

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 3097 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

Approved for Reporting	Yes	No
		✓

BHUMIKABEN D/O JANAKKUMAR BRAHMBHATT W/O CHIRAJ
RAJENDRAKUMAR RAO

Versus

COLLECTOR , AHMEDABAD & ANR.

Appearance:

MR SUNIL S JOSHI(2925) for the Petitioner(s) No. 1

MR JAYNEEL PARIKH, AGP for the Respondent(s) No. 1,2

CORAM:**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

Date : 02/03/2026

ORAL JUDGMENT

1. Rule returnable forthwith. Mr. Jayneel Parikh, learned AGP waives service of notice of Rule for and on behalf of respondent authorities.

2. Heard Mr. Manish Bhatt, learned Senior Counsel with Mr. Sunil S. Joshi, learned advocate appearing for the petitioner and Mr. Jayneel Parikh, learned AGP appearing for the respondent authorities.

3. By way of the present petition, the petitioner herein has invoked Article 226 of the Constitution of India being aggrieved and dissatisfied by the impugned order dated 11.02.2025 passed by the respondent no. 1 - Collector, Ahmedabad whereby the petitioner's application bearing Application No. 3071720413826 for Non-Agricultural use of the agricultural land belonging to the petitioner came to be rejected, the same being in violation of the settled principles of law laid down in the case of **Tushar Ghelani Vs. State of Gujarat** reported in **2019 (4) GLR 2578**.

4. The petitioner herein has prayed for the following reliefs which read thus:

"20. Under the aforesaid premise, the petitioner most respectfully prays to Your Lordships that:

(A) Be pleased to issue a writ of mandamus or certiorari or a writ in the nature of mandamus or certiorari or any other appropriate writ, order or direction, quashing and setting aside the order dated 11.2.2025 passed by the Collector, Ahmedabad i.e. respondent No.1 bearing Application No.3071720413826;ut Amax.A.&

(B) Pending admission, hearing and final disposal of the captioned petition, be pleased to stay the execution, implementation and operation of the order dated 11.2.2025 passed by the Collector, Ahmedabad i.e. respondent No.1 bearing at Ammor. A Application No.3071720413826 and further be

pleased to consider the application of the petitioner afresh in the light of the law laid down by this Hon'ble Court reported in 2019 (4) GLR 2578;

(C) Be pleased to grant any other and further relief in the facts and circumstances of the matter."

5. Brief facts leading to the filing of the present petition read thus:

5.1. The petitioner herein purchased the land situated at Village: Thaltej, Taluka: Ghatlodiya, District: Ahmedabad bearing Survey/Block.No.445/2 (for short, "the subject land"), admeasuring 1526 sq.mts., which is included in Town Planning Scheme No.214 and allotted Final Plot No. 12/2 admeasuring 1068 sq.mts. The petitioner purchased the subject land from its erstwhile owners by a registered sale deed dated 18.01.2024, the mutation entry of which is recorded in the revenue record vide Mutation Entry No. 17271 dated 18.01.2024 duly produced at Annexure-B to the petition.

5.2. The land in question was owned by one Nalinkant Kantilal and the said owner by a registered sale deed dated 15.04.1994 sold the same to Shri Saraswati Smruti Kheti Sahakari Mandali Limited and the said sale deed was mutated in the revenue record as Mutation Entry No. 7408 duly certified by the concerned revenue officer on 17.12.1994 duly produced at Annexure-C to the petition. The said Sahakari Mandali was, thereafter, divided and on account of such

division, the said land had gone in the share of Saraswati Smruti Samudayik Kheti Sahakari Mandali Limited, Vighag-2. The said division came to be mutated in Village Form No. 6 of the said land vide Mutation Entry No.7730 and 8051 dated 20.04.1996 and 20.05.1997 respectively duly produced at Annexure-D to the petition. The said Cooperative Farming Society was converted as Cooperative Housing Society by an order dated 09.11.1998 passed by the Additional Registrar, Cooperative Societies, District Panchayat, Ahmedabad. The said Sahakari Mandali appears to have been renamed as and registered as Sumit Cooperative Housing Society Limited and the same is reflected in the Village Form No. 6 of the land vide Mutation Entry No. 9221 dated 05.01.2004 duly produced at Annexure-E to the petition.

5.3. The part of the land other than the subject land was sold by the said society to Nathabhai Borad, who in turn sold it to Kamleshbhai Parshottambhai, etc. and said purchasers had applied for the part of said land for N.A. use and the Collector, Ahmedabad, by an order dated 15.11.2006, granted such permission, which is mutated in the revenue record as Mutation Entry No. 10147 dated 17.11.2006 duly produced at Annexure-F to the petition. The said Sumit Cooperative Housing Society Limited sold the subject land along with its other lands by a registered sale deed dated 23.11.2016 in favour of Jayantilal Kacharabhai Patel and two others and the said sale deed

was mutated in the Village Form No. 6 of the said land vide Mutation Entry No. 14431 dated 03.12.2016.

5.4. The said purchasers namely, Jayantilal Kacharabhai Patel and others executed registered sale deed in favour of the petitioner.

5.5. The petitioner upon becoming the owner of the said land by virtue of the sale deed applied for N.A. use permission as referred to herein-above by an application dated 18.12.2024.

5.6. It is the case of the petitioner that the petitioner herein is an agriculturist by birth/succession in respect of land bearing Survey No. 1994 situated at Village: Traj, Taluka: Matar, District: Kheda and her name is recorded as such in the Village Form No. 6 of the said land vide Mutation Entry No. 5400 and Prant Officer, Kheda issued a certificate dated 18.12.2023 in favour of the petitioner as being agriculturist.

5.7. The petitioners application for N.A. use came to be rejected by respondent no. 1 on the ground that in view of Mutation Entry No. 7408, the name of Shri Saraswati Smruti Kheti Sahakari Mandali is entered in the column of occupier of the Village Form No. 7/12 and thereafter by virtue of Mutation Entry No. 7730 and 8051, the said society was divided and no permission under Section 63 of the Gujarat Tenancy and Agricultural Lands Act, 1948,(for short, “the

Tenancy Act”) is obtained by the said society and therefore, the tenancy authorities have not given a favourable opinion for grant of N.A. Further, the name of the petitioner was mutated in the revenue record by virtue of sale deed which was mutated in Village Form No. 6 of the said land vide Mutation Entry No. 1727 dated 18.01.2024 but in respect of the evidence of petitioner being agriculturist produced vide Mutation Entry No. 5400 in respect of land situated at Village: Traj, Kheda, there is no clarity as regards her being agriculturist. On the aforesaid grounds, the respondent no. 1 - Collector rejected the application of the petitioner by an order dated 11.02.2025. The aforesaid has given rise to the filing of the present petition for prayers as referred to herein-above.

6. Mr. Bhatt, learned Senior Counsel for the petitioner submits that the grand-father of the petitioner was an agriculturalist and the petitioner herein is also issued certificate of an agriculturalist as referred to herein-above which was duly produced before the Collector with respect to land at Village: Traj, Kheda by way of succession, however, the respondent no. 1 has erred in holding that the evidence produced by the petitioner of being an agriculturalist is not clear as regards her status as an agriculturalist.

6.1. It is further submitted that the respondent no. 1 has also erred in rejecting petitioner’s application for N.A. on the erroneous ground

that no action for breach of Section 63 of the Tenancy Act is taken qua the society who had purchased the land on 15.04.1994 by the respondent authorities.

6.2. It is submitted that no action is ever taken by the concerned authority under the Tenancy Act till date and therefore, after a gross delay of 30 years, the authorities do not have any jurisdiction to initiate such proceedings.

6.3. The impugned order is such that the same is unsustainable in the eye of law.

6.4. Placing reliance on the aforesaid submission, it is submitted that while considering the application for N.A. use, the respondent authority is required to consider whether the applicant herein is an occupier of the land in question and whether such applicant is carrying on agricultural activities. It is submitted that it is not in dispute that the petitioner herein is an agriculturalist by birth and the name of the petitioner is mutated in the column on occupier in village Form No. 7 of the said land and satisfies the ratio laid down in Tushar Ghelani (Supra). It is submitted that in view of the aforesaid, the petitioner herein is satisfying both the conditions as laid down in the aforesaid judgment and in view thereof, the impugned order is required to be quashed and set aside.

7. Mr. Parikh, learned AGP submits that no interference is called for in the impugned order passed by the respondent no. 1. It is further submitted that the respondent authority has as such not initiated any proceedings under Section 63 of the Tenancy Act with respect to the erstwhile Mandali.

8. Having heard learned advocates appearing for the respective parties, upon perusal of the impugned order passed by the respondent no. 1 dated 11.02.2025, the petitioner's application for N.A. use under Section 65 of the Code as stated herein-above is rejected mainly on the ground that it is not clear whether the erstwhile cooperative society had taken permission under Section 63 of the Tenancy Act before the purchase of the said land as well as no such permission was obtained by the said society at the time of division and in view thereof, based on the negative online opinion by the Mamlatdar and Krushi Panch the permission for N.A. use as prayed for could not be granted.

9. It emerges from the record that and upon submission made by Mr. Parikh, learned AGP that no proceedings are ever initiated by the respondent authority qua the erstwhile co-operative society under the Tenancy Act.

10. In the facts of the present case, in light of the ratio laid down in Tushar Ghelani (Supra), the impugned order passed by the

respondent authority is unsustainable in the eye of law having been passed on the grounds distinct from powers provided under Section 65 of the Code wherein, the respondent no. 1 in exercise of such powers is required to summarily inquire whether the applicant is occupying the land in question and whether using the said land for agricultural purpose.

10.1. It is apposite to refer to the decision rendered in the case of ***Tusharbai Harjibhai Ghelani versus State of Gujarat*** reported in **(2019) 4 GLR 2578**, paragraph nos. 35 to 44 of which reads thus:

“35. Section 65 of the Code, referred to above, on its plain reading, do not provide for any scope of raising objection by any party who is yet to establish its right in his favour over the land in question. In other words, the proceedings under section 65 of the Code is not an adversary proceeding at all.

36. In section 65 of the Code, referred to above, two words are of pivotal importance; (i) “occupant” and (ii) “holding”. Section 3(12) defines the term “holding”. It reads as under;

“3(12):-”holding”:-”holding” means a portion of land held by a holder”

37. Section 3(16) defines the term “occupant”. It reads under; “3(16):-”occupant”; “occupant means a holder in actual possession of unalienated land, other than a tenant; provided that where the holder in actual possession is tenant the landlord or superior landlord, as the case may be, shall be

deemed to be the occupant.”

38. Thus, the plain reading of section 65 makes it clear that for the purpose of grant of N.A. Permission, the first thing the Collector should look into is whether the applicant, seeking N.A. Permission, is an occupant of the land which is being assessed or held for the purpose of agriculture. For the purpose of ascertaining this, the Collector is expected to look into the revenue records. The name of the applicant in the revenue records would prima facie go to show or rather indicate that he is the occupant of the land. The second step in the process would be to ascertain whether such land is being assessed or held for the purpose of agriculture.

39. Section 65 of the Code provides for the uses to which an occupant of land for the purpose of agriculture may put his land to. If the occupant of the land wishes to use the land for purposes other than the agriculture or agriculture-related activities, he is required to make an application to the Collector for permission to do so. It may be noted that the keyword in Section 65 is the occupant of the land. It is sufficient for the purposes of Section 65, that the person applying for NA Permission is an occupant of the land. It is nowhere stated in the said provision that the applicant should have title or ownership over the land for which NA Permission is sought. The legislature, in its wisdom, has thought it fit that it should suffice if an occupant of the land applies for NA Permission. It is not necessary that such person has to prove his title to the land before he makes an application. The present case is on a far better footing. Not only are the petitioners occupants of the land, they are also the owners thereof, by a legal and valid registered Sale Deed. The said sale deed may be a subject

matter of challenge before the Civil Court but the fact remains that the Civil Court has not yet passed any decree cancelling the same or declaring it to be illegal or obtained by fraud.

40. Thus, it transpires that, no power is available to the Collector under Section 65 of the Code to examine or conclude regarding the title of the writ applicants over the land in question. A bare reading of the said provision makes it clear that it only provides for the uses to which an occupant of land for agricultural purposes, may put his land to. The provision further lays down the procedure to be followed for making an application for NA Permission by the occupier and the manner in which it is to be processed by the Competent Authority. Nowhere is it contemplated in Section 65 that the Collector is empowered to undertake an inquiry into the title of the occupier.

41. A perusal of the impugned order dated 19th November, 2014 passed by the Collector makes it clear that the reason for the rejection of the application of the writ applicants is that their title to the land in question is defective on the ground that two civil suits are pending.

42. In State of Gujarat v. Patel Raghav Natha, (1969) 2 SCC 187, the Supreme Court has clearly held as below "14. We are also of the opinion that the Commissioner should not have gone into question of title. It seems to us that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent Court and not decide the question of title himself against the occupant."

43. This was also a case where the NA Permission under the provisions of Section 65 of the Code was in issue. The above principles of law therefore, squarely apply to the present case.

44. Considering the provisions of Section 65 of the Code as well as the above pronouncement of law by the Supreme Court, this Court cannot but arrive at the inevitable conclusion that the denial of NA Permission to the writ applicants under the garb of a purportedly defective title over the land in question amounts to a transgression of the limits of jurisdiction vested in the second respondent under the Code. The impugned order is, therefore, one without jurisdiction. For such reason also the plea of alternative remedy should fail.”

11. In the facts of the present case, the respondent no. 1 having exercised powers contrary to those provided under Section 65 of the Code as discussed herein-above and the ratio laid down in the case of Tushar Ghelani (Supra) as referred to herein-above, the impugned order passed by respondent no. 1 - Collector dated 11.02.2025 is quashed and set aside.

12. The petitioner herein to prefer a fresh application seeking N.A. use permission under Section 65 of the Gujarat Land Revenue Code, 1879, which is directed to be decided within the statutory period taking into consideration the ratio laid down in case of Tushar Ghelani (Supra).

13. With the aforesaid directions, the present petition stands allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

KUMKUM

(VAIBHAVI D. NANAVATI,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: KUMKUM MAHENDRA SHARMA(HC02349), ENGLISH STENO GRADE-II, at High Court of Gujarat on 07/03/2026 17:19:20