It is further argued that, pursuant to the orders passed by the Government, certain persons approached the Hon'ble High Court, and in one such matter the land of one Sakarlal Purohit was regularised upon payment of

premium. However, no reply was given to the request made by the plaintiffs. In support of this contention, the learned Advocate has relied upon the judgment in the case of Mayur Ratilal Joshi, wherein the Hon'ble High Court held that representations made by litigants are required to be considered and that land may be allotted subject to appropriate conditions.

12.43 It is further argued that the Trial Court has accepted the plaintiffs' possession of the suit trees on the basis of the sale deed. However, while deciding the other issues, the said aspect has not been taken into consideration.

12.44 Thus, prayed to allow the appeal and quash and set aside the impugned Judgment and Decree of the Trial Court and to allow the suit of the plaintiffs.

13 Arguments of the respondent/original defendant:

13.1 The learned AGP for the original defendant has argued out the matter encircling the contentions taken in the written statement before the Trial Court.

13.2 It is further argued out that the Trial Court has passed the Judgment and Decree after appreciating the entire evidence on record and after affording opportunity of leading evidence and hearing to both the sides which does not call for any interference of this Hon'ble Court.

13.3 It is thus argued to dismiss the appeal with costs.

REASONS

14 As regards Issue Nos.1, 2 and 4:-

1. Whether the plaintiffs proves that they are owners and in actual possession of suit

property?

2. Whether the plaintiff proves that the order in revision No.મ.વિ.વિ./ જમન/ જનક/ ૩૧/૦૨ dt.30/06/2004 dt. 30/09/2004 is unconstitutional, null and void, perverse, with non application of mind & against natural justice and illegal?
4. Whether the plaintiffs suit is maintainable?

14.1 The present suit has been filed by heirs of decd. Kantilal Karshanbhai Patel. The land involved in the suit is Survey No. 35, admeasuring Acre 1-24 Gunthas. According to the plaintiffs, the said land was purchased by way of a registered sale deed No.938 dated 12.03.1990 (Exh.44).

14.2 It is the case of the plaintiffs that they have rights over the said land since the time of the erstwhile Junagadh State and that they are in possession of the suit land by virtue of the registered sale deed. It is further pleaded that such fruit-bearing trees could be sold or mortgaged and that, under such provisions, the plaintiffs was put in possession of the land through the said sale deed.

14.3 The said sale deed has been produced at Exh. 44. From the said document, it transpires that the transaction took place between Patel Kantilal Karshanji, i.e., the father of the present plaintiffs, and Dhobi Ravjibhai Ramjibhai. It is specifically stated by the seller therein that:

“શહેર જુનાગઢ તળપદમા મહોદ્દે ધારાગઢ દરવાજા બહાર ત્રીવેણી નદીના કાંઠા ઉપર મારી માલીકી અને કબજા

ભોગવટાના આંબાના ઝાડો ખાતા નંબર ૧૫૧ તથા ૬૪૬ મળી કુલ આંબાના ઝાડો ૫૬ છે.”

14.4 It is an admitted fact, as stated by the plaintiffs in Paragraph 8 of the plaint, that:

“...આ જમીનની માલિકી રેવન્યુ રેકર્ડ મુજબ સરકારશ્રીની છે (માલીકી સરકારશ્રીની છે તે કોઈ વાધો કે તકરાર વાદીની નથી...)

14.5 Further, the plaintiffs have specifically pleaded in para 13 that:

“(૧૩) વાદ્યસ્ત જમીન ઝાડો ગત જુનાગઢ સ્ટેટના વખતમાં અપાયેલ છે. જ્યારે તે અપાણા તે વખતે શું શરતો હતી અને કઈ શરતનો ભંગ થયો અને જુનાગઢ સ્ટેટના વખતમાં શરત ભંગ થાય તો શું કરવું તે વખતની ગ્રાન્ટ કે પટો હોય તે વખતની શરતો ના ભંગ અંગેની જોગવાઈઓ શું હતી, તેમાં હાલની દાવાવાળી દસ્તુરી વાળી જમીન અગાઉના રાજ્યના વખતની કાયમી ગ્રાન્ટ છે, હાલની નથી. મુદતબંધી હાલમાં થાય છે તેમ ૧૫ વર્ષની મુદતબંધી ૩૦ વર્ષની મુદતબંધી તેવા કોઈ બંધ નથી. ફળાઉ ઝાડ માટે જમીન અપાયેલ નથી. જે તે વખતના કાયદા મુજબ જમીન ફળાઉ ઝાડ માટે આપી હોય, તો દસ્તુરી નક્કી થાય તે ભરવામાં આવે ત્યાં સુધી તે જમીન પાછી લેવા જે તે વખતના ગત જુનાગઢ રાજ્યના કોઈ ઠરાવ નથી. હાલની સરકાર આવ્યા પછી જુના રાજ્ય સરકારના અમલ દરમ્યાન અપાયેલ ફળાઉ ઝાડો વાળી જમીનનું શું કરવું તે અંગે હાલની સરકારનો કોઈ ઠરાવ નથી. કે તે અંગે કાયદાની કોઈ જોગવાઈ નથી. આ કેસની હકીકત કે કાયદાનો યોગ્ય અર્થ કરવામાં આવે તો પ્રતિવાદીનો ઠરાવ તથા ખાસ સચિવશ્રીનો ઠરાવ જેમાં કલેક્ટરશ્રીનો ઠરાવ કાયમ રાખવા સિવાય કાંઈ વિશેષ કોઈ તર્કસંગત કોઈ વાજબી કારણો નથી. આ બંને ઠરાવો વાદીના કાયદેસરના ફળાઉ ઝાડો કે જે લાંબી મહેનત, મજૂરી, ખર્ચ પછીના કાયદેસર કબ્જાવાળા ઝાડો કાનુની રીતે, ભારતના બંધારણની જોગવાઈ મુજબ વળતર આપ્યા વિના લઈ શકાય નહીં. એકસાલી રીતે આપવા અંગેનો

કોઈ ઉદ્દેશ ન હોવા છતાં આબીટરી મનસ્વી રીતે તેવું ઠરાવવામાં આવેલ છે. જે તદ્દન ગેરકાયદેસર છે. જુનાગઢ રાજ્યના વખતથી દસ્તુરી લઈ, મહેસુલ વસુલ લઈ અત્યાર સુધી ચાને જુનાગઢ રાજ્ય પછી સૌરાષ્ટ્ર રાજ્ય બાદ બૃહદ મુંબઈ રાજ્ય અને ત્યારબાદ ગુજરાત રાજ્ય ૧૯૬૦ થી અમલમાં આવ્યું ત્યારથી અત્યાર સુધી વાંધાજનક ગણવામાં આવ્યું નથી અને હવે ખુબ જ લાંબા સમય પછી પ્રતિવાદીના આ કૃત્યને પ્રોમીસરી ઈસ્ટોપલ અને પ્રીન્સીપલ ઓફ લેચીઝ અને વેવનો બાધ નડે છે. આમ, સમગ્ર હકીકતોએ કલેક્ટરશ્રી તેમજ અધિક સચિવ શ્રીના ઠરાવો અન્યાયી અને ગેરકાયદેસરના અને રદ થવા પાત છે.”

14.6 Further plaintiffs has pleaded in para 18 that:

“(૧૮) જુનાગઢ રાજ્ય નેટીવ સ્ટેટના નવાબ સાહેબનું રાજ્ય હતું. તેઓ પાકીસ્તાન જતા રહ્યા અને તેના રાજ્યના કુલ સતાધીશ તરીકે હાર્વેજોન્સની નિમણૂંક કરતા ગયેલા. એટલે સૌરાષ્ટ્રનું લોકશાહી રાજ્ય તમામ રાજ્યના એકમથી ઉપસ્થિત થયું. ફેબ્રુઆરી ૧૯૪૮ માં તે વખતે પણ જેમનું તેમ જુનાગઢ રાજ્ય હતું ત્યારબાદ સપ્ટેમ્બર ૧૯૪૮ માં હાર્વેજોન્સે સૌરાષ્ટ્ર રાજ્ય સાથે ભળવા માટે કોવેનન્ટ કર્યું. બીજા રાજ્યો પણ કોવેનન્ટથી પણ સૌરાષ્ટ્રમાં ભળી ગયા હતા અને તે કોવેનન્ટમાં પણ જુનાગઢમાં રાજ્યો અમલ દરમિયાન જે કોઈ ધારાધોરણ કાયદા હુકમો કર્યા હોય તેમા નવા રાજ્યને ફેરફાર કરવાની સત્તા નથી, તે મુજબ પણ જુનાગઢ રાજ્યના વખતમાં ખરાબ ઝાડોની જમીન જે-તે શખ્સને આપેલી હોય, તેમાં રાજ્ય સરકાર ફેરફાર કરી ગ્રાન્ટ રદ કરી શકતી નથી. તેથી પણ રાજ્ય સરકારના ધારાસભાના નિર્ણય વગર અને કાયદા વગર કલેક્ટરશ્રીને વાદીની ગ્રાન્ટ રદ કરવા હકુમત નથી.

14.7 Further, the plaintiff has deposed in cross examination at Exh. 41 that , "દાવા વાળી તકરારી જમીન મારા પિતાએ દસ્તાવેજથી વેંચાણ રાખેલી. આ જમીન મારા પિતાએ ૧૩ વર્ષ પહેલા ખરીદેલી....”

14.8 Therefore, it is clear case of the plaintiffs that the erstwhile Junagadh State had granted the lease, and that by virtue of

such lease, the plaintiffs entered into the registered sale deed produced at Exh.44. It is further the case of the plaintiffs that, by virtue of the said sale deed, they being heirs of decd. Kantilal are in possession of the suit land.

14.9 Herein, the plaintiff has produced circular bearing No.2472 dated 05.03.1912 which says that:

“(અ) ખેડુતના કબજાની જમીનમાના ફળાઉ ઝાડની વ્યવસ્થા જમીનથી જુદી કરવામા આવશે નહી અને તેમને જમીન સંબંધીના નિયમો લાગુ પડશે. જે સક્ષ તેવા ઝાડ વાવશે તેમને સરકાર હક ભરવાની શરતે જ્યાસુધી તે જમીન ધારણ કરશે ત્યા સુધી ઝાડના ફળ ફાલનો ભોગવટો બીન હરકત કરવા દેવામાં આવશે.

(બ) જે સક્ષને સરકારી ખરાબા જમીનમાં ફળ ઝાડ વાવા શકે તેઓ રેવન્યુ ખાતાના અધિકારી ની મંજૂરી મેળવીને તેવા ઝાડ વાવી શકશે. તેઓને સરકાર હક ભરવાની શરતે તેના ફાલ ફળનો ભોગવટો બીન હરકતે કરવા દેવામાં આવશે અને તેવો હક રજીસ્ટર દસ્તાવેજથી પોતાની મરજી પ્રમાણે ગીરો વેચાણ કરી શકશે એટલે તે ઉપરનો સરકાર હક આપવા વેચાણ ગીરો રાખનાર પાત્ર થશે અને તે ઝાડ સુકાઈ જશે એટલે તેના લાકડા ઉપર સરકારનો હક રહેશે.

(ક) આ હુકમની તારીખ પહેલા કબજાની તેમજ પડતર સરકારી જમીનમાંનાં ફળાઉ ઝાડ સંબંધીના વેચાણ ગીરોના સાટા સંબંધી દસ્તાવેજો રજીસ્ટર થયેલા નહી હોય તો તે માન્ય કરવામાં આવશે નહી. જે સક્ષો પાસે આવી બાબતના રજીસ્ટર દસ્તાવેજ ન હોય તેમણે આ હુકમની તારીખથી છ માસથી અંદર તેવા વેચાણ ગીરો સંબંધી રજીસ્ટર દસ્તાવેજો કરાવી લેવા. ત્યારબાદ જે વેચાણ ગીરો સંબંધી રજીસ્ટર થયેલા

દસ્તાવેજો નહીં હોય તે તમામ વેચાણ ગીરો રદ સમજવા. અને તેવા ફળાઉ ઝાડની વ્યવસ્થા સરકાર તરફથી આ નિયમને અનુસરી કરવામાં આવશે.”

14.10 Therefore, according to the said circular, a person having the right to sow fruit-bearing trees can transfer such right over those trees by way of a mortgage or a registered sale deed.

14.11 Further Circular No.2234 dated 04.07.1914 says that:

“ આ સ્ટેટમાં કબજાની અથવા બીજા કબજાની જમીનમાં ફળાઉ ઝાડ આંબા, ગુંદા વિગેરેના વાવેતર સંબંધમાં તથા તેના ભોગવટા બાબતમાં સાં. ૧૯૬૮ ના ચૈત્ર માસના દસ્તુરલ અમલ પુસ્તક જપ ને પાને ૩૩૩ મે હજુર ઓફીસ જા. નં. ૨૪૭૨ તા. ૫-૩-૧૨ નો જે સરકયુલર પ્રસીધ્ધ થયેલ છે તેની કમલ ૩ ની પેટા કલમ 'બ'માં નીચે પ્રમાણે જણાવેલું છે.

“જે શક્ષને સરકારી ખરાબા જમીનમાં ફળ ઝાડ વાવવા હશે તેઓએ 'રેવન્યુ ખાતાના અધિકારીની મંજૂરી મેળવીને તેવા ઝાડ 'વાવી શકશે'”

આવી મંજૂરી રેવન્યુ ખાતયાના કયા અધિકારી આપી શકે તે બાબતમાં કાંઈ નિર્ણયકારક ખુલાસો થયેલો નહીં હોઈને તેવી પરવાનગી માટે જે તે મહાલના રા. રા. વહીવટદાર પાસે તેવી અઅરજી રજુ થયેથી તપાસ કરી કોઈ જાતની અડચણ ન હોય તો તેવી પરવાનગી તેમણે પોતાથી આપવાનું ઠરાવવામાં આવે છે.”

14.12 Therefore, a person who intends to sow or plant a tree is required to obtain the permission of the competent authority.

14.13 Therefore, the plaintiff is required to prove that he or his predecessor-in-title was permitted to plant such trees and that his predecessor's case, or his own case, falls within the ambit of the said circulars.

14.14 It is an undisputed fact that the lease or grant was not granted in favour of the plaintiffs or their father. Therefore, it was incumbent upon the plaintiffs to establish that the original lessee/grantee had the right to transfer possession of the suit land. However, the plaintiffs have not produced any evidence in support of such contention. On the contrary, the defendant, Patel Kalidas Somdas, has deposed at Exh. 136 and has specifically stated that:

“(૩) આ કામના સદરહુ વાદીઓએ વેંચાણ લીધા સમયે જુનાગઢ સ્ટેટનો મહેસુલ કાયદો અમલમાં નથી તેમજ નવાબ સ્ટેટના રાજ્યનું વિલિનકરણ થતા તે સઘળા કાયદાઓ રદ કરી અને જમીન મહેસુલ અધિનિયમ-૧૮૭૯નો કાયદો વટ હુકમ નં. ૨/૧૯૫૯ બહારપાડી તા.૨૦/૫/૧૯૫૯થી મુંબઈનો કાયદો સૌરાષ્ટ્ર વિસ્તારને લાગુ કરવાના વટ હુકમો રાજ્ય સભા/સાંસદ સભાથી પસાર થયેલ છે. જેથી લેન્ડ રેવન્યુ કોડમાં ફળાઉ દસ્તુરીની જોગવાઈ નથી. જેથી અગાઉના કાયદો રદ થયેલ છે તેમ સમજવાનું રહે છે. આ અંગે કલેક્ટર શ્રીના વટહુકમ અનુસાર સરકાર શ્રીની ગાઈડ લાઈનનો પરિપત્ર તા.૧૧/૧૧/૧૯૬૬, ત્યારબાદ ૦૧/૦૧/૧૯૮૭ તથા તા.૧૦/૬/૨૦૦૩ના પરિપત્ર મુજબ સવાળવાળી જમીનનો કબજો ખુલ્લો કરવો જુરરી છે. સવાળવાળી જમીન જંગલ ખાતાને અડીને આવેલ છે. તથા વિકસીત હોવાથી સરકાર શ્રીનું નાણાકીય હિત જોખમાય તેમ છે. જેથી સરકારી જમીનનું ખાતું બંધ કરવા નિર્ણય લેવામાં આવેલ છે. તેમ છતાં વાદીએ નામદાર અદાલતનો આશરો લઈ સવાળવાળી જમીનમાં ચીપડી રહેવાના બદલ્લિયા હાલનો ખોટી હકીકતો સભર દાવઓ કરેલ છે જે રદ કરવા અરજ છે.”

14.15 Herein, the Mamlatdar has specifically deposed vide

Exh.136 that :

“(૩) આ કામના સદરહુ વાદીઓએ વેંચાણ લીધા સમયે જુનાગઢ સ્ટેટનો મહેસુલ કાયદો અમલમાં નથી તેમજ નવાબ સ્ટેટના રાજ્યનું વિલિનકરણ થતા તે સઘળા કાયદાઓ રદ કરી અને જમીન મહેસુલ અધિનિયમ-૧૮૭૯નો કાયદો વટ હુકમ નં. ૨/૧૯૫૯ બહારપાડી તા.૨૦/૫/૧૯૫૯થી મુંબઈનો કાયદો સૌરાષ્ટ્ર વિસ્તારને લાગુ કરવાના વટ હુકમો રાજ્ય સભા/સાંસદ સભાથી પસાર થયેલ છે. જેથી લેન્ડ રેવન્યુ કોડમાં ફળાઉ દસ્તુરીની જોગવાઈ નથી. જેથી અગાઉના કાયદો રદ થયેલ છે તેમ સમજવાનું રહે છે. આ અંગે કલેક્ટર શ્રીના વટહુકમ અનુસાર સરકાર શ્રીની ગાઈડ લાઈનનો પરિપત્ર તા.૧૧/૧૧/૧૯૬૬, ત્યારબાદ ૦૧/૦૧/૧૯૮૭ તથા તા.૧૦/૬/૨૦૦૩ના પરિપત્ર મુજબ સવાળવાળી જમીનનો કબજો ખુલ્લો કરવો જુરરી છે. સવાળવાળી જમીન જંગલ ખાતાને અડીને આવેલ છે. તથા વિકસીત હોવાથી સરકાર શ્રીનું નાણાકીય હિત જોખમાય તેમ છે. જેથી સરકારી જમીનનું ખાતું બંધ કરવા નિર્ણય લેવામાં આવેલ છે. તેમ છતાં વાદીએ નામદાર અદાલતનો આશરો લઈ સવાળવાળી જમીનમાં ચીપકી રહેવાના બદલ્લે હાલનો ખોટી હકીકતો સભર દાવઓ કરેલ છે જે રદ કરવા અરજ છે.”

14.16 Therefore, the provisions contained in Paragraph 4.10 of the Circular dated 01.01.1987 (Exh. 140) and the Circular dated 10.06.2003 (Exh. 141) are reproduced as under:

“જ.૧૦ પટ્ટાની મુદત દરમિયાન પટ્ટેદારનું જો મૃત્યુ થાય તો પટ્ટાની બાકી રહેતી મુદત માટે પટ્ટો તેમના કાયદેસરના વારસ (લીગલ હેર્સ) માટે ચાલુ રાખી શકાશે. પરંતુ તે સ્વિચ અન્ય રીતે પટ્ટાની જમીન તબદીલ કરી શકાશે નહીં.”

14.17 Therefore, the said circular prohibits transfer of the land.

14.18 Herein, it is the case of the plaintiffs that the former Junagadh State granted Dasturi rights, whereby the ownership of the land remained vested in the Government, while the possession and rights over the fruit-bearing trees

remained with the person in whose favour such grant or lease was made. It is further their case that such person was entitled to transfer his rights over the trees to another person.

14.19 Therefore, the plaintiffs are required to prove that the said rights were granted to the plaintiff or his predecessor-in-title.

14.20 If the plaintiff proves the aforesaid fact, he is further required to establish that such rights are protected and continue to subsist under the provisions of the present Land Revenue Code.

14.21 In the present case, it is an undisputed fact that the plaintiffs claims possession of the disputed land and that such possession was transferred by the previous holder of the suit property. Therefore, the following facts stand established:

- A. Herein, plaintiffs have succeeded to prove that the Junagadh State has issued Circular relating to granting land for Dasturi right. Said circular is bearing No.2472 dated 05.03.12 and said circular says that:
- B. The plaintiffs have not produced the original grant deed or lease deed issued by the erstwhile Junagadh State;
- C. The plaintiffs have not produced any evidence that Junagadh State has granted grant or lease in his

favour;

- D. Plaintiffs have also failed to prove that in whose favour first grant or lease was granted;
- E. Plaintiffs have also failed to prove that the subsequent transfers are from the original person in whose favour lease or grant is made;
- F. The plaintiffs have failed to establish that the original lessee/grantee was entitled to transfer possession of the land;
- G. The plaintiffs have admitted that they are in possession of the disputed land by virtue of the sale deed produced at Exh. 44;
- H. The plaintiffs have failed to produce any documentary or other cogent evidence to establish that his predecessor-in-title was legally entitled to execute the alleged sale deed in his favour.
- I. Furthermore, the plaintiffs have not produced any evidence to demonstrate that any lease, grant, allotment, or right of occupation in respect of the suit property was ever conferred by the Government upon his predecessor.
- J. Mere payment of the amount does not establish that the case falls within the ambit of Circular No. 2472 dated 05.03.1912 issued by the Junagadh State.
- K. The Collector has referred to the circulars produced

at Exhs. 140 and 141, and Paragraph 4.10 thereof specifically provides that: “જ.૧૦ પટ્ટાની મુદત દરમિયાન પટ્ટેદારનું જો મૃત્યુ થાય તો પટ્ટાની બાકી રહેતી મુદત માટે પટ્ટો તેમના કાયદેસરના વારસ (લીગલ હેર્સ) માટે ચાલુ રાખી શકાશે. પરંતુ તે સિવાય અન્ય રીતે પટ્ટાની જમીન તબદીલ કરી શકાશે નહીં.”.

14.22 The fundamental legal and philosophical maxim for the burden of proof is: *Ei incumbit probatio qui dicit, non qui negat* and it means "the burden of proof lies upon him who asserts, not upon him who denies".

14.23 Therefore, the burden lay upon the plaintiffs to prove that he had acquired a lawful right to possess the disputed land through a transfer from the original lessee. In the absence of such proof, and upon consideration of the circulars produced at Exhs. 140 and 141, particularly Paragraph 4.10 thereof, the plaintiffs have failed to establish that the order in revision referred to in Issue No. 2 is null and void, unconstitutional, or perverse. Therefore, this Court is of the view that the Trial Court has decided the said issues in its proper perspective and has not committed any error in recording its findings thereon.

As regards issue No.5:

5. Whether the plaintiff is entitled to get injunction as prayed for?

14.24 Herein, the plaintiffs have sought a decree of permanent injunction. However, as discussed hereinabove, the plaintiffs has failed to produce any document establishing

his legal right over the suit land. The plaintiffs have also failed to prove that the person who put him in possession of the suit land had any legal right to transfer such possession.

14.25 Had the plaintiffs established that their predecessor-in-title was legally entitled to transfer possession of the suit land, he might have been entitled to seek protection of such possession. However, the plaintiffs have failed to prove that his predecessor had any right to transfer the suit land or its possession to him.

14.26 Therefore, in view of the findings recorded on Issue No. 1, the competent authority is empowered to take such action as may be permissible under the relevant revenue laws. Consequently, the Trial Court has rightly decided the said issue in its proper perspective and has not committed any error in dismissing the claim for permanent injunction.

As regards issue No.3:

3. Whether the plaintiff is entitled to get relief as prayed for?

14.27 As discussed hereinabove, the plaintiffs have failed to prove the facts relating to Issue Nos. 1 to 3. Consequently, the plaintiffs are not entitled to any of the reliefs claimed in the suit. In view of the findings recorded on the aforesaid issues, the competent authority is empowered to take such action as may be permissible under the relevant law. Therefore, the plaintiffs are s not entitled to any relief as prayed for. Accordingly, the Trial Court has decided the

said issue in its proper perspective and has not committed any error in recording its findings thereon.

14.28 One of the arguments advanced on behalf of the plaintiffs is that the collector ought to have made inquiry u/s.37 of the Land Revenue Code. However, the present suit has been instituted by the plaintiffs themselves. Moreover, so far as the plaintiffs are concerned, it is an undisputed fact that the land in question belongs to the Government, meaning thereby that the Government is the owner of the said land.

14.29 Further, it is an undisputed position emerging from the pleadings that the land in question belongs to the Government, and the plaintiffs do not dispute the Government's title over the suit property. Therefore, such argument is not helpful to the plaintiffs.

14.30 Another argument advanced on behalf of the plaintiffs is that the Collector ought not to have initiated proceedings under Section 79A of the Land Revenue Code. However, the plaintiffs have failed to prove that their predecessor fell within the ambit of Circular No. 2472 dated 05.03.1912. Therefore, this argument is also of no assistance to the plaintiffs.

14.31 Herein, the plaintiffs have produced the Judgment of the Hon'ble Gujarat High Court in Special Civil Application No.21705/2005 wherein, the case of the petitioner of that case narrated in para 4 as under:

“4.It is the case of the petitioner that during the erstwhile

State of Junagadh, certain provisions were made by passing Resolution Nos. 2472 dated 5.3.1912 and 2492/84 dated 5.6.1928 for the proper maintenance of the land which is situated within the boundary of Junagadh State revenue limits and the forest department. Under the aforesaid Resolutions, the lands were allotted for growing trees and also for maintenance of the trees on these lands on condition to pay revenue (dasturi) to the Government.

The land admeasuring 20 gunthas situated at Junagadh Talpad area, near Dharagadh Road (known as Ambawadiyu), Junagadh came to be allotted to one Shri Pathan Daulatkhan Alamkhan (allottee) for growing Mango trees by the erstwhile rulers of Junagadh State. It is the case of the petitioner that in the subject land, which is also known as Ambawadi, wherein the allottee has grown almost more than 25 Mango trees. That all the revenue (dasturi) in respect of the growing trees was paid by the allottee of the land in the revenue account no. 310 maintained by the respondent authorities.

In the year 1986, out of total Mango trees grown by the allottee, 2 Mango trees were given by him to one Shri Rathod Rajabhai Jesangbhai to maintain these Mango trees. It appears that the said Rathod Raja Jesangbhai made some kachcha hut, well and kachcha wall fencing for the maintenance of land, trees and water pump as also for the protection from animals. Subsequently, Mango trees were purchased by the petitioner from the original allottee by registered sale deed dated 8.10.1992 for a share consideration of Rs.5000/-. It is submitted by the petitioner that by virtue of the sale deed he got the right to use the kachcha hut and kachcha wall fencing made for the purpose of maintenance of land, trees and water pump as also for the protection from the animals.

After a period of 10 years, i.e. on 21.1.2002, the Collector, Junagadh – the Respondent no.2 herein issued a notice, purportedly exercising powers under Section 79(A) of the Bombay Land Revenue Code, 1879, for the alleged unauthorised occupation and use of the subject land on two grounds:-

(i) The petitioner has constructed a house on the subject land for residential purpose and,

(ii) The petitioner is in illegal possession of the land by illegal transfer of the land.

The Respondent no.2 passed an order on 11.6.2002 canceling the grant of (Fal-Dasturi) trees in favour of the petitioner. The petitioner being aggrieved by the said order preferred a revision application before the State Government. The Respondent No.1 by his order dated 30.6.2003 – 25.6.2004 rejected the revision application. It is the contention of the petitioner that the revision was rejected on extraneous grounds which were not there before the Respondent No.2 and not even in the notice issued by the Respondent no.2. The petitioner made representation dated 23.9.2004 and subsequently another representation on 6.8.2005 before the Respondent No.4, pointing out the fact that earlier in a case of similarly situated persons, the Collector has permitted the permanent transfer of Fal-Dasturi following various State Government Resolutions. As the Respondent No.4 has not replied any of the representation, the Petitioner has approached this Court by way of the present petition.”

14.32 and considering the said fact, the Hon’ble High Court has observed in para in 9 and 10 as under:

“9.Having gone through the contents of the petition as well as the orders passed by the authorities, I am of the view that the contention raised by the learned advocate for the petitioner has some force. In view of the statement made before this Court by the learned advocate for the petitioner namely that the petitioner will not claim any ownership of the land and will abide by the Resolutions made by the erstwhile Junagadh State, that the ownership right of the lands shall remain with the Government and the petitioner will have no better right than the original allottee on the land in question, the case of the petitioner is required to be considered along with the case of similarly situated persons. The petitioner has pointed out that the Collector in his earlier order dated 29.5.1982, after considering the Resolution No. JNN/3966/A dated 27.11.1969, transferred the land of original allottee Shankarlal Chaganlal Purohit in favour of Ramde Malde Godhaniya. In view of this, I am of the opinion that the case of the petitioner is also required to be considered bearing in mind the said order.

As stated above, since the two representations of the petitioner making the similar request are pending before the Secretary, Revenue Department, it would be just, fit and appropriate that the said authority may consider the representations and take appropriate decision in the matter.

10. In the result, this petition is allowed. Orders – Annexure-A and Annexure-D passed by the first and second respondents respectively are set aside. The matter is remanded to the Secretary, Revenue Department, State of Gujarat with a direction to decide the representations dated 23.9.2004 and 6.8.2005 made by the petitioner. The said authority is directed to decide the representation as early as possible and preferably within two months from the date of the receipt of the writ of this Court, bearing in mind the observations made hereinabove and in accordance with law.”

14.33 Therefore, even in the said judgment, the Hon'ble High Court did not adjudicate upon or recognize any right of the petitioner. The petitioner was merely permitted to pursue the representation that was pending before the Government. Therefore, the said judgment is of no assistance to the petitioner, particularly when the matter has already been decided by the competent revenue authority.

14.34 Herein, the plaintiffs have relied Judgment reported in 1982 GLH 592 in the case of **Jhala Mansangji Kalyansangji and others Vs. Jhala Mahobatsang Madarsang and another** wherein the Hon'ble High Court has held that:

“Gujarat Rural Debtors Relief Act, 1976-Scope and ambit of enquiry under s. 8 – Debt Settlement Officer to follow the procedure of summary inquiry laid down by Ss. 195 and 196 of the Land Revenue Code – Notices should be issued to persons either interested in the security involved in the dispute between the creditor and the debtor or who are in any manner likely to be adversely affected by the decision of the Debt Settlement Officer

and they should be brought on record of the proceeding as parties and they should be given an opportunity to have their say and to lead whatever evidence they want to officer – Basic safeguards to be followed to plug the loopholes in the enquiry u/s.8 of the Act pointed out.”

Herein, the plaintiffs have failed to prove that their predecessor fell within the ambit of the Circular dated 05.03.1912. Therefore, it was the duty of the plaintiffs, and the burden squarely lay upon them, to establish that they are in possession of the disputed trees by virtue of the rights conferred under the said Circular dated 05.03.1912. As discussed hereinabove, the plaintiffs have failed to prove the said fact. Consequently, the plaintiffs are not entitled to claim the benefit of the said precedent.

14.35 Herein, the plaintiffs have relied Judgment reported in AIR 1980 Supreme Court 59 in the case of **Thakoreshri Naharasinghji Dolatsinghji etc. Appellants V. State of Gujarat and others** wherein the Hon’ble Apex Court has held that:

“Bombay Merged Territories and Areas (Jagirs Abolition) Act (39 of 1954), Ss. 3, 5 (1) (b), 9 – Bombay Land Revenue Code (1879), S. 40 – Settlement of certain land with Jagirdar – Land comprising forests also – Forests not reserve under Forests Act – Right of Jagirdar to cut and remove forest produce cannot be interfered with, SCA Nos.1234, 1212 and 1244 of 1965, D/- 5-5-1967 (Guj), Reversed.”

Herein, the plaintiffs have failed to prove that their predecessor fell within the ambit of the Circular dated 05.03.1912. Therefore, it was the duty of the plaintiffs, and the burden squarely lay upon them, to establish that they are in possession of the disputed trees by virtue of the rights conferred under the said Circular dated 05.03.1912.

As discussed hereinabove, the plaintiffs have failed to prove the said fact. Consequently, the plaintiffs are not entitled to claim the benefit of the said precedent.

14.36 Herein, the plaintiffs have relied Judgment reported in AIR 1972 Supreme Court 2224 in the case of **The Special Land Acquisition Officer Hosanagar, Appellant Vs. K. S. Ramachandra Rao and others** wherein the Hon'ble Apex Court has held that:

“INDEX NOTE: (A) Land Acquisition Act (1894), S. 18 – Government lands – Grant on condition to surrender without compensation – In spite of the condition, lands notified under S.4 for acquisition and compensation payable to grantee determined – Grantee was entitled to compensation”

Herein, the plaintiffs have failed to prove that their predecessor fell within the ambit of the Circular dated 05.03.1912. Therefore, it was the duty of the plaintiffs, and the burden squarely lay upon them, to establish that they are in possession of the disputed trees by virtue of the rights conferred under the said Circular dated 05.03.1912. As discussed hereinabove, the plaintiffs have failed to prove the said fact. Consequently, the plaintiffs are not entitled to claim the benefit of the said precedent.

14.37 Herein, the plaintiffs have relied Judgment reported in AIR 1995 Andhra Pradesh 208 in the case of **K. Sai Reddy and others Vs. Deputy Executive Engineer, Irrigation and Command Area Development, Nampally, Hyderabad and others** wherein the Hon'ble High Court has held that:

“(A) Constitution of India, Arts. 300A, 31A- Right to property - Possession of land of petitioners - Taken over by State Authorities without recourse to law and in violation of

provisions of Land Acquisition Act Action liable to be condemned as un-constitutional and violative of provisions of Land Acquisition Act Alleged consent given for taking over possession by petitioners - Not a valid ground to take over possession without initiating land acquisition proceedings.”

14.38 The state has passed order and such order is under challenge and therefore, State has followed the procedure, therefore, this precedent is not helpful to the plaintiffs.

14.39 Herein, the plaintiffs have relied Judgment reported in 1983(2) GLR 961 in the case of **Ibrahim Shah Mohamad and Ors. Vs. Noor Ahmed Noor Mohamed and Ors.** wherein the Hon’ble Court has held that:

“Civil Procedure Code (V of 1908) Order 39 Rule 1 – Property subject matter of litigation - If during the period property changes hands other person may become necessary party - Court should lean towards seeing that there is no multiplicity of proceedings Ad interim injunction can be granted in such cases.”

14.40 Herein, the plaintiffs have relied Judgment reported in 1965 GLR 34 in the case of **Patel Raghav Natha Vs. Mankodi, Commissioner, Rajkot Division and others** wherein the Hon’ble High Court has held that:

HELD that when as a result of a decision under sec. 65 of the Land Revenue Code or any other provision of law there is an agreement entered into between the Government and a subject, then the Government has no jurisdiction under sec. 211 to revise that decision so as to affect the agreement or to revise any part of the agreement. A Kabuliyat passed by an occupant in Form F(1) is not an agreement and it is only a formality performed at the end of the enquiry and it is a part of the proceeding, and, therefore, it has no separate entity or existence apart from that proceeding nor has any greater sanctity than the proceeding itself. Therefore, under the powers vested in Government under sec. 211 of the Code, the

Government has the right and jurisdiction to revise the terms of the Kabuliyat as well as to cancel it in a fit case. But if a document is an agreement between the Government and a subject it is beyond the ken of the powers vested under sec. 211 of the Code (Para 10).

Herein, the plaintiffs have failed to prove that their predecessor fell within the ambit of the Circular dated 05.03.1912. Therefore, it was the duty of the plaintiffs, and the burden squarely lay upon them, to establish that they are in possession of the disputed trees by virtue of the rights conferred under the said Circular dated 05.03.1912. As discussed hereinabove, the plaintiffs have failed to prove the said fact. Consequently, the plaintiffs are not entitled to claim the benefit of the said precedent.

14.41 In view of the foregoing discussion and upon re-appreciation of the oral as well as documentary evidence available on record, this Court finds that the plaintiffs have failed to establish any legal right, title, or interest over the suit land. The plaintiffs have also failed to prove that their predecessor-in-interest had any lawful authority to transfer possession of the suit land in his favour. The findings recorded by the Trial Court on all the issues are based upon proper appreciation of the evidence and the applicable provisions of law. No illegality, perversity, or jurisdictional error is found in the impugned judgment and decree warranting interference by this Court. Accordingly, the appeal being devoid of merits deserves to be dismissed, and the judgment and decree passed by the Trial Court are hereby confirmed.

14.42 Therefore, reasons and observations which are assigned by the Trial Court is legal one and all the issues are decided in legal way by appreciating the evidences in proper perspective and there is no need to interfere it. Therefore, considering the same, point nos.8(1) to 8(5) are answered accordingly in Negative and so far as the point no.8(6) is concerned, the following order is passed:-

:: ORDER ::

1. This appeal is hereby **dismissed** and therefore, the Judgment and Decree dated 17.03.2020 passed by the Ld. Principal Senior Civil Judge, Junagadh, in Regular Civil Suit No.470/2004 is hereby **confirmed and upheld**.
2. Taking into consideration the circumstances of the present case, the appellants shall bear the entire costs of this appeal.
3. Pursuant to Order 41 Rule 37 of the Code of Civil Procedure, 1908, a certified copy of the judgment of this appeal shall be sent to the court below for the necessary procedures as stipulated in Order 41, Rule 37 of the Code of Civil Procedure, 1908.
4. Any interim order, if issued, shall be merged into the final order.
5. Application/s pending if any, shall stand disposed of accordingly.
6. The original record shall be promptly returned to the Trial

Court.

7. The decree shall be drawn accordingly.

Pronounced in the open Court today
on this 30th day of June, 2026.

Date : 30.06.2026

Junagadh

(B. G. Dave)
Principal District Judge
Junagadh
[GJ00469]