

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 10587 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

Approved for Reporting	Yes	No
	✓	

BRIJESH GAUTAM KUMAR DAVE

Versus

STATE OF GUJARAT & ORS.

Appearance:

AISHVARYA(8018) for the Petitioner(s) No. 1

N R MEHTA(7794) for the Petitioner(s) No. 1

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

CORAM: HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**Date : 23/04/2026****ORAL JUDGMENT**

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

2. Heard Mr. N.R. Mehta, learned advocate appearing for the petitioner and Mr. Jayneel Parikh, learned AGP appearing for the respondent – State authorities.

3. By way of present petition, the petitioner herein has

challenged the impugned order dated 26.12.2023 passed by the respondent No.3 bearing No.Ganot/Vashi/568/2023 duly produced at Annexure – A to the petition wherein, by the said order, the land bearing Survey Nos.349, 354, 356, 355, 342, 347, 362, 366, 369, 358, 581, 448, 546, 367, 442, 540, 541 543, 547, 556, 557, situated at Mouje : Vekra, Taluka : Kadi, shall not be further transferred, mortgaged or sold and that, the status – quo be maintained by the parties for the reasons stated in the said order, and the order dated 03.07.2024 passed by the respondent No.2 rejecting the petitioner's application for Non-Agriculture (NA) use under Section 65 of the Gujarat Land Revenue Code, 1879, duly produced at Annexure – B to the petition, on the three grounds:

- (i) A negative opinion dated 26.05.2024 was received from the respondent No.3 in light of the Entry No.6422 mutated in the revenue record pursuant to the order passed by the respondent No.3.
- (ii) Agriculture status of the person, whose name had been entered into the revenue records vide Entry No.3362, required to be verified.
- (iii) In view of the pendency of Special Civil Application Nos.1234/2024, 1364/2024 and 1192/2024 before the Hon'ble Gujarat High Court qua the land-in-question.

3.1 The aforesaid orders have given rise to the filing of the present petition.

4. The petitioner herein is an agriculturist and is owner of the land bearing Survey No.1011, Village : Rancharda, Taluka : Kalol, District : Gandhinagar. A copy of the 7/12 extract is duly produced on record at Annexure – C to the petition.

4.1 The petitioner herein purchased the land-in-question and other parcels of land from one Mr. Sandeepkumar Krishnamurari Agarwal (for short “the vendor”) by way of registered sale deed dated 19.07.2023. The revenue entry came to be mutated in the revenue record being Entry No.6320 on 28.07.2023, which was duly certified on 15.09.2023 wherein, it was recorded that the same would be subject to the outcome of the tenancy proceedings initiated under the Tenancy Act. Upon inquiry, the petitioner was informed the by the vendor, Mr. Sandeepkumar Agarwal that, certain proceedings under the various laws were initiated against the vendor’s family as also in respect of the land-in-question. The said proceedings are also challenged, which are pending adjudication before various forums.

4.2 It is the case of the petitioner that an application preferred by the petitioner seeking Non-Agricultural (NA) use permission, dated 27.04.2024, under Section 65 of the Gujarat Land Revenue Code, 1879 (for short 'the Code') and the said application came to be rejected by the impugned order dated 03.07.2024 on the grounds, as referred to hereinabove.

4.3 It is further the case of the petitioner that it was only when the impugned order came to be passed on 03.07.2024 rejecting the petitioner's application under Section 65 of the Code, it came to the knowledge of the petitioner that the order dated 26.12.2023 is passed against the vendor and his family on the ground that the father of the vendor obtained a certificate of Agriculturist, by concealing the fact that the learned Collector, Surendranagar, after initiating proceedings under the Saurashtra Gharkhed Tenancy Settlement and Agricultural Land Ordinance, 1949, vide order dated 02.12.1991 passed in Gharkhed Revision Case No.1 of 1991-92 held the vendor's father as non-agriculturist. The impugned order dated 26.12.2023 further states that such order dated 02.12.1991 passed by the Collector, Surendranagar, was assailed by the vendor's father by preferring Revision

Application No.12 of 2006 before the learned Secretary, Revenue Department (Appeals), which ultimately came to be dismissed on 06.11.2012, confirming the order passed by the District Collector, Surendranagar, dated 02.12.1991 holding that the vendor's father was not an agriculturist within the State of Gujarat.

4.4 The vendor's father preferred Special Civil Application No.16394 of 2012 wherein, by order dated 06.11.2012, the Coordinate Bench recorded that the order is passed without touching upon the aspect of delay and hence, the said order stands stayed.

4.5 The impugned order dated 26.12.2023 records that the order dated 06.11.2012 has been assailed by way of Special Civil Application No.16394 of 2012 but, conveniently, does not record cognizance of the interim relief granted by the Court by order dated 10.12.2012 whereby, ad-interim relief is granted in favour of the vendor's father by staying the implementation, execution and operation of the said order dated 06.11.2012. The impugned order does not record that the Hon'ble Court was further pleased to issue Rule on 09.10.2013 and the ad-interim relief granted earlier was directed to continue as

interim relief till final disposal of the petition. The said petition is still pending adjudication.

5. Mr. N.R. Mehta, learned advocate appearing for the petitioner submits that the petitioner's Non-Agricultural (NA) permission came to be rejected by the impugned order dated 03.07.2024, pertains to the prior Entry being No.3362 in respect of the land-in-question and verification of the agriculturist status of the vendor, whose name was mutated in the revenue record on the basis of the entry. In that regard, the Mamlatdar & ALT, Kadi, Mehsana, the respondent No.3 herein, issued notice to the vendor with a copy to the petitioner being notice dated 26.12.2023 in respect of the very entry No.3362 for the very purpose as mentioned in the impugned order dated 03.07.2024. The same has been challenged by the vendor by way of writ petition being Special Civil Application No.2541 of 2024 and the same is also stayed by the Coordinate Bench.

5.1 Mr. Mehta, learned advocate submits that the Non-Agriculture (NA) use application of the petitioner came to be rejected by the impugned order dated 03.07.2024, also pertains to the pendency of Special Civil Application Nos.1234

of 2024, 1364 of 2024 and 1192 of 2024, which are preferred by the vendor challenging the show cause notice as well as the order dated 26.12.2023 in respect of withdrawal and suspension of the certificate of Agriculturist of the vendor issued by the Deputy Collector, Kadi, wherein, the notice as well as the order dated 26.12.2023 are ordered to be stayed by order dated 12.02.2024 passed by this Court. Placing reliance on the aforesaid submissions, it is submitted that the impugned orders passed by the respondent Nos.2 and 3 respectively, are required to be quashed and set aside.

5.2 It is submitted that the impugned order dated 26.12.2023 is passed contrary to the settled principles of natural justice wherein, the Survey No.442, which is included in the order dated 26.12.2023, is purchased by the petitioner by way of registered sale deed for which, entry is mutated in the revenue record. It is submitted that the impugned order adversely affects the petitioner herein and in view thereof, the same is required to be quashed and set aside on the aforesaid ground alone.

5.3 With respect to the impugned order rejecting the Non-Agriculture (NA) application, dated 03.07.2024, reliance is

placed on the mutation entry No.6320, dated 28.07.2023, of the registered sale deed in favour of the petitioner duly produced at page 156 to the petition wherein, the petitioner's status as an agriculturist is not under clout and that, the petitioner herein has purchased the land-in-question by way of registered sale deed, which is also in-tact and in view thereof, though the tenancy proceedings are ongoing qua the vendor, the petitioner's application seeking NA permission as such was required to be considered on its own merits. It is submitted that it is well settled position of law that while considering an application seeking NA permission, the permission is required to be granted qua the land-in-question and not the person.

6. Mr. Jayneel Parikh, learned AGP appearing for the respondent – State authorities relied on the affidavit-in-reply duly produced on record at page 123 to the petition and submitted that the petitioner is well aware of the tenancy proceedings, which are ongoing. Reliance is also placed on Entry No.6320 mutated in the revenue record on 28.07.2023 duly certified on 11.09.2023 wherein, it is stated that the said entry would be subject to the outcome of the pending tenancy proceedings. It is submitted that in view thereof, it is not open

for the petitioner herein to submit that the petitioner was not aware about the pendency of tenancy proceedings qua the petitioner's vendor.

6.1 Reliance is also placed on the documents produced with the affidavit-in-reply wherein, placing reliance on the order of NA, dated 03.07.2024 and the order dated 26.12.2023, it is submitted that the entry of the order dated 26.12.2023 is also mutated in the revenue record by way of Entry No.6422. Reliance is also placed on the Notice placed on record at Annexure – R9, of even date i.e. 26.12.2023 and it is submitted that the petitioner herein is in possession of the land-in-question bearing Survey/Block No.442 for which, Entry No.3362 is mutated in the revenue record and in view thereof, it is not open for the petitioner to contend that no notice was issued to the petitioner herein.

6.2 To substantiate the aforesaid submission, reliance is placed on the ratio laid down in case of ***State of Gujarat Vs. Jitendra Ramabhai Patel***, reported in ***2016 (1) GLR 866***. Placing reliance on the same, it is submitted that the Hon'ble Division Bench has held that until the proceedings under Section 84C of the Act are concluded, title of property or

vesting of the land-in-question is not complete, the petitioner cannot apply for permission under Section 65 of the Code. It is submitted that in light of the well settled principle of law, the present petition is devoid of merits and is required to be dismissed.

7. In rejoinder, Mr. N.R. Mehta, learned advocate appearing for the petitioner substantiated the contentions raised earlier and relied on the rejoinder filed by the petitioner herein to submit that the impugned order dated 26.12.2023 as such is passed without knowledge to the petitioner herein and without affording opportunity of hearing to the petitioner and that, the application for NA use is required to be considered in terms of the powers provided to the Collector while considering an application seeking NA use permission. Reliance is placed on the ratio laid down in case of ***State of Gujarat Vs. Amaratbhai Naranbhai Patel and 2 Ors.***, reported in ***2013 SCC Online Guj 3318***. Reliance is also placed on ***Special Civil Application No.14730 of 2021***, Oral Judgment dated 02.02.2022, ***Special Civil Application No.993 of 2025 with Special Civil Application No.3154 of 2025***, Oral Judgment dated 21.04.2025, ***Special Civil Application No.21363 of***

2022 and allied matters, Common Oral Order dated 15.02.2023.

8. Having heard the learned advocates appearing for the respective parties, the following emerge:

8.1 It is not in dispute that the petitioner herein purchased the land bearing Survey No.442 (Old Block/Survey No.184/p2), situated at Mouje : Vekra, Taluka : Kadi, Dist.: Mehsana, by way of registered sale deed dated 19.07.2023 from one Mr. Sandeepkumar Krishnamurari Agarwal. The entry of the same is mutated in the revenue record vide Entry No.6320 on 28.07.2023 duly produced at page 156 to the petition wherein, the said entry is duly certified on 11.09.2023. However, it further records that taking into consideration the judgment rendered in Special Civil Application No.3038 of 2023, dated 13.03.2023, there is no stay and the petitioner would be governed by any order that may be passed in the tenancy proceedings. It further records that land bearing Survey No.930, Block No.922 situated at Mouje : Gautamgadh, Taluka : Muli, District: Surendranagar, holds an agricultural land for which, certificate of an agriculturist dated 02.08.2023 was issued by the Prant Officer, Chotila and the entry was

certified on the basis of index of the registered sale deed.

9. In light of the aforesaid, it is not in dispute that the petitioner herein has purchased the land in question by way of registered sale deed. The petitioner holds an agricultural land and in view thereof, though the said entry records that the petitioner would be governed by any order that may be passed in the tenancy proceedings qua the vendor, the petitioner herein has accepted the same and would be governed by the same but, the same would not affect the consideration of NA application of the petitioner. The status of the petitioner as agriculturist is not in clout and if the petitioner holds an agricultural land by way of a registered sale deed, the petitioner's application for Non- Agriculture (NA) use is required to be considered in accordance with the parameters/powers that can be exercised by the respondent No.2 by summarily inquiring whether the petitioner herein is occupying the land-in-question and is using the land for agriculture purpose.

10. The aforesaid issue is no longer *res-integra* as held in case of ***Tushar Ghelani and Ors. Vs. State of Gujarat***, reported in **2019 (4) GLR 2578**, duly confirmed by the

Hon'ble Division Bench in **Letters Patent Appeal No.1181 of 2025 and allied matters.**

10.1 At this stage, it is apposite to refer to the ratio laid down by the Hon'ble Division Bench in **Letters Patent Appeal No.1181 of 2025 and allied matters**, wherein, relevant paragraphs 14 to 18 and 25 of the said judgment read thus:

*"14. The impugned order dated 24.12.2024 records that the affidavit filed by the Collector, Vadodara was taken on record and the said affidavit though started with an apology, but the collector tried to justify the reasons for passing the orders impugned dated 28.10.2024 and 29.10.2024 for rejection of the NA application, more particularly, as regards the probability of the provisions of Agricultural Land Ceiling Act being violative on account of the Entry No. 780 dated 06.02.1985. It is noted by the learned Single Judge in the order impugned that the Collector, Vadodara has failed to appreciate the law laid down by this court in the case of **Tusharbhaj Harjibhaj Ghelani and Anr. Vs State of Gujarat and Ors. [2019 (4) GLR 2578]**, which was the basis of passing the judgement and order dated 31.01.2024 wherein the scope of inquiry under Section 65 of the Bombay Land Revenue Code, 1879 has been laid down.*

15. The writ court records that in the first round of litigation vide judgment and order dated 31.01.2024, the Coordinate Bench had specifically laid down that Section 65 of the Bombay Land Revenue Code, 1879 provides for the use to with an occupant of the land for the purposes of agriculture may put his land to. The key words in section 65 of the Code is the occupant of the land and it is sufficient for the purposes of Section 65 of the Code that the person applying for NA permission is the occupant of the land. The question about the title or ownership over the land in question for which NA permission is sought, cannot be examined within the scope of Section 65 of the Bombay Land Revenue Code, 1879. It was also noted that in the facts of the present case, the petitioners therein (herein as well) stand at a better footing as they are not only occupants of the subject lands but also the owners thereof by virtue of the registered Sale Deed dated 06.09.2022. It is also noted that the registered sale deed has not been cancelled or held invalid by any competent Court of law.

16. The judgment and order dated 31.01.2024 passed by the writ court allowing the writ petitions of the year 2023 categorically records that the Collector, Vadodara while rejecting the applications for conversion of the land into NA land had travelled back in time in

respect of history of the lands in question about 30 years ago. The questionable entries being revenue entries of 30 years old could not have been made basis for rejection of the NA applications. Some entries mutated on account of the Will could not have been disputed on the doubts raised in the order as to whether there was a blood relationship between the parties (executant and the beneficiary) or not

17. It was noted that the impugned order indicated of some alleged illegalities committed sometime in the years 1980s and 1990s which was not the subject matter of scrutiny to raise any doubt about the title of the petitioners over the lands in question so as to take it a ground for rejection of NA applications. It is also noted by the writ court in the first round that nothing came out from the record as to whether any proceedings were initiated in respect of any of the shortcomings mentioned in the orders impugned for rejecting NA permission. In absence of there being any other material and also the fact that the petitioners are bona fide purchasers of the land in question, being the last persons in the chain of transactions, NA applications moved by them could not have been rejected. The writ petitions were allowed taking note of the ratio of law laid down by the Coordinate bench in **Tusharbai Harjibhai Ghelani (supra)** vide judgment and order dated 31.01.2024 with the above noted categorical observations by the writ court to remand the matter to the Collector, Vadodara for fresh decision.

18. Taking note of the above, it is neither understandable nor acceptable as to how that the Collector, Vadodara could have rejected the fresh applications filed by the petitioners in the second round by passing the orders dated 28.10.2024 and 29.10.2024 on the very selfsame grounds on which the NA applications filed in the year 2023 were rejected.

25. Noticing the above, we find that the officers holding the office of Collector, Vadodara at the relevant point of time have failed to apply their minds to the settled legal position pertaining to the inquiry to be made under Section 65 of the Bombay Land Revenue Code, 1879 in utter ignorance of the decision of this Court in **Tusharbai Harjibhai Ghelani (supra)**. The attitude of the officers in passing repeated orders putting caveat about the title of the predecessor in interest of the petitioners by digging graves, to reject the NA permission was without any substantive basis. There is nothing on record even in the present set of appeals filed by the State appellant which would indicate that any legal proceedings had ever been initiated with respect to the revenue entries made in favour of the predecessors in interest of the petitioners. All doubts raised in the first set of orders of rejection of the NA permission of the year 2023 till the third set of orders of rejection of the year 2025, were without any basis."

10.2 It is also apposite to refer to the ratio laid down in case of **Tushar Ghelani and Ors. Vs. State of Gujarat**, reported in

2019 (4) GLR 2578 wherein, paragraphs 35 to 40 read 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 as 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 key-word 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."

11. Coming to the second aspect with respect to the order passed by the Mamlatdar & ALT, dated 26.12.2023, it is not in dispute that the mutation entry itself records while certifying the entry No.6320 that, the said entry would be governed by the outcome of the tenancy proceedings and in view thereof, the petitioner as such having accepted the same, would be bound by such orders that are passed qua vendors in the tenancy proceedings, which are also stayed by this Court in the petition filed by vendors. Upon perusal of the record, it emerges that the notice dated 12.05.2023 and subsequent notices were issued to the family members of Sandeepkumar Agarwal and Krishnamurari Agarwal, wherein, they appeared before the Mamlatdar and put their case which, resulted in the order dated 26.12.2023. It is also noted that as stated in the

petition, while passing the order dated 26.12.2023, though the order passed in Special Civil Application No.16394 of 2012 is recorded, there is no mention about the interim order dated 10.12.2012 staying the order passed by Gujarat Revenue Tribunal qua vendors. However, it is not in dispute that the petitioner was never issued such notice.

11.1 On even date, i.e. 26.12.2023, the petitioner herein is issued notice as relied upon by Mr. Jayneel Parikh, learned AGP wherein, the petitioner herein is in possession of the land qua Survey No.442 wherein, the mutation entry No.3362 is mutated in the revenue records. In view thereof, the competent authority is conscious of the fact that the land-in-question is purchased by the petitioner herein and is owner and occupier of the land-in-question qua Survey No.442 and despite the same, no such notice was issued to the petitioner herein in Ganot/Vashi/586/2023, though the petitioner purchased the land-in-question as back as in July, 2023.

11.2 For the reasons as stated herein above, the petitioner would be governed by the notice being Ganot Case No.84C/32/2023 for entry No.3362 issued under Section 84C of the Tenancy Act wherein, the petitioner herein is arraigned as

third party and the said notice is subject matter of petition filed by the vendor and the proceedings are stayed by this Court.

11.3 In light of the aforesaid, the impugned order dated 26.12.2023 as such would not govern the case of the petitioner wherein, since the petitioner was never issued the notice, the same would not govern the petitioner herein as admittedly, it was issued only to the family members of Krishnamurari Agarwal, who appeared and had challenged the same and the proceedings are pending before this Court, which are also stayed by this Court.

12. For the reasons as referred to hereinabove, the impugned order dated 26.12.2023 (Annexure - A) is directed not to be implemented qua the petitioner herein and the petitioner herein would be governed by the notice issued on 26.12.2023 being Ganot Case No.84C/32/2023, which appears to be in force, however, stayed in the proceedings by the vendor in Special Civil Application No.2513 of 2024 by order dated 15.12.2024. This Court is not opining further on the said notice as the same not being subject matter of the present petition. The tenancy proceedings are separate proceedings and the petitioner herein would be bound by the outcome of the same.

12.1 The impugned orders dated 26.12.2023 passed by the respondent No.3 qua the subject land purchased by petitioner by way of registered sale deed dated 19.07.2023 for the land bearing Survey No.442, (Old Survey No.184/1p2) of Village : Vekra, Tal. Kadi, District : Mehsana, is quashed and set aside. The order dated 03.07.2024 passed by the respondent No.2 rejecting the NA application is also quashed and set aside. If the petitioner were to apply afresh seeking Non- Agriculture (NA) use permission, the same shall be considered by the respondent authority, for the reasons as referred to herein above, as per the statutory mandate of Section 65A of the Code.

13. The present petition is allowed, accordingly. Rule is made absolute to the aforesaid extent.

(VAIBHAVI D. NANAVATI,J)

NEHA