

Special Civil Suit No.109/2022**Common Order below Ex. 5 & Ex. 24**

1. Since both the applications involve common questions, therefore, they are disposed of by way of this common order.

2. Plaintiff has filed present suit for declaration and permanent injunction, wherein, plaintiff has prayed for setting aside the order dated 20/10/2021 passed by the Collector in the Misc. Appeal No.56 to 67/2020 filed by the defendant no.1 and 3 as well as the order dated 16/04/2022 passed by the Special Secretary (Appeals), Revenue Department in the Revision Application No. Land/3/C/Misc. Appeal No. 56 to 67-2020, which upheld the order passed by the Collector, Junagadh. Thereby, rejecting the plaintiff's application for regularization of encroachment of the land bearing Survey No.71, situated in village Pratapsar (hereinafter referred to as the suit land in question) and has also prayed that defendants be directed to regularize the said suit land as per the Resolutions of the Government dt. 1.6.1993 & 15.2.1989, and has also sought for permanent injunction that defendants be restrained from dispossessing them without due process of law. Simultaneously, has also

sought for ad interim injunction that defendants or their agents be restrained from dispossessing without obtaining the order from the competent Civil Court and also without due process of law and plaintiffs have also sought for the relief to the effect that the order and facts as culled out from the pleadings of the parties appear that

It is stated that despite the orders of the Hon'ble High Court of Gujarat, Hon'ble District Court and Ld. Civil Court and despite the resolutions of the State dated 01/06/1993 and 15/02/1989 and in accordance with the resolutions from time to time to regularize the land, the land bearing Survey No.71, situated in village Pratapsar , which is Government waste land has been assumed as Gauchar land by rejecting the demands of the plaintiffs without due process of law i.e. Sections 61, 79, 105, 202 of the Gujarat Land Revenue Code and the provisions of Gujarat Public Premises Eviction of Authorized Occupants Act and without obtaining a decree of competent Civil Court, the defendants forcibly deprived the livelihood of the plaintiffs despite the order to take possession of the Collector, Junagadh not to take the possession of the suit land. It is stated that the defendants are trying to snatch the suit land and to give it to their known persons. Therefore, if the injunction is not granted, then it will

cause irreparable loss to the plaintiffs, which cannot be compensated in terms of money.

It is further stated that the plaintiffs are having possession of the suit land since last 32 years and they have worked hard to remove the pits and mounds and have made the land suitable for cultivation and they have also constructed irrigation bores and now, they are forcibly removed from the land occupied by the plaintiffs without due process of law. Thus, the means of livelihood of plaintiffs' family will be deprived. When the suit land is in possession with plaintiffs since long, the defendants will not be benefited by suddenly removing it when plaintiffs' family is starving.

It is further stated that there are so may gauchar lands situated at Patrapasar village. There is massive encroachment on those lands. Constructions have been done and instead of taking any actions against them, abuse of powers is done against the present plaintiffs, who are of scheduled caste and scheduled tribes and are poor. Moreover, no alternative source of employment has been provided to the plaintiffs herein and, therefore, the plaintiffs are suffering irreparable loss on daily basis. Thus, the present application seeking ad interim injunction and simultaneously he has also filed separate application vide Ex, 24 wherein, he has sought to maintain status quo in respect of suit land.

3. At the first instance, Court has issued show cause notice against all the defendants under order 39, rule 3 of Code of Civil Procedure.

4. Defendants No.1 to 3 have appeared through Ld. AGP and they have filed written statement as well as reply vide exh.35 and 36 respectively, wherein they have denied most of facts of plaintiffs, which are not admitted by them and they have stated that the present application is not maintainable in the eyes of law. It is further stated that there is no prima facie case of the plaintiffs and balance of convenience is also not in favour of the plaintiffs and there is no cause of action arise to file the present application for injunction. That this Court has no jurisdiction to try this application. That the present application is not filed within the stipulated time. It is stated that the land in question i.e. Survey No.71 is recorded as Gauchar land and has been vested in Gram Panchayat as per the official records and policies and an entry to this effect has been made on 20/04/1976 and also has been certified. Thus, the land is not private property nor available for allocation as per the Gauchar policy defined by the Government Resolution dated 01/04/2015. Therefore, plaintiffs' submission is not acceptable under these circumstances. Further, as per

the say of plaintiffs, none of the Court has passed any final order regarding regularization of the disputed land. The case has been remanded back to the Collector, Junagadh for review. Thus, the claim of the plaintiffs in this regard is misleading. Further, as per resolution dated 01/04/2015, the Gauchar land is designated for communal use. Therefore, no compromise or alternative use can be allowed. In the above stated circumstances, the plaintiffs have made illegal encroachment over the disputed land and the competent officer, from time to time removes such illegal encroachments. Further, the Gauchar land or the Government land cannot be used without any prior permission and in the present case, no such permission has been obtained or granted. Furthermore, there are many other options for employment and the National Food Safety Act, 2016 is in force and, therefore, there is no possibility of plaintiffs being foodless. In all, the defendants have prayed to dismiss the present application.

5. Plaintiff has filed documentary evidence as under :

Documentary Evidence :-

Photo copies of

Mark	Particulars	Date
23/1	Judgment passed in RCS No.279/1998	13.11.2003
23/2	Application by the plaintiffs to the Collector	20.1.2003

23/3	Letter by the Collector to Mamlatdar	11.11.2003
23/4	Letter by the Collector to Mamlatdar	10.5.2004
23/5	Letter by the Mamlatdar to Circle Officer	20.12.2003
23/6	Panchrojkam by Sarpanch-Talati Mantri	3.5.2004
23/7	Panchrojkam	3.5.2004
23/8	Certificate of plaintiffs are agricultural labours	3.5.2004
23/9	Certificate of plaintiffs resident of Patrapasar village and are of Scheduled Caste and Schedule Tribes	3.5.2004
23/10	Letter of the Government to regularize encroachment	23.12.1991
23/11	Letter by the Collector to Mamlatdar	28.4.2004
23/12	Judgment passed in RCA No.62/2004	25.10.2019
23/13	Application by plaintiff to defendant	26.11.2019
23/14	Place Rojkam by Circle Officer	1.6.2020
23/15	Place Rojkam by Circle Officer of the encroachment by plaintiffs	10.7.2020
23/16	Notice u/s.80	17.1.2023
23/17	Postal receipt	
23/18	Acknowledgement	
23/19	Notice by defendants to the plaintiffs despite the suit under trial	6.9.2023
23/20	Patrak by defendant no.4	
23/21	Submissions by Ld. Advocate for plaintiffs to defendants	18.9.2023
23/22	Village Form No.7/12 and 8-A of land bearing survey no.71 of village Pratapsar showing the situation of the land as on 18/09/2023	
23/23	Order passed by the Hon'ble High Court of Gujarat in Civil Revision Application No.901/1996	6.11.1996

5.1 Defendants have filed documentary evidence as under :

Documentary Evidence :-**Photo copies of**

Mark	Particulars	Date
37/1	Letter to Mamlatdar regarding RCS No.109/2022	11.7.2021
37/2	Resolution dated 19/10/2020 of the Collector, Junagadh	19.10.2020
37/3	Government Policy of arrangement of Gauchar land	22.10.2021
38/1	Hakpatrak Entry No.784	20/04/1976
38/2	Order of the Mamlatdar making rectification in village form no.7/12 and 8-a in respect of the suit land	26/03/2024
38/3 to 38/6	Form No.6-A record of right and village form no.7/12 and 8-a in respect of the suit land.	15/06/2024

6. The Ld. Advocate for the plaintiffs has relied upon the following judgments and documents in support of his arguments:

- 1 **Meghmala & Ors. v. G. Narasimha Reddy & Ors.** (2010) 6 Supreme 321
- 2 **Ranjankumar Vamanrao Nandker v. Sarvajanik Hindu Dharmashala** (1985 G.L.H. (U.J.) 56
- 3 **Ashvinkumar Jayantilal Shah v. M/s Harichand Kedarnath Khanna & Ors.** (1995 (1) G.L.H. 97)
- 4 **Raghavbhai Arjunbhai & Anr. v. Amreli Nagarpalika & Anr.** (1994 (1) G.L.H. 470)
- 5 **Khoda Dhor Panjara Pole Sanstha, Radhanpur & Anr. v. The State of Gujarat & Ors.** (1984 G.L.H. 970)

6 Bhupatbhai Oghadbhai & Ors. v. The State of Gujarat (1995 (2) G.L.H. 219)

The ratio of these judgments is that a person in unlawful possession cannot be dispossessed without due process of law. The plaintiffs emphasize that the right to due process must be followed before dispossession or eviction can occur. Furthermore, the plaintiffs have also submitted a copy of the resolution of the State of Gujarat dated 08/01/1990 to support their position.

The Ld. Advocate for defendants No. 1 to 3 has also been heard in this matter.

7. Perusing the pleadings and documentary evidences of the parties and following points are emerged to decide this application :-

1. Whether plaintiffs prove their prima facie case?
2. Whether plaintiffs prove balance of convenience lies in favour of plaintiffs ?
3. Whether plaintiffs prove if injunction as prayed is not granted, then plaintiff would suffer irreparable loss, which cannot be compensated in terms of money?
4. What order?

8. My findings of above points are as under :-

1. In Negative.
2. In Negative.
3. In Negative.
4. As per final order.

9. **As to point no.1 :-**

1) Order 39, rule 1 & 2 provide for the grant of temporary injunction. The Court can grant temporary injunction, when 1) any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of decree; 2) the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors; 3) the defendant threatens to dispossess the plaintiff or otherwise causes injury to the plaintiff in relation to any property in dispute in the suit. In above said cases, the Court may grant an injunction to restrain such acts or may make any other order staying or preventing the wasting, damaging, alienation, sale, removal or dispossession of the property or dispossession of plaintiff or causing injury. Even Court may grant injunction for other injury of any kind, which defendant is committing or going to commit such injury.

2) It is settled law that at the threshold the plaintiff must make out prima facie case. To entitle a plaintiff to a temporary injunction, court should be satisfied that there

is a serious question to be tried at the hearing, and that on the facts before it there is a probability that the plaintiff is entitled to relief and plaintiff must prove that there is substantial question to be investigated. Plaintiff has to satisfy that alleged legal injury pleaded is on well founded case.

9.1 In the case of Maria Margarida Sequeria Fernandes Versus Erasmo Jack De Sequeria(Dead) Through L.Rs., AIR 2012 SC 1727 :-

Pleading

61 In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

62 Possession is an incidence of ownership and can be transferred by the owner of an immovable property to another such as in a mortgage or lease. A licensee holds possession on behalf of the owner.

63 Possession is important when there are no title documents and other relevant records before the Court, but, once the documents and records of title come before the Court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum.

64 There is a presumption that possession of a person, other than the owner, if at all it is to be called

possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the Courts.

65 A suit can be filed by the title holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.

66 A title suit for possession has two parts - first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for enactment where the defendant must plead and prove why he must not be ejected.

67 In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a

right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

68 In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69 The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70 It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.
(a) who is or are the owner or owners of the property; (b)

title of the property; (c) who is in possession of the title documents (d) identity of the claimant or claimants to possession; (e) the date of entry into possession; (f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method; (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount; (h) If taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed; (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.; (j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and (k) basis of his claim that not to deliver possession but continue in possession.

71 Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72 The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73 Discovery and production of documents and answers to interrogatories, together with an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many false claims or defences from sailing beyond the stage for issues.

74 If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.

75 On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

76 In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

78 The Court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence.

10. In light of the above referred principle, now reverting back to the factual aspect of the present application on hand. In the present fact on hand, following facts are not in dispute.

a. Prior to filing of this suit, plaintiff had filed the Regular Civil Suit No.448/1993 for declaration and permanent injunction for the same suit land that the the notice issued by Sarpanch of Pratapsar Gram Panchayat directing them to remove the encroachment was illegal, null and void and Gram Panchayat had no authority to remove them from possession. Along with that suit, plaintiff had also filed an application vide Exh.5 for ad-interim injunction restraining the Panchayat from dispossessing them. The said application was dismissed by the then Ld. Civil Judge, Junagadh by judgment and order dated 04/01/1994, wherein, in that order, the Trial Court had specifically held that plaintiffs have made encroachment on the suit land, which was Gauchar land vested in the Panchayat. Being aggrieved and dissatisfied with the said order, the plaintiff had

earlier filed an appeal before the appellate court which had also been affirmed by the Trial Court and thereafter, the plaintiff had filed Civil Revision Application No.901/1996 before the Hon'ble High Court of Gujarat, which had in turn rejected the Revision Application.

b. There after the said civil suit 448/1993 had been withdrawn by the plaintiffs with a liberty to file a fresh suit and a fresh suit bearing RCS No.279/1998 for declaration and permanent injunction in respect to the same suit land was filed by the plaintiffs, which had been dismissed by the Trial Court on merits. The District Panchayat then filed an appeal under Section 96 of the Civil Procedure Code (CPC) against the judgment and decree of the Trial Court. The Appellate Court dismissed the appeal and affirmed both the judgment and decree passed by the Civil Court, along with the directions issued. Whereas against that suit, plaintiffs had not filed any appeal before the Appellate Court.

11. As per the say of the plaintiffs, they belong to Scheduled Caste and are agricultural labourers. To show that fact, they have adduced documents vide Mark-23/8 and 23/9. As per the case of the plaintiff, they are in possession of the suit land since last 32

years and have through their efforts made that land as cultivable land and also made some construction on the said lands. Inspite of the order of the Hon'ble High Court of Gujarat and Trial as well as appellate court for regularization of the said suit land and Resolution of the Government of Gujarat dt. 1.6.1993, 15.2.1989 of Regularizing the said suit land after accepting the premium. The defendant / authorities i.e. Collector and SSRD have rejected their application for regularization of the encroachment over the suit land on the ground of suit land being classified as Gauchar land and are now trying to dis-possess them without due process of law. Further, as per the say of the plaintiff, the said suit land is Government waste land and that fact is being reflected through documentary evidence in the form of village Form No. 7/12 & 8A which of the dt. 18.9.2023 show the suit land as Government waste land but on the wrong assumption, they have classified the suit land as Gauchar Land and wrongly rejected the application for regularization of the encroachment over the suit land and are now trying to dis-possess the same. Inspite of their being no order of the Collector, SSRD to obtain possession of the suit land. Therefore, the present suit has been filed for declaration and perceptual injunction wherein, prayer to the effect of setting aside the order passed by the

Collector and SSRD has been sought for and have prayed to perpetual injunction. Simultaneously, present application seeking ad-interim injunction restraining defendant from dis-possessing them without the process of law have been sought for. Whereas, on the other hand The defendant authorities have submitted that the land in question (Survey No. 71) is officially recorded as Gauchar land and has been vested in the Gram Panchayat, as per the official records, with an entry made on 20/04/1976 and certified. Therefore, the land is not private property and cannot be allocated for any other purpose under the Gauchar policy defined in the Government Resolution dated 01/04/2015. They further state that no court has issued a final order regarding the regularization of the disputed land, as the case has been remanded to the Collector, Junagadh, for review. The Gauchar land is designated for communal use, and any alternative use or compromise is prohibited. The plaintiffs' claim is therefore misleading, as they have illegally encroached on the land, and competent authorities have been removing such encroachments. No permission has been granted for the use of the land. The defendant authorities also highlight that there are alternative employment opportunities available, and the National Food Security Act, 2016,

ensures food security, making the plaintiffs' claim for relief untenable. The defendant authorities have prayed for the dismissal of the plaintiffs' application.

12. Herein, plaintiffs have come to the case that they are in possession of the suit land since last 32 years and have made some construction on the suit land as stated in the plaint. Herein, plaintiff neither in his plaint nor in the present application have stated how they are in possession of the said suit land. Admittedly, plaintiffs are neither the owners nor tenants of the said suit land. Admittedly, plaintiffs are in unlawful and illegal possession of the suit land and had made an encroachment over it. Admittedly, defendant no.5, Gram Panchayat is the owner of the suit land. Though, plaintiffs have stated that they are in possession of suit land since last 32 years and the documentary evidences vide Mark 4/1 to 4/4 and mark 23/1 to 23/3 do not show that they are in possession since last 32 years. Punch Rojkam which have been adduced in the present case of hand show that plaintiffs are in possession and have made encroachment on the suit land. As stated above, plaintiffs are neither the owners nor tenants of the suit land per contra they are in in unlawful and illegal possession of the suit land and have made encroachment over the suit land. Herein, as per the say

of the plaintiff, inspite of their being orders of the Hon'ble High Court of Gujarat and Hon'ble District Court to regularized the said suit land and also there being resolution of the Government, the defendant authority have rejected their application on the wrong assumption of the suit land being Gauchar land inspite of the fact that the suit land is Government waste land. The said contention is devoid of any merits on plain perusal of the order of the Honble Gujarat High Court in Civil Revision Application No. 901 of 1996, it transpires that the revision application filed against the order of the Trial Court and affirmed by the appellate court below Ex. 5 application had been rejected by the Hon'ble High Court of Gujarat. And, on the request of the Ld. Counsel that petitioner had already made an application before the Collect for the grant of the land in their favour. If, in fact, the petitioner have made any such application, before the Collector, Junagadh, the Collector will be at liberty to consider the same in accordance with law, without being influenced by the observation made in this order. On the basis of the same order of Hon'ble High Court of Gujarat, the Trial court after dismissing the suit of the plaintiff, had also directed to decide the applications for regularization if any pending, before the Collector, to be decided in accordance with the law and said order was also affirmed by the Appellate Court. The

contentions that the Hon'ble High Court of Gujarat and there after Trial Court as well as Appellate Court had directed to regularized the said suit land is devoid of any merits. Even otherwise, it is pertinent to note that the persons in illegal occupation of the Government land/Panchayat lands cannot, as a matter of right, claim regularization. Regularization of the illegal occupation of the Government Land/Panchayat Land can only be as per the policy of the State Government and the conditions stipulated in the Rules. If it is found that the conditions stipulated for the regularization have not been fulfilled, such persons in illegal occupation of the Government Land/Panchayat Land are not entitled for regularization. Therefore, the contention that in spite of the orders of the Hon'ble High Court of Gujarat, Trial Court as well as the Appellate Court, the defendants authority have not regularized the encroachment over the suit land is devoid of any merits.

13. Herein, admittedly, the application for regularization of encroachment over the suit land has been rejected by the Collector vide Order dt. 19.10.2020 and thereafter affirmed by the SSRD vide order dt. 22/10/2021. As per the say of the plaintiff, the suit land was Government waste land the documentary evidences in the Village form No. 7/12 & 8A of dt. 18.9.2023 reflecting that fact,

in spite of that on the wrong assumption of said land being Gauchar land, their application for regularization of the suit land of encroachment have been rejected and are trying to dis-possess them without due process of law. On perusal of the order of the Collector and there after affirmed by the SSRD, it transpires that, as per the records of Pratapsar village, Taluka Junagadh (Rural), the suit land, Survey No.71, is classified in the current village forms no.7 and 8-A as 16-65-29 hectares of waste land under "other occupants" in the name of the Gram Panchayat Pratapsar. However, as per entry no.784, an area of 41-06 acres of the suit land was recorded as Gauchar land vested with the Gram Panchayat and the said entry has been certified as on 20/04/1976. Thus, the suit land has been classified as Gauchar Land and has been vested in the gram panchayat. The revenue entry to that effect has been mutated in the revenue record and thereafter has been certified as on 20.4.1976. Therefore, the suit land is the Gauchar land. The contention raised by the plaintiff attempting to categorized the suit land as Government waste land is not sustainable upon analysis of the documentary evidences adduced as well as previous findings of the Trial Court. It is true the documentary evidences submitted by the plaintiffs in the form of Village form No. 8A & 7/12 show the suit land as Government waste land,

but those documentary evidence have been rectified on the application of the Mamlatdar, Junagadh dt. 26.3.2024 and rectified entry to that effect have been mutated in the revenue record dt. 15.6.2024 and documentary evidence in the form of Village form 6 and form No. 7 & 12 show the entry that the suit land is Gauchar Land. Even otherwise, on perusal of the order of the SSRD & Collector, as well as revenue entry in the revenue records dt. 20.4.1976, wherein, the suit land has been classified as Gauchar Land and the said entry has been certified. Admittedly, the said entry has not been challenged or set aside by the plaintiffs. Furthermore, the above aforesaid revenue entry has been certified and remains unchallenged as no evidence has been adduced to show that the said entry has been set aside or invalidated. Additionally, the earlier Regular Civil Suit being No. 448 of 1993 filed by the plaintiff in the year 1993 for declaration and injunction, wherein, the Trial Court had rejected the plaintiffs' injunction application wherein, the Trial Court had held that plaintiffs have encroached upon the suit land which was Gauchar land vested in the panchayat and the said order had been affirmed by the Hon'ble High Court of Gujarat. Furthermore, the separate Civil Suit No. 279/1998 filed by the plaintiffs in respect of the same suit land also, had been adjudicated on merits and the suit has been

dismissed against which admittedly, plaintiff have not filed any appeal. Even in that suit, there was clear and unequivocal admission on the part of plaintiffs that suit land is Gauchar land which reflect that plaintiffs have clear knowledge since 1993 that the suit land was Gauchar land and they have never challenged the entry of the year 1976 which shows that the suit land as Gauchar land vested in the panchayat. Therefore, previous suit was disposed of on merits, solidifying the classification of the land as Gauchar land. Therefore, the aforesaid contention of the Ld. Advocate for the plaintiffs that suit land is Government waste land is untenable.

14. Herein, Plaintiffs have been unable to show any legal right over the suit land and admittedly, plaintiffs are in unlawful and illegal possession over the suit land. Since, the suit land is Gauchar land, as per the ratio laid down by the Hon'ble Supreme Court, Jagpal Singh Vs. State of Punjab 2011 (11) SCC 396 to the effect that if land is not available for allotment and construction is made thereon, then that construction must be demolished. Coming down harshly on the land grabbing prevalent in the various parts of the country, especially the areas relating to village, the Supreme Court in a decision pronounced rise in such unscrupulous tendencies in Independent India to hold that it was high time that stern action was

required to be undertaken in this regard. The Court inter alia observed as under;

3. Since time immemorial there have been common lands inhering in the village communities in India, variously called gram sabha land, gram panchayat land, (in many North Indian States), shamlat deh (in Punjab etc.), mandaveli and Poramboke land (in South India), Kalam, Maidan, etc., depending on the nature of user. These public utility lands in the villages were for centuries used for the common benefit of the villagers of the village such as ponds for various purposes e.g. for their cattle to drink and bathe, for storing their harvested grain, as grazing ground for the cattle, threshing floor, maidan for playing by children, carnivals, circuses, ramlila, cart stands, water bodies, passages, cremation ground or graveyards, etc. These lands stood vested through local laws in the State, which handed over their management to Gram Sabhas/Gram Panchayats. They were generally treated as inalienable in order that their status as community land be preserved. There were no doubt some exceptions to this rule which permitted the Gram Sabha/Gram Panchayat to lease out some of this land to landless labourers and members of the scheduled castes/tribes, but this was only to be done in exceptional cases.

4. The protection of commons rights of the villagers were so zealously protected that some legislation expressly mentioned that even the vesting of the property with the State did not mean that the common rights of villagers were lost by such vesting. Thus, in *Chigurupati Venkata Subbayya vs. Paladuge Anjayya*, 1972(1) SCC 521 (529) this Court observed: "It is true that the suit lands in view of Section 3 of the Estates Abolition Act did vest in the Government. That by itself does not mean that the rights of the community over it were taken away. Our attention has not been invited to any provision of law under which the rights of the community over those lands can be said to have been taken away. The rights of the community over the suit lands were not created by the landholder. Hence those rights cannot be said to have been abrogated by Section 3© of the Estates Abolition Act."

5. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with its original

character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs .

6. This appeal has been filed against the impugned judgment of a Division Bench of the Punjab and Haryana High Court dated 21.5.2010. By that judgment the Division Bench upheld the judgment of the learned Single Judge of the High Court dated 10.2.2010.

7. It is undisputed that the appellants herein are neither the owner nor the tenants of the land in question which is recorded as a pond situated in village Rohar Jagir, Tehsil and District Patiala. They are in fact trespassers and unauthorized occupants of the land relating Khewat Khatuni No. 115/310, Khasra No. 369 (84-4) in the said village. They appear to have filled in the village pond and made constructions thereon.

13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and

possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

15. Hon'ble S.C. in the case of Rameshbhai Virabhai Chaudhari Vs. State of Gujarat have held that it is trite of say that Gauchar land can be used only for purposes for which it is permitted to be used. If there is a user contrary to the permissible user, whether by the State or by any third party, the same cannot go on.

16. In the case of **Navdurga Charitable Trust Versus State Of Gujarat 2018 (2) GLR 1015 GUJARAT HIGH COURT Hon'ble Judges:J.B.Pardiwala, J. (Para 29.)** The Court of law should not decide the matters on the basis of the religious sentiments of the people at large. It is high time that the Government takes prompt and

appropriate steps in accordance with law to clear all the encroachments across the State. It should not make any difference whether it is a temple or a house or any other religious structure. If the same is constructed by encroaching upon the government land, then it has got to be demolished at the earliest. To pray for regularization of a temple constructed by encroaching upon a large parcel of the government land, is nothing but an insult to the god.

17. The plaintiffs are admittedly in unlawful and illegal possession of the suit land which is Gauchar Land. As per the ratio laid down by Hon'ble S.C., in Jagpal Singh (Supra), the Regularisation of encroachment on Gauchar land is impermissible. Even otherwise, as previously stated plaintiff have no vested right of regularization of the encroach land, even if a Government policy exists, such policies are merely enabling provision granting discretionary power to the authorities and do not confer any enforceable right, the policy is intended to apply in exceptional circumstances which are absent in the present case. In the present case on hand, considering the documentary evidence as well as the orders of the Collector and SSRD, the suit land is classified as Gauchar land which cannot be regularized as per the ratio laid down by Hon'ble S.C. in Jagpal Singh (Supra) except for

exceptional circumstances. Therefore, plaintiff have failed to show any prima-facie case or any legal right over the suit property.

18. Ld. Advocate for the plaintiff contending that in spite of the fact that suit land is a Government waste land, the Collector and, thereafter, the SSRD have on the wrong assumption of suit land being Gauchar land and mechanically on the principle that the first and foremost requirement of the Government Resolution dated 08/01/1980 that provides for removal of the encroachment on the Government land have wrongly rejected their regularization application and not considered clause (6)(2) of the said resolution and in support of the said contention, have relied upon the judgment reported in 2024 (3) G.L.H. 37 in the case of Umatiya Hasambhai Nurjibhai v/s. State of Gujarat & Ors., wherein, it has been held that:- Gujarat Land Revenue Code, 1879- S.37 - Government Land - Encroachment -Regularization-The encroacher cannot claim regularization of encroachment as a matter of right based on Government policy- Such a policy is only an enabling power that can be exercised in an appropriate case by the authority-on facts of the case, a Government resolution was issued for framing a policy for regularization of encroachment of Government land

subject to certain condition-As per policy, the Collector can consider the regularization of encroachment if he is of the opinion that an encroacher would face hardship and will be in a very pitiable condition and the land holding of a person should not exceed eight acres- However, the encroacher was found holding more than six acres of land and is earning his livelihood out of it- Therefore, the encroacher cannot be said to be in a pitiable condition and will suffer hardship -the order of the Collector refusing to regularize the encroachment is proper.

As discussed above, in the present case, the plaintiffs do not claim ownership of the suit property. Admittedly, they are in unlawful and illegal possession of the suit land and have made encroachments over it, which is Gauchar land. It is well-settled law that persons in illegal occupation of Government or Panchayat land cannot claim regularization as a matter of right. Plaintiffs have no vested right to demand allotment or a regularization of the encroached land even if a Government policy exists. Such policies are merely enabling provisions, granting discretionary powers to the authorities and do not confer any enforceable right on the encroachers. Regularization can only be granted in accordance with the policies of the State Government and the conditions stipulated in the relevant rules. In the

present matter, the Collector and SSRD have categorically held that the suit land is classified as Gaucher land (community grazing land), which cannot be regularized. As per the judgment of the Hon'ble Supreme Court in the case of Jagpal Singh (Supra), regularization of encroachment over gauchar land is impermissible. The plaintiffs do not fall under the category of cases eligible for regularization, as stipulated by the rules. Ratio of the said judgment is with regard to Government waste land, whereas, suit land is the gauchar land as discussed above. So, ratio of the said judgment would not be applicable in the present matter. Even, as stated above, regularization cannot be claimed as a matter of right and plaintiffs have no vested right to demand regularization. Furthermore, the plaintiffs, by alleging their own unlawful possession, cannot claim protection or legal remedy, as highlighted by the legal maxim "allegans suam turpitudinem non est audiendus" (a person alleging his own infamy is not to be heard). Courts, do not permit individuals to benefit from their own wrongful acts. The maxim "commodum ex injuria sua nemo habere debet" (no one ought to derive advantage from his own wrong) further supports the principle that unlawful acts cannot be the basis of any legal claim. Additionally, as held in Ram Ji Lal v. Balwant Singh, 1967 All LJ 410, the court cannot recognize a

claim or cause of action based on wrongful conduct or illegality. The maxim “ex turpi causa non oritur actio” (no action arises from a dishonorable cause) applies here. Thus, a person approaching the court must establish lawful possession of the suit property to seek relief. In this case, the plaintiffs, being in unlawful possession of Gaucher land, fail to demonstrate any prima facie case in their favour.

19. The learned Advocate for the plaintiffs has relied on the following judgments to support his argument:

- 1 **Meghmala & Ors. V/s G. Narasimha Reddy & Ors.** (2010) 6 Supreme 321
- 2 **Ranjankumar Vamanrao Nandker V/s Sarvajani Hindu Dharmashala** (1985 G.L.H. (U.J.) 56)
- 3 **Ashvinkumar Jayantilal Shah V/s (M/s) Harichand Kedarnath Khanna and Others** (1995 (1) G.L.H. 97)
- 4 **Raghavbhai Arjunbhai and Another V/s Amreli Nagarpalika and Another** (1994 (1) G.L.H. 470)
- 5 **Khoda Dhor Panjara Pole Sanstha, Radhanpur and Another V/s The State of Gujarat and Others** (1984 G.L.H. 970)
- 6 **Bhupatbhai Oghadbhai and Others V/s The State of Gujarat** (1995 (2) G.L.H. 219)

The ratio of these judgments is that a person in unlawful possession cannot be dispossessed without due process of law. The plaintiffs emphasize that the right to due process must be followed before dispossession or eviction can occur. The plaintiffs argue that even if they are in illegal possession of the suit land, they cannot be dispossessed without due process of law. The learned Advocate for the plaintiffs contends that the defendants are required to obtain an order from the competent authority or the SSRD to dispossess the plaintiffs. No order has been issued directing the plaintiffs to hand over possession to the defendants. Furthermore, the authorities of the defendants have not sought an order from the competent Civil Court to recover possession from the plaintiffs. Therefore, without adhering to the procedures established under the Land Revenue Code and without following due process of law, the plaintiffs cannot be dispossessed. Herein, as per the prayer as well as contention of the plaintiff that as plaintiff is in possession of the suit land, their possession cannot be disturbed except in due process of law and defendant authorities though may be owners of the suit land would have to file substantive suit for recovery of possession. The said contention is unsustainable and devoid of any merits as Hon'ble Supreme Court in the case of Maria Margarida Sequeria Fernandes V/s. Erasmo Jack de

Sequeria, reported in (2012) 5 SCC 370. What is meant by due process of law has been explained by the Hon'ble Supreme Court in para-79, which reads as under:

79. Due process of law means that nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity to the defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent Court. In the said decision, the Hon'ble Supreme Court has approved the following findings of the Hon'ble High Court of Delhi in the case of Thomas Cook (India) Ltd. V/s. Hotel Imperial, reported in (2006) 88 DRJ 545, held as under:

“28. The expressions ‘due process of law’, ‘due course of law’, and ‘recourse of law’ have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed ‘forcibly’ by the true owner taking law in his own hands. All these expressions, however, mean the same thing-ejectment from settled possession can only be had by recourse to a court of law. Clearly, due process of law or due course of law, here

simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner. Now, this due process or due course condition is satisfied the moment the rights of the parties are adjudicated upon by a court or competent jurisdiction. It does not matter who brought the action to Court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the Court and the Court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting a god case, can it then say that the other party must now institute an action must grant an injunction anyway? I would think not. In any event, the recourse of law stipulation stands satisfied when a judicial department is made with regard to the first party's protective action."

20. Applying the law laid down by the Hon'ble Supreme Court to the facts of the present case on hand, herein, admittedly, the rights of the parties have already been adjudicated earlier by the competent civil Court and the contention that defendants have to file the suit to obtain possession is devoid of any merits. Further, plaintiffs neither being the owner nor tenant of the suit land are admittedly, in unlawful possession of the gauchar land vested in the Gram Panchayat. As per the judgment of the Hon'ble Supreme Court in the case of Jagpal Singh (Supra), regularization of encroachment over gauchar land is impermissible. The plaintiffs do not fall under the category of cases eligible for regularization, as stipulated by the rules. Ratio of the said judgment is with regard to Government waste land, whereas, suit land is the gauchar land as discussed above. So, ratio of the said judgment would not be applicable in the present matter. Even, as stated above, regularization cannot be claimed as a matter of right and plaintiffs have no vested right to demand regularization. Furthermore, the plaintiffs, by alleging their own unlawful possession, cannot claim protection or legal remedy, as highlighted by the legal maxim "*allegans suam turpitudinem non est audiendus*" (a person alleging his own infamy is not to be heard). Courts, do not permit individuals to benefit from their own wrongful acts. The maxim "*commodum ex injuria*

sua nemo habere debet” (no one ought to derive advantage from his own wrong) further supports the principle that unlawful acts cannot be the basis of any legal claim. Therefore, it cannot be said that due process of law has not been followed therefore, the contention is devoid of any merits.

21. At the cost of repetition, admittedly plaintiffs are unlawful and illegal possession and have made an encroachment towards the suit land which is classified as Gauchar Land. The plaintiff have unable to show any prima-facie legal right over the suit property. Even, as per the recent pronouncement of Hon’ble S.C. in case of Jagpal Singh (Supra) and regularization of the suit land is not permissible. Even otherwise person in illegal occupation or possession of the Government or panchayat land cannot claim regularization as a matter of right. Therefore plaintiffs have failed to show any legal right over the suit land and therefore, they do not have any prima-facie case therefore, I give reply of point No.1 in negative.

22. **Point No.2 :-**

As discussed herein above, plaintiff have unable to show any legal right over the suit land and do not have prima facie case and therefore, not granting injunction

would not amount to suffer more inconveniency to plaintiff. Further, the balance of convenience does not favour the plaintiff because granting of injunction would essentially allow them to continue their unlawful possession contrary to public interest. Therefore, my reply in respect of point No.2 is also in negative and hence, I pass following order.

23. Point No.3 :-

Herein, plaintiff has failed to prove his prima facie case and when he has not prima facie case therefore, if injunction as prayed is not granted, then plaintiff would not suffer any irreparable loss and therefore, my reply as regards, point No.3 in negative.

-:: O R D E R ::-

1. This application vide Ex. 5 & 24 are hereby, rejected.
2. Cost is to be decided in final adjudication of suit.
3. Copy of this order also, be kept along with Exh.24.

Pronounced in the Open Court today on this 17th day of December, 2024.

Date : 17.12.2024

Place: Junagadh.

(Avinash Kamal Bhatt)
Addl. Senior Civil Judge,
Junagadh.
UIC No. GJ00862