

Reserved On : 18/12/2025
Pronounced On : 23/01/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 15605 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

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Approved for Reporting	Yes	No
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STATE OF GUJARAT & ANR.
 Versus
 BHAVANI INDUSTRIES & ORS.

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Appearance:

MR KANVA ANTANI, AGP for the Petitioner(s) No. 1,2
 MR PERCY KAVINA, SENIOR ADVOCATE WITH MR MEET D
 KAKADIA(11896) for the Respondent(s) No. 1
 MR SP MAJMUDAR(3456) for the Respondent(s) No. 1
 MR MAULIK NANAVALI FOR NANAVALI & CO. for Respondent 7
 RULE SERVED for the Respondent(s) No. 6
 SERVED BY AFFIX. (R) for the Respondent(s) No. 2,3,4
 SERVED BY PUBLICATION IN NEWS for the Respondent(s) No. 5

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CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

CAV JUDGMENT

1. By way of preferring present petition, the petitioners have prayed for the following relief/s:

“A. To issue writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the orders passed by the

Secretary, Revenue Department (Appeals) in Review Application No.6 of 2007 and the order dated 13/14th December 2005 passed by the Secretary, Revenue Department (Appeals) in Revision Application No.15 of 2005.

B. To pass an ex-parte ad-interim order staying the operation, execution and implementation of the orders passed by the Secretary, Revenue Department (Appeals) in Review Application No.6 of 2007 and the order dated 13/14th December 2005 passed by the Secretary, Revenue Department (Appeals) in Revision Application No.15 of 2005.

C. To pass any other order(s) in favour of the petitioners as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The brief facts of the case of the petitioners can be summarized in nutshell as under:

2.1. In the year 1967, an application was made by the Director of M/s. Nav Bharat Potteries Ltd. to the Collector, Rajkot for allotment of Government land for the purpose of setting up a Pottery Industry.

2.2. Pursuant to the said request, the Collector, Rajkot, vide order bearing No. Land-1-78 dated 26.05.1967, granted land admeasuring 12 Acre 02 Gunthas (48964.77 Sq. Mtrs.) from land bearing Survey No.637 (hereinafter be referred to as the 'subject land') at a concessional rate of Rs.3/- per Sq. Mtr. in consonance with the Government Resolutions dated

17.10.1947 and 07.08.1956 by imposing certain terms and conditions and entry no.4610 in that regard came to be mutated in the revenue record on 16.06.1967.

2.3. Thereafter, the Director of M/s. Nav Bharat Potteries Ltd. sought permission of the Collector, Rajkot to change the name of the firm from M/s. Nav Bharat Potteries Ltd. to Day Light Ceramics Gujarat Pvt. Ltd. The said request is accepted by the Collector vide order dated 01.02.1969 and therefore the name of the firm was changed from M/s. Nav Bharat Potteries Ltd. to M/s. Day Light Ceramics Gujarat Pvt. Ltd. At that relevant point of time, the Director of M/s. Day Light Ceramics Gujarat Pvt. Ltd. filed Kabulatnama accepting the conditions of the order. Thereafter, the layout plan for construction of pottery industry was sanctioned by the Collector on 12.11.1969.

2.4. Thereafter, for the purpose of development of business, the aforesaid firm had taken loan from the Bank of Baroda by mortgaging the subject land after obtaining permission from the competent revenue authority. As the firm failed to repay the loan amount, the Bank of Baroda had filed Special Civil Suit No.186 of 1985 before the competent Civil Court at Rajkot. After considering and appreciating the relevant materials and documents, the learned Court concerned initiated the process of selling the

subject land through auction and accordingly appointed Court Receivers. Thereafter, after following due procedure, the auction was held on 23.04.1994, wherein the bid of one Shree Bansidhar Udyogik Seva Sahakari Mandali (hereinafter be referred to as the 'Mandali') was accepted and subject land was sold to said Mandali for a consideration of Rs.80,01,111/-. Pursuant to the said transaction, entry No.45 came to be mutated on 15.10.1995 and subsequently certified on 17.01.1996.

2.5. Thereafter, the subject land is purchased by respondent No.1 – M/s. Bhavani Industries from the aforesaid Mandali. It appears from the record that respondent No.1 had filed one Lavad Suit against the aforesaid Mandli and its members before the Board of Nominees, Rajkot for specific performance and said suit came to be allowed by the learned Board of Nominees vide order dated 20.07.2002. Thus, since then, the subject land is in occupation and possession of M/s. Bhavani Industries.

2.6. Thereafter, the Collector, Rajkot received one application from one whistle-blower viz. Shri B. L. Solanki on 19.09.2002, *inter alia*, alleging certain illegalities committed by the revenue authorities in connivance with the administrators of M/s. Day Light Ceramics Gujarat Pvt. Ltd., whereby, the subject land is sold. Pursuant to the said application,

instructions were issued by the Collector, Rajkot to the concerned revenue authorities to ascertain the veracity of the version of allegations levelled in the said application. After receiving reports from the concerned revenue authorities, the Collector, Rajkot had taken the matter into *suo motu* revision under Rule 108(6) of the Gujarat Land Revenue Rules and issued notice to the concerned parties. Simultaneously, the Collector, Rajkot had also initiated proceedings for breach of conditions of original allotment letter and issued notice to the concerned parties.

2.7. Pursuant to the issuance of show cause notice by the Collector, Rajkot, respondent No.1 – M/s. Bhavani Industries had preferred a writ petition being Special Civil Application No.966 of 2003 before this Court. The said petition came to be disposed of by the Coordinate Bench of this Court vide order dated 06.09.2004, inter alia, directing the Collector to consider the reply of the petitioner (respondent No.1 herein) and its proposal for regularization in accordance with law. Pursuant to order dated 06.09.2004 passed by the Coordinate Bench of this Court, the Collector, Rajkot fixed the matter for hearing and after considering relevant documents and materials, passed an order dated 03.03.2005 vesting the land into the Government.

2.8. Being aggrieved by and dissatisfied with the said order, the respondent No.1 had filed revision before the learned Special Secretary, Revenue Department (Appeals) (hereinafter be referred to as 'the SSRD'). The learned SSRD, vide order dated 13/14.12.2005, allowed the revision application of the respondent No.1 herein by setting aside the order passed by the Collector and directing the Collector, Rajkot to regularize the land by taking 50% market value of the land after deducting the cost of construction and value of machineries. The market value of the land to be considered as Rs.80,01,111/- i.e. the price of the land fetched at the time of auction held in the year 1994.

2.9. Pursuant to the aforesaid order passed by the learned SSRD, the Collector sought guidance from the Secretary, Revenue Department and the learned Secretary, Revenue Department, vide communication dated 21.12.2006, directed the Collector, Rajkot to file review application against the order dated 13/14.12.2005 passed by the SSRD. Accordingly, the Collector, Rajkot has preferred review application before the learned SSRD. However, the said review application also came to be dismissed by the learned SSRD vide order dated 19.10.2007. Hence, present petition is preferred by the petitioners challenging the orders passed by the learned SSRD in review application as well as in the revision application.

3. Heard learned AGP Mr. Kanva Antani for the petitioners, learned Senior Advocate Mr. Percy Kavina assisted by learned advocate Mr. Meet Kakadia for the respondent No.1 and Mr. Maulik Nanavati for respondent No.7.

4. Learned AGP Mr. Antani submits that the subject land was allotted to M/s. Nav Bharat Potteries Ltd. for setting up a pottery industry with certain terms and conditions at a concessional rate of Rs.3/- per sq. mtr. He further submits that thereafter the name of the said firm has been changed with the prior permission of the Collector. Thereafter, the said firm applied for loan from the Bank of Baroda by mortgaging the subject land and failed to repay the amount of loan and therefore Bank of Baroda had instituted a suit before the competent Civil Court and sought to sell the subject land through auction. Thereafter, the Court concerned has held the auction, wherein, the price of the land was fixed at Rs.1,72,00,000/-. However, as the highest bidder offered an amount of Rs.80,01,111/-, the sale is confirmed in favour of that bidder and an entry to that effect is also mutated which was also certified. Learned AGP Mr. Antani further submits that thereafter the subject land is purchased by the respondent No.1 from the auction purchaser. He submits that thereafter one whistle-blower has made an application to the Collector, Rajkot inter alia

alleging certain illegalities insofar as the subject land is concerned. The learned Collector therefore took the matter into suo motu revision under Rule 108(6) of the Gujarat Land Revenue Rules and issued show cause notice to the concerned parties. Being aggrieved by the said act of the Collector, the respondent No.1 herein had preferred one petition before this Court, which came to be disposed of with certain directions to the Collector. He submits that thereafter the learned Collector had fixed the matter and after appreciating and considering the materials available before him, passed the order, whereby, the land in question is vested in the Government by cancelling the original allotment letter. Being aggrieved by the said order, the respondent No.1 herein had preferred revision before the learned SSRD, which came to be allowed by setting aside the order passed by the Collector. He further submits that the learned SSRD has also directed the Collector to consider Rs.80,01,111/- to be the market price of the subject land and accept 50% of that amount from the respondent No.1 for regularization of the subject land. He further submits that while passing the impugned order, learned SSRD has directed the learned Collector to send the proposal of regularization made by the respondent No.1 in the aforesaid manner and after giving his opinion and after getting sanction from the Government, the Collector has to initiate the proceedings of regularization and therefore, the

matter is remanded back to the Collector. Learned AGP Mr. Antani submits that pursuant to the said order, learned Collector sought guidance from the Secretary, Revenue Department and the Secretary, Revenue Department directed the Collector, Rajkot to file review before the learned SSRD. Therefore, the Collector has filed review before the learned SSRD, which came to be dismissed by the learned SSRD and therefore present petition is preferred.

4.1. Learned AGP Mr. Antani has read the orders passed by the Collector and SSRD and submitted that at the time of passing the impugned order allowing the revision preferred by the respondent No.1 herein, the learned SSRD has exceeded its jurisdiction by giving certain directions to the learned Collector. He submits that Rule 108(6) of the Gujarat Land Revenue Code empowers the learned SSRD to assess the validity of the orders passed by the subordinate revenue officers. However, it does not empower the learned SSRD to dictate the subordinate officer to act in a particular manner deviating from the policy of the State Government which prescribes certain norms and parameters for the purpose of regularization and levy of premium and by doing so, the learned SSRD has not only misread the guidelines issued by the State Government from time to time by issuing various circulars but it has also misread the order passed by the Coordinate Bench of this Court.

He further submits that if the Honorable Court would make cursory glance upon the operative part of the order passed by the learned SSRD, in that event, it would have been found out that though the matter has been remanded back to the Collector, by issuing mandatory directions, no discretion is left open for the Collector to pass any independent order based upon the merit of the matter and in accordance with law, as directed by the Coordinate Bench of this Court and rather it can be said that the matter was remanded back to the learned Collector with a specific mandate to scrupulously follow the directions given in the order and regularize the land in question. Therefore, the said view adopted by the learned SSRD is required to be quashed and set aside.

4.2. Learned AGP Mr. Antani further submits that at the time of entertaining the suo motu revision, the Collector has given detailed and elaborate reasons by discussing the commission of breach of conditions of original allotment letter at the instance of the purchasers and jumped to the conclusion, whereas, learned SSRD has overturned the said decision of the Collector without assigning any plausible reasons of divergence from the view adopted by the Collector as regards the breach of conditions, which itself crystallizes the position of fact that the view adopted by the learned SSRD is not just, fair, reasonable and legal. He further submits that in fact

at the time of filing the petition before this Court, the respondent no.1 has contended that he has purchased the subject land from the members of the Mandali and in fact there are more than 38 plots found available at the place. It is an admitted position of fact that as per the terms and conditions of the original allotment letter, division of the land is not permissible. Despite that, the subject land divided without obtaining prior permission of the revenue authority and therefore there is express breach of condition of the original allotment letter. Thereafter, the respondent No.1 has made construction upon the subject land and change the use of the land from pottery industry to manufacturing of automobile spare-parts without prior permission of the Collector and in breach of the conditions of the allotment letter. Thus, the terms and conditions of the original allotment letter have been breached. He further submits that even the Bank of Baroda has also not joined the petitioners as party in the suit. Therefore, the petitioners were not at all aware about the civil litigation ensued at the instance of the Bank of Baroda. He further submits that at the time of disposing of the petition, certain observations were being made by the Coordinate Bench of this Court, whereby, the respondent No.1 herein was permitted to send a proposal for regularization before the Collector without prejudice to its rights and contentions to challenge the proceedings of

breach of conditions and directions were issued to the Collector to decide it in accordance with law. Pursuant to the said direction issued by this Court, at the first in point of time, the Collector concerned has verified the record and jumped to the conclusion that there was breach of various conditions and as a consequential effect, as per the direction of this Court, the application for regularization has been heard by the learned Collector and respondent No.1 was directed to pay 50% premium amount as per the prevalent policy of the State Government. However, respondent No.1 was not ready and agreeable to pay that amount. He, therefore, submits that the order of the Collector is just, fair, reasonable and based upon the sound principle of law. The sum and substance of the arguments canvassed by learned AGP Mr. Antani is that while passing the impugned order in revision, the learned SSRD has exceeded its jurisdiction by issuing directions to the learned Collector to act in a particular manner in contravention and against the policy of the Government as well as existing Government Resolutions passed by the Government for regularization and assessing the amount of premium. Learned AGP Mr. Antani has drawn the attention of this Court to Rule 108(6) of the Gujarat Land Revenue Rules and submitted that as per the said provision, the learned SSRD is empowered to assess the propriety, validity and legality of the order passed

by the subordinate revenue authority and it does not empower the learned SSRD to dictate the subordinate authority to act in a particular manner in contravention and against the existing policy and Government Resolutions issued by the State Government from time to time for regularization as well as levy of premium. In rejoinder, learned AGP Mr. Antani submits that the contention as regards delayed initiation of the suo motu proceedings at the instance of the Collector is not required to be taken in to consideration since the respondent No.1 has not challenged the order of the learned SSRD before this Court and accepted the it wholeheartedly. Therefore, the doctrine of merger would be squarely applicable in the instant case and respondent No.1 is not entitled to take the said contention at this advance stage. He, therefore, submits that the order passed by the learned SSRD may be quashed and set aside.

5. Per contra, learned Senior Advocate Mr. Percy Kavina assisted by learned advocate Mr. Meet Kakadia appearing for the respondent No.1, has opposed this petition with vehemence and submitted that in the instant case suo motu powers have been exercised by the Collector by issuing a show cause notice to the respondent No.1 for cancellation of allotment on the basis of breach of condition of the allotment letter. He submits that as such there is no breach of any condition of original allotment letter as alleged by

the Collector, at the instance of the respondent No.1. He submits that in fact the respondent No.1 had purchased the said property from the Mandli by executing registered sale deed and paying full amount of consideration. He submits that at the time of allotment of the subject land to the original allottee, certain salient conditions have been imposed in the order of allotment. Those conditions are very important. He further submits that he has already produced all the documents on record. At the time of issuance of order of allotment, the revenue authority has heavily put reliance upon the Government Resolutions of the year 1947 and 1956. He further submits that with a sole intention to develop industries in the particular region, the subject land had been allotted to the original allottee to develop pottery industry. He further submits that at that relevant point of time the State Government was very keen to develop industrial belt in that particular region and therefore allotted Government lands to various industrial/commercial concerns after receiving reasonable amount of the land.

5.1. Learned Senior Advocate Mr. Kavina further submits that the Revenue Department has considered the Government Resolution issued in the year 1956, wherein also the tenure of the land so given to the industrial/commercial concerns is mentioned as alienable tenure and original allotment letter is

also based on the Government Resolutions of 1947 and 1956 and therefore it can safely be said that there was no prohibition for transfer/alienation of the subject land. He further submits that if the Hon'ble Court would minutely go through the language employed in condition No.4 of the original allotment letter, in that event, it would have been found out that the subject land could not be sub-divided and if sub-division of the land is to be made, in that event, without prior permission of the Government, the said sub-division could not be sold. He submits that the said condition applies to pre-sale and not post-sale and after first purchase of the land by the Mandali through public auction, the Government ceases to be the owner of the said property and Mandli can develop and use the land as per the requirement of its members. He submits that when the Mandli had purchased the subject land, it was not divided and Mandli had purchased the entire chunk of the subject land, as per the condition of the allotment letter, through public auction held by the Court by following due procedure and thereafter the respondent No.1 had purchased the entire property from the auction purchaser - Mandali by way of executing a registered sale deed. Therefore, it cannot be said that there was any breach of terms and conditions of the allotment letter on the part of respondent No.1. He further submits that respondent No.1 is a *bona fide* purchaser. He further submits that if there was no

breach of terms and conditions of the allotment letter, there is no question of consequential forfeiture and its regularization. Learned Senior Advocate Mr. Kavina further submits that the petitioners have not challenged the order passed by the competent Civil Court, whereby, the sale of the subject land is confirmed in favour of the Mandali and therefore Collector, Rajkot has exceeded its jurisdiction by vesting the land in the Government by loosing sight to an important aspect that the entry in question has been mutated in the revenue record on the basis of confirmation of sale by the competent Civil Court. If the Government would have any grievance against the order of the competent Civil Court, in that event, the Government should have to challenge the outcome of the civil proceedings by way of preferring an appeal before the competent Appellate Court. However, the said course of action has not been adopted by the petitioners, instead carried out the proceedings of breach of conditions and suo motu revision under Rule 108(6) of the Rules. Thus, in absence of any challenge to the order passed by the competent Court confirming sale in favour of Mandli, it is not open for the petitioners to cancel the entry, which was mutated on the basis of the order passed by the competent Court and cancel the allotment and vest the subject land in the Government.

5.2. Learned Senior Advocate Mr. Kavina further submits that at the time of initiation of suo motu proceedings as well as breach of conditions, Collector sought permission from the Government to challenge the order passed by the competent Civil Court before the higher forum. However, the Collector was directed to initiate *suo motu* proceedings as well as proceedings for breach of conditions instead of challenging the order of the competent Civil Court on the ground of delay.

5.3. Learned Senior Advocate Mr. Kavina further submits that for the purpose of better understanding of the controversy involved in this matter, certain sequence of event of incidents occurred in the matter are required to be seen. In the year 1967, the land was allotted in favour of original allottee for the purpose of setting up of a pottery industry. Thereafter, the said firm has changed its name after obtaining permission from the Collector. Thereafter, for the purpose of development of the business, the said firm has obtained loan from Bank of Baroda by mortgaging the subject land with the prior permission of the Collector. The documents pertaining to permission granted by the concerned revenue authority is also placed on record. Thereafter, as the firm failed to repay the loan amount, the Bank was constrained to initiate the proceedings for enforcement of the mortgage deed by way of

instituting a suit before the competent civil Court. He submits that the said suit is filed by the bank in the year 1985, wherein, the order confirming sale through auction in favour of Mandali has been passed in the year 1994. During the interregnum period those particular facts have already been brought to the notice of the concerned revenue authority but they have chosen not to enter into the said dispute. Learned Senior Advocate Mr. Kavina further submits that on the strength of the order passed by the competent civil Court, exercise of auctioning the subject land has been carried out and for that 7 times notice to sell the subject land has been published in the newspaper and therefore it cannot be believed that the petitioners were not aware about those proceedings. Not only that, during the course of proceedings certain reports were also called for from the revenue authority which crystallizes the position of fact that the petitioners were aware about the ongoing civil litigation pertaining to the subject land. He further submits that in fact the respondent No.1 herein had purchased the subject land from the Mandali and at that relevant point of time no condition was imposed upon the said Mandali. He submits that the Government authority has imposed conditions upon the original allottee and the original allottee has to scrupulously follow and adhere with the terms and conditions mentioned in the allotment letter in a *stricto sensu* manner. Learned

Senior Advocate Mr. Kavina submits that the original allottee had scrupulously followed and adhered with the terms and conditions of the allotment letter and at the time of mortgaging the subject land with the Bank of Baroda for the purpose of obtaining loan, prior permission of the Collector was sought for and obtained by the original allottee. Therefore, the said fact was well within the knowledge of the petitioners. Not only that after the publication of public advertisement in the newspapers after almost 7 occasions, auction proceedings have been initiated by the Court by appointing the Court Receivers and Mandali had purchased the property in the said auction by paying the market price of the subject land and thereafter respondent No.1 had purchased the subject land from the Mandali after paying full amount of consideration as per prevalent market price and executing registered sale deed. Therefore, it can safely be said that if at all the recovery of premium is required to be made at the instance of the Government, in that event, it would have been made either from the original allottee in whose favour the land was originally allotted or the Bank of Baroda with whom the subject land was mortgaged and at whose instance the sale through auction had taken place and/or the Mandali – the auction purchaser. Learned Senior Advocate Mr. Kavina emphatically submitted that a very specific condition is incorporated in the allotment letter. He submits that it is well settled

that the things which may not be done directly cannot be done indirectly, therefore the course of action taken by the petitioners is not legal and legitimate one crystallizes the position of fact that in the event of sale of the subject land, the Government is entitled to get 50% of the unearned profit. He submits that for the sake of repetition, in fact the respondent No.1 herein had purchased the subject land from the Mandali at a market price and therefore the question of earning any profit by the respondent No.1 through said transaction and consequential repayment of 50% of the unearned profit does not at all arise. In spite of that, respondent No.1 had shown readiness and willingness to pay 50% of Rs.80,01,111/- i.e. the price of the subject land fetched through public auction and therefore learned SSRD has rightly assessed the said price as the market value of the subject land and no error could be said to have been committed by the learned SSRD in arriving at a figure of Rs.80,01,111/-.

5.4. Learned Senior Advocate Mr. Kavina submits that the question of forfeiture of the land and/or its regularization does not arise in absence of any breach of terms and conditions of the allotment letter. He submits that as per the condition of the allotment letter, which is based on the Government Resolution of 1956, the tenure of the land is transferable/alienable. He further submits that the

auction purchaser had purchased the entire subject land including existing structure of construction of building in public auction in the year 1994, whereas, present respondent No.1 also purchased the entire land including building etc. from the auction purchaser in the year 2002. Thus, not a single condition of the allotment letter could be said to have been breached either by the auction purchaser or by the present respondent No.1. He further submits that as per the provisions of the Transfer of Properties Act, a mortgage involves transferring an interest in specific immovable property as security for a loan, debt, or performance of an obligation of the mortgagor. He further submits that it is the case of the petitioners that they were not joined as a party in the suit preferred by the Bank of Baroda for the enforcement of mortgage deed before the competent Civil Court and the order confirming auction sale has been passed in their absence. He submits that if the petitioners were aggrieved by the said decision, in that event, they should have to challenge the said order by way of preferring an appeal before the competent Appellate Court. However, till date no appeal is preferred by the petitioners and order confirming sale passed by the competent Civil Court has attained finality. Therefore, after a lapse of period of 35 years, now, it is not open for the petitioners to take the shelter of non-joining them as a party to the suit proceedings by the BOB.

Learned Senior Advocate Mr. Kavina has also drawn the attention of this Court to the correspondence entered into by and between the petitioners *inter se* and submitted that the Collector was directed not to challenge the order of Civil Court before the higher forum on account of inordinate delay. Learned Senior Advocate Mr. Kavina submits that if the Hon'ble Court would make cursory glance upon the contents of the original allotment order as well as conditions attached to the said order, in that event, it would have been found out that the subject land itself is of alienable tenure i.e. old tenure land.

5.5. Learned Senior Advocate Mr. Kavina has read the conditions of the allotment letter and submitted that condition Nos. 6, 9 and 12 of the allotment letters are very important conditions. Learned Senior Advocate Mr. Kavina further submits that time is very essential factor in this kind of cases. He submits that there is gross unexplained delay of 8 years in initiating the proceedings by the Collector. He further submits that the Hon'ble Apex Court has, in numerous case laws, held that the suo motu powers has to be exercised within a reasonable time and exercise of such powers beyond reasonable time would render the exercise arbitrary. In support of his submission, learned Senior Advocate Mr. Kavina has put reliance upon the decision of the Division Bench of this Court in the case of ***State of Gujarat v. Jitendrasinh***

Jagmalsinh Sodha, reported in **2023(0) AIJEL-HC-245041**. Learned Senior Advocate Mr. Kavina has submitted that the contention of delayed initiation of suo motu proceedings by the Collector can be agitated at any stage as the respondent No.1 has not waived off the said right.

5.6. Learned Senior Advocate Mr. Kavina further submits that at the time of issuance of notice for auction sale of the subject land and/or in the sale certificate issued by the Court, the conditions of the original allotment letter are required to be imposed. However, such conditions are not there in the sale certificate issued by the Court and therefore it can safely be said that neither the auction purchaser nor the present respondent No.1 has committed any breach of conditions of allotment letter. He further submits that nowhere in the entire body of the order, the Collector has given any explanation regarding delayed initiation of the proceedings. He further submits that the order impugned passed by the SSRD is just, fair and reasonable and based upon the sound principle of law and passed after appreciating and considering the materials available before it. Learned Senior Advocate Mr. Kavina submits that in fact it is the case of the petitioners that the subject land was allotted to the original allottee at a concessional rate of Rs.3/- per sq. mtr. However, nowhere in the

entire allotment letter it is stated that the subject land is allotted to the original allottee at a concessional rate. In fact at that relevant point of time i.e. in the year 1967, an amount of Rs.1,75,000/- has been paid by the original allottee to the Government. Thus, it cannot be said that the Government has allotted the subject land at a concessional rate. On the contrary, the original allottee had already paid reasonable amount of the subject land in the year 1967 and thereafter also Government has earned premium from the original allottee at a fixed rate till the property is auctioned. He further submits that even the auction purchaser had also purchased the property in question at a market rate and that too in 7th attempt of auction sale of the subject land. Likewise, respondent No.1 had also purchased the subject land by paying the amount of consideration at a market rate. Therefore, the question of earning any unearned profit either by the auction purchaser or by the present respondent No.1 does not arise at all and therefore respondent No.1 is not liable to pay the unearned profit to the Government. In support of his submission, learned Senior Counsel Mr. Kavina relied upon the decision of this Court in the case of **P.B. Textiles Pvt. Ltd. v. Gujarat Industrial Development Corporation**, reported in **1997 SCC Online Guj 285**. He, therefore, submits that the amount of Rs.2 crore deposited by the respondent No.1 pursuant to the

order of the Division Bench of this Court may be refunded to the respondent No.1. He further submits that without prejudice and for the sake of argument even if it is to be believed that petitioners were not aware about the initiation of proceedings by the Bank before the competent Civil Court, in that event also, the petitioners could have challenged the order passed by the competent Civil Court, whereby, the sale is confirmed in favour of the auction purchaser. The said order has not been challenged uptil now and it has attained finality. He further submits that from the record it also transpires that at that relevant point of time the Collector has also sought permission from the Government to challenge the order passed by the competent Civil Court but the said permission has not been granted by assigning specific reason that there is gross delay in challenging the said order and therefore it is advisable not to challenge the said order. He further submits that in absence of any adverse order setting aside the sale held and confirmed by the Court through public auction, the Collector is not empowered to vest the land in to the Government merely on the ground of breach of condition of the original allotment letter. He submits that it is well settled that the things which may not be done directly can certainly not be done indirectly, therefore the course of action taken by the petitioners is not legal and legitimate one. He submits that in view of the aforesaid overall

facts of the present case, petition being devoid of merit is required to be dismissed.

6. Having heard learned advocates appearing for the respective parties and having gone through the materials placed on record, it transpires that the subject land was allotted to the original allottee for the purpose of setting up a pottery industry by accepting Rs.3/- per sq. mtr. in the year 1967. It is pertinent to note that at that relevant point of time, the original allottee had paid approximately Rs.1,75,000/- for the subject land to the Government. I have also perused the terms and conditions of the original allotment letter. It is found out from the record that thereafter the original allottee has changed the name of the firm with the prior permission of the Collector. Thereafter, for the purpose of development of the business, the firm had taken loan from Bank of Baroda by mortgaging the subject land and at that relevant point of time, the firm had obtained prior permission from the Collector. It is found out from the record that as the firm was not able to make the repayment of the loan, the Bank of Baroda had instituted a suit before the competent civil Court for enforcement of the mortgage deed in the year 1985. The Court appointed Court Receivers/Commissioners and thereafter held the auction process for sale of the subject land. It is pertinent to note that 7 times notice for auction

sale of the subject land had been published/advertised in the newspapers but due to one or other reasons, auction could not take place. Lastly, the Mandali had offered highest bid of Rs.80,01,111/- which was accepted and subject land had been sold to the Mandali in the year 1994. Thereafter, the respondent No.1 had purchased the subject land from the Mandali. However, after accepting part payment, since the Mandali had refused to sell the property to the respondent No.1, it had filed one Lavad Suit before the Board of Nominees, Rajkot, for specific performance and declaration. The said suit came to be allowed by the Board of Nominees on 20.07.2002 and since then respondent No.1 is the owner and occupier of the subject land and carrying on the business of manufacturing of automobile spare-parts. Thereafter, on 19.09.2002, one whistle-blower had made an application to the Collector, *inter alia*, alleging certain illegalities as regards the transfer of subject land. Therefore, the learned Collector had taken the matter into suo motu revision under Rule 108(6) of the Rules and issued show cause notice to the parties concerned. It appears that being aggrieved by the said notice, respondent No.1 herein had preferred a writ petition before this Court. It is also found out that simultaneously the Collector had also initiated the proceedings for breach of conditions along with the proceedings of suo motu

revision. The petition preferred by the respondent No.1 had been disposed of with a direction to the respondent No.1 to submit a proposal to the Collector for regularization of the land without prejudice to his rights and contention to challenge the suo motu revision proceedings initiated by the Collector and directed the Collector to accept the proposal of the respondent No.1 and decide it in accordance with law. Accordingly, the learned Collector has passed the order, whereby, the subject land has been vested in the Government by cancelling the allotment. Being aggrieved by the said order, the respondent No.1 herein preferred revision before the learned SSRD. The learned SSRD has allowed the said revision and remanded the matter back to the learned Collector with a direction to send a proposal to the Government for regularization of the subject land by accepting 50% amount of Rs.80,01,111/- as premium from the respondent No.1 by assessing it to be the market value of the subject land and on receipt of approval by the Government, regularize the land in favour of respondent No.1. Pursuant to the aforesaid directions issued by the learned SSRD, the Collector has sought guidance from the Secretary, Revenue Department and in turn the Secretary, Revenue Department directed the Collector to file review before the learned SSRD. Pursuant to which, the Collector preferred review before the learned SSRD, which came to be dismissed by the learned SSRD. Therefore, present petition is

preferred by the petitioners.

7. In view of the aforesaid factual aspects as well as arguments canvassed by learned counsel appearing for the respective parties, following points fall for consideration before this Court:

(1) Whether the Collector is empowered to vest the subject land in the Government in absence of any adverse order passed by the competent Court setting aside the order of the learned Civil Court, whereby, sale of the subject land is confirmed in favour of Mandali – auction purchaser through legitimate auction proceedings, in the revenue proceedings ?

(2) Whether the learned SSRD has exceeded its jurisdiction by directing the Collector to send the proposal of respondent No.1 to the Government for regularization considering Rs.80,01,111/- as the market price of the subject land?

8. It is pertinent to note that as per the terms and conditions of the original allotment letter, tenure of the land is transferable/alienable one and as per the terms and conditions of the allotment letter, the subject land can be mortgaged with the financial institution subject to prior approval from

the competent authority. Accordingly, the original allottee had, for the purpose of expansion of its business, applied for loan from the Bank of Baroda by mortgaging the subject land with prior permission of the Collector. It is pertinent to note that for the enforcement of mortgage deed, the Bank of Baroda had instituted a civil suit before the competent Civil Court, pursuant to which, the Court had appointed Court Receivers and initiated the auction proceedings. It is pertinent to note that 7 times advertisements came to be published in the newspapers and on 7th occasion, the land came to be sold to the Mandali – an auction purchaser after accepting its highest offer of bid of Rs.80,01,111/- in the year 1994. It is the case of the petitioners that they have not been joined by the Bank of Baroda in the suit proceedings and the sale had taken place in their absence by keeping them in dark. However, it is pertinent to note that 7 times public notice for auctioning the subject land has been published in the newspapers and after confirmation of sale in favour of auction purchaser, entry came to be mutated in the revenue record and subsequently certified in the year 1995/1996. Moreover, the original allottee had also mortgaged the subject land with the Bank of Baroda after obtaining prior permission from the Collector. Thus, though the petitioners were not joined in the suit proceedings, they were well aware about the sale of the disputed land since the year 1995/1996 i.e.

when the entry was mutated and certified in the revenue record. Despite that, they have not challenged the order passed by the Civil Court confirming sale in favour of auction purchaser. It is also pertinent to note that the Collector had also sought permission to file appeal against the order passed by the Civil Court but the said permission had not been granted to the Collector by the Government and correspondence in that regard is also entered into between the petitioners, wherein a specific reason is assigned that due to delay, it is not advisable to challenge the order passed by the competent Civil Court belatedly after lapse of many years. The said factual aspect of the matter crystallizes the position of fact that in absence of any challenge to the the order passed by the competent Civil Court confirming sale in favour of an auction purchaser, the said order attains finality. The said correspondence also reveals that though the Collector was directed not to challenge the order of the Civil Court, at the same time, permission to initiate the proceedings for breach of conditions of the original allotment letter has been granted and therefore Collector had initiated the proceedings and jumped to the conclusion that apparently on the face of the record express breach of terms and conditions of the original allotment letter is found out and therefore passed an order, whereby, the subject land had been vested in the Government by cancelling the

allotment.

9. I have also gone through the public advertisements as well as sale certificate issued by the competent Civil Court in favour of auction purchaser but nowhere it is mentioned that subdivision of the subject land is not permissible and subject land can be used for pottery industry only. Not only that, the entire property in question including existed constructed structure of building etc. has been sold by the Court and purchased by the auction purchaser through an auction and subsequently purchased by the respondent No.1 by paying full amount of consideration as per market rate to the auction purchaser. Thus, in the opinion of this Court, the conditions of allotment letter are not breached either by the auction purchaser and/or by the respondent No.1. It is also pertinent to note that as per condition No.5 of the allotment letter, the Government is entitled to get 50% of unearned profit, if the entire property (including existed constructed structure of building etc.) is sold and the property is sold/transferred/alienated in discharge of a mortgage. Thus, the said condition itself provides that the subject land can be sold and the title of the subject land can be changeable. Thus, in the opinion of this Court, the said condition coupled with other conditions of the original allotment letter shows that the subject land

is not of restricted tenure and it can be sold/alienated/transferred. Therefore, in the considered view of this Court, in absence of any adverse order passed by the competent Court setting aside the order of the learned Civil Court, whereby, the sale is confirmed by exchanging the title in favour of the auction purchaser after obtaining full amount of consideration of Rs.80,01,111/- at the market price, the Collector is not empowered to pass the order vesting the land in the Government and by doing so, the Collector has exceeded its jurisdiction.

10. It is the case of the petitioners that by way of impugned order, learned SSRD directed the Collector to accept the proposal of the respondent No.1 for regularization of subject land by accepting 50% amount of Rs.80,01,111/- considering it to be the market price of the subject land. The said direction issued by the learned SSRD is against the prevailing policy as well as Government Resolutions issued by the Government from time to time for the purpose of regularization as well as assessing the amount of premium. It is the case of the petitioners that by issuing aforesaid mandatory direction, the SSRD has exceeded its jurisdiction and no discretion is left for the Collector to decide the issue on merit and in accordance with law, as directed by the Coordinate Bench of this Court. Therefore, the order passed by

the learned SSRD is required to be set aside. It is also the case of the petitioners that when the respondent No.1 has not challenged the order passed by the learned SSRD before this Court and as per the observations made by the learned SSRD, when the respondent No.1 has shown readiness and willingness to send proposal for regularization of the subject land after paying 50% amount of Rs.80,01,111/- and also sent proposal, it can be said that they have accepted the said order wholeheartedly and therefore the contention raised by learned Senior Advocate Mr. Kavina for respondent No.1 that on account of delayed initiation of the proceedings by the Collector, the order passed by the Collector is required to be quashed and set aside, does not have any legs to stand and doctrine of merger would squarely be applicable in the instant case and respondent No.1 is not entitled to raise the said contention before this Court at this advance stage. Whereas, it is the case of the respondent No.1 that contention as regards delay can be agitated at any stage and respondent No.1 have not waived off their right to raise the said contention and they have shown their readiness and willingness to send proposal for regularization of the subject land only to rest the disputes and to save their business. In view of the aforesaid contentions raised by both the parties, though this Court is of the considered view that the Collector has exceeded its jurisdiction and the question of

forfeiture of the subject land and its regularization does not at all arise in view of the aforesaid discussion, in view of the fact that the impugned order passed by the learned SSRD has attained finality qua respondent No.1 and as per the observations and directions of learned SSRD, they have shown readiness and willingness to send proposal by accepting to pay 50% of the amount of Rs.80,01,111/- as the premium of the subject land and also sent proposal to the concerned revenue authority, without harping upon the question of forfeiture as well as regularization and to prevent multiplicity of proceedings and strike a balance between the interests of both the parties, I deem it appropriate to uphold the decision of the learned SSRD and remand the matter back to the learned Collector for the purpose of regularization of the subject land in favour of respondent No.1. It is pertinent to note that at the time of arriving at the figure of Rs.80,01,111/-, the learned SSRD has not done any guesswork but the said amount is taken as a base because of the fact that the auction purchaser had purchased the subject land through legitimate proceedings of public auction held by the competent Civil Court. Thus, in the opinion of this Court, when the sale is involuntary and taken place for the enforcement of the mortgage, the learned SSRD has rightly arrived at the figure of Rs.80,01,111/- i.e. the price of the land fetched during the legitimate

auction proceedings held at the instance of the competent Civil Court, and directed the Collector to consider it to be the market price of the subject land by observing that it is beneficial for the Government to accept the proposal of the respondent No.1 by considering the amount of Rs.80,01,111/- to be the market price of the subject land, after considering and appreciating the aforesaid overall factual aspects of the matter. Moreover, considering the peculiar facts of the present case, I am of the view that the question of assessment of the premium for regularization of the land by the District Level Committee or the State Level Committee based on the prevalent policy as well as Government Resolutions/Circulars issued by the Government from time to time in that regard, does not arise. Hence, in view of the aforesaid overall factual aspects, in the opinion of this Court, learned SSRD has not exceeded its jurisdiction while directing the Collector to send the proposal of respondent No.1 to the Government for regularization of the subject land by considering Rs.80,01,111/- as the market price of the subject land.

11. It is also pertinent to note that the entry came to be mutated on the basis of confirmation of sale by the competent Court and, in the opinion of this Court, the concerned Revenue Authority has not committed any error while posting and certifying the

said entry. Thus, the concerned revenue authority was well aware about the transaction of sale in favour of auction purchaser since the year 1995/1996, despite that, the Collector had initiated the suo motu proceedings under Rule 108(6) of the Rules as well as proceedings for breach of conditions in the year 2002/2003. Thus, in the opinion of this Court, there is gross delay in initiating the said proceedings and that too without challenge to the order passed by the competent Civil Court, whereby, sale is confirmed in favour of the auction purchaser. At this juncture, I would like to refer and rely upon the decision of Division Bench of this Court in the case of ***Jitendrasinh Jagmalsinh Sodha (supra)***, wherein, the following observations are made:

“13. The Hon’ble Apex Court in the case of State of Gujarat vs. Patel Raghav Natha reported in (1969) 2 SCC 187 has held that Commissioner exercising the power under Sections 65 and 211 of the Bombay Land Revenue Code, 1879, had not exercised the revisional powers within few months from the date of the order of the Collector and as such it was bad in law. It has been further held :

“11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the

order which is being revised.

12. It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Under Section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the Legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e. more than a year after the order and it seems to us that this order was passed too late."

14. The statutory authorities exercising suo motu powers would be required to exercise the same within a reasonable time and exercise of such powers beyond reasonable time would not justify their act and render the exercise arbitrary. Where a statutory provision for exercise of suo motu power of revision does not prescribe any limitation, it is trite law that such power should be exercised within a reasonable period of time even in case of transaction which can be termed as void transaction.

15. The Hon'ble Apex Court in the case of Joint Collector Ranga Reddy District and another vs. D. Narsing Rao and others (supra) had held that exercise of the revisional powers after delay would tantamount to fraud upon statute. It has been further held :

“31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.

32. In the case at hand, while the entry sought to be corrected is described as fraudulent, there is nothing in the notice impugned before the High Court as to when was the alleged fraud discovered by the State. A specific statement in that regard was essential for it was a jurisdictional fact, which ought to be clearly asserted in the notice issued to the respondents. The

attempt of the appellant- State to demonstrate that the notice was issued within a reasonable period of the discovery of the alleged fraud is, therefore futile. At any rate, when the Government allowed the land in question for housing sites to be given to Government employees in the year 1991, it must be presumed to have known about the record and the revenue entries concerning the parcel of land made in the ordinary course of official business. In as much as, the notice was issued as late as on 31st December, 2004, it was delayed by nearly 13 years. No explanation has been offered even for this delay assuming that the same ought to be counted only from the year 1991. Judged from any angle the notice seeking to reverse the entries made half a century ago, was clearly beyond reasonable time and was rightly quashed."

12. Thus, in view of the aforesaid observations made by the Division Bench of this Court, the statutory authorities exercising suo motu powers would be required to exercise the same within a reasonable time and exercise of such powers beyond reasonable time would not justify their act and render the exercise arbitrary. Where a statutory provision for exercise of suo motu power of revision does not prescribe any limitation, it is trite law that such power should be exercised within a reasonable period of time even in case of transaction which can be termed as void transaction. In the instant case, the Collector had initiated suo motu proceedings after lapse of 8 years from the date of confirmation of

sale in favour of the auction purchaser as well as posting and certifying the entry by the competent revenue authority. It is also pertinent to note that the original allottee had paid an amount of approximately Rs.1.75 lakh in the year 1967 for the subject land and nowhere in the order of allotment it is mentioned that the land is allotted at a concessional rate. Thus, the argument canvassed by learned AGP Mr. Antani that the land is allotted at a concessional rate cannot be countenanced.

13. It is an admitted position of fact that all the parties concerned have participated in the proceedings before the Collector. The Bank of Baroda is also made party in the proceedings before the Collector, SSRD as well as before this Court. It is pointed out by learned counsels for the parties that Bank of Baroda has challenged the order of the Collector before the Gujarat Revenue Tribunal and said proceedings are still pending. However, learned advocates jointly submitted that as per the statute, the said proceedings would not be maintainable and the powers are vested with the SSRD and therefore the outcome of the present petition would be binding upon all the parties.

14. In view of the aforesaid discussion, the petition is required to be dismissed. Accordingly, it is dismissed. Rule is discharged. The Collector,

Rajkot is directed to consider the issue of regularization of the subject land, keeping in mind the aforesaid observations made by this Court, after affording opportunity of hearing to the parties. The said exercise shall be concluded as expeditiously as possible. The authority/court concerned is directed to refund whatever amount deposited by the respondent No.1 during the pendency of present proceedings along with accrued interest, within a period of 4 (four) weeks from today.

(DIVYESH A. JOSHI, J)

LAVKUMAR J JANI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: LAVKUMAR JAYANTBHAI JANI(HC00210), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 23/01/2026 14:36:30