

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16165 of 2021**

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SAROJBEN BALASHANKAR RAVAIYA

Versus

STATE OF GUJARAT & ANR.

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Appearance:

DR. SHRENIK R JASANI(9486) for the Petitioner(s) No. 1

MR VIMAL A PUROHIT(5049) for the Petitioner(s) No. 1

MS DEVANSHIBA RANA, AGP for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**Date : 09/01/2026****ORAL ORDER**

1. Heard Mr. Vimal A. Purohit, the learned advocate appearing for the petitioner and Ms. Devanshiba Rana, the learned AGP appearing for the respondents – State.

2. By way of present petition, the petitioner herein is constrained to invoke Article 227 of the Constitution of India being aggrieved and dissatisfied by the impugned order dated 5.8.2021 passed by the learned District Collector, Gir-Somnath in Order No.166/29/11/101/2021 rejecting the application for Non-Agriculture Use Permission having applied under Section 65 of the Gujarat Land Revenue Code, 1879 (hereinafter referred to as ‘the

Code' for short).

3. The petitioner herein purchased the land bearing Survey No.787/P2/P1 admeasuring Hector 0-14-16 Sq.Mtrs., situated at Village : Prabhas Patan, Taluka : Veraval, District : Gir-Somnath from the erstwhile owner Omprakash Sudarshan Dubey by way of Registered Sale Deed bearing No.3912 dated 27.6.2019 for which mutation entry came to be mutated in the revenue record on 06.07.2019 bearing Mutation Entry No.18444. Subsequent thereto, the petitioner herein applied for grant of N.A. Use Permission on several occasions, however the same was rejected for one or the other reasons. The petitioner herein applied for N. A. Permission under Section 65 of the Code by way of an application dated 8.7.2021 which came to be rejected by impugned order dated 5.8.2021 (Annexure-A) page-32 on the following grounds (true translation) :-

“(1) Upon verification of the sequential mutation entries, vide entry no. 2389 regarding the Fesal Patrak, Survey No. 782/2, A.0-24 Guntha, was mutated in the name of Ghanchi Kamal Hasan. Subsequently, vide entry no.8690, the inheritance of Mamad Hasan was recorded. Therefore, it does not become

clear how Mamad Hasan was holding the land in question.

(2) Vide entry no. 9244, the land partition was done for an area less than the sustainable holding size, resulting in a violation of the Fragmentation Act. Furthermore, the area partitioned in the said division is not consistent with the area finalized as per entry no. 2389.

(3) From entry no. 9789, Sale Entry, it is not established that Omprakash Sudarsan Dubedi, the holder of the land in question for Non-Agricultural (NA) use, is an original account holder.”

4. Mr. Vimal A. Purohit, the learned advocate appearing for the petitioner submits that the grounds on which the petitioner's application for N.A. Permission is rejected are such that the same are not sustainable in eye of law in view of the following :-

- (1) The title of land in question does not seem to be clear.
- (2) Mutation Entry No.9244 results in breach of fragmentation and
- (3) Original affidavit was not submitted.

That the erstwhile owner's - Omprakash Sudarshan Dubey entry is mutated by way of Entry No.9789 appears not to be an agriculturist.

It is submitted that the aforesaid grounds on which the petitioner's application is rejected are such that the same are not sustainable in eye of law.

4.1 To substantiate his submissions it is submitted that, no proceedings are initiated against the petitioner under the Fragmentation Act.

(a) That no proceedings are initiated against the erstwhile owner Omprakash Sudarshan Dubey under the Tenancy Act.

(b) That the respondent authority has acceded its jurisdiction by questioning how Mamad Hasan was holding the land in question.

4.2 It is submitted that with respect to the objections raised by the learned District Collector that it is not clear regarding the aspect as to how the succession Entry No.8690 came to be mutated in the name of the legal heirs of Mamad Hasan. To this, it is submitted that the land in question is old tenure land and it is of

private ownership which is not in dispute. Moreover, the said mutation Entry No.8690 was mutated on 11.01.2007 and till date the said mutation entry is never disputed by any private persons. Thereafter, by way of mutation Entry No.9244 dated 22.1.2008 family arrangement came to be given effect which is also not disputed, thereafter the land in question came to be sold to Omprakash Sudarshan Dubey pursuant to mutation Entry No.9789 which came to be mutated on 17.12.2008, then the same is not disputed. In view of the aforesaid, the objections raised by the learned District Collector with respect to the title of the land in question is such that the same is not tenable in eye of law.

4.3 Placing reliance on the aforesaid submissions, it is submitted that the impugned order is required to be interfered with.

4.4 To substantiate above submissions, it is submitted that while exercising powers under Section 65 of the Code the learned Collector is not competent to question title of the land.

4.5 Reliance is placed on the ratio laid down in the following cases :-

- (a) In the case of Tushar Harjibhai Ghelani vs. State of Gujarat, reported in 2018 Lawsuit (Guj.) 1183.
- (b) In the case of Dinesh Karshanbhai Kangad vs. State of Gujarat, Special Civil Application No.6165 of 2023 dated 24.4.2023.
- (c) In the case of Dudabhai Bhutabhai Rabari vs. State of Gujarat, Special Civil Application No.6616 of 2023 dated 12.6.2025.

Placing reliance on the aforesaid decisions, it is submitted that wherein the respondent authority has questioned the title whether the erstwhile owner Omprakash Sudarshan Dubey was agriculturist, has attained finality wherein it is held that, the District Collector can only look into the aspect whether the applicant is an occupant of the land being assessed or held for the purpose of agriculture. It is not open for the learned Collector to consider whether the predecessor of the petitioner was an agriculturist or not, more particularly when the competent authority found while certifying the entry that the predecessor of the petitioner was an agriculturist when the land in question was purchased.

4.6 Placing reliance on the aforesaid decisions, it is submitted that the facts of the present petition is squarely covered by the order dated 24.4.2023 passed in the Special Civil Application No.6165 of 2023.

5. Ms. Devanshiba Rana, the learned AGP appearing for the respondents is not in position to controvert the submissions advanced by Mr. Purohit, the learned advocate appearing for the petitioner.

5.1 It is submitted that the proceedings under Section 63 of the Code have been initiated against the erstwhile owner Omprakash Sudarshan Dubey.

6. Answering the aforesaid contention raised by Ms. Rana, the learned AGP, Mr. Purohit, the learned advocate in rejoinder submits that Omprakash Sudarshan Dubey also applied for N.A. Use Permission wherein the said application also came to be rejected and approached this Court for grant of N.A. Use Permission which came to be allowed for another parcel of land which has also attained finality.

6.1 To substantiate his submissions, it is submitted that in absence of any proceeding initiated against the erstwhile owner such permission to convert the land into Non-Agriculture was granted by this Court and there is no initiation of tenancy proceedings under the Tenancy Act.

7. Having heard the learned advocates appearing for the respective parties, it is not in dispute that the application seeking N.A. Use Permission by the petitioner herein under Section 65 of the Code came to be declined on the grounds as referred to hereinabove. The same are not repeated for sake of brevity.

8. In light of the undisputed facts, as referred to hereinabove, it emerges that, once the petitioner applied for N.A. Use Permission under the Land Revenue Code, the respondent authority is required to confine itself to the provisions of the Act by inquiry as provided under Section 65 of the Code whether the applicant holds the subject land for the purpose of agriculture and that whether such person is occupant of the said land.

9. In the opinion of this Court, the respondent authority overreached its jurisdiction by delving into the question wherein the predecessor-in-title was an agriculturist, whether the land was fragmented and whether the erstwhile owner was an agriculturist. Such objections raised by the respondent authority are such that the same are untenable in eye of law.

10. At this stage, this Court deems it fit to refer to the decision rendered in the Special Civil Application No.19455 of 2018 dated 25.9.2019, which clinches the issue, paragraph-8 reads thus :-

“8. Having heard the learned advocates appearing for the parties and having gone through the material placed on record, it has emerged that the name of the petitioner was mutated in the revenue record on the basis of the heirship entry. The petitioner is, therefore, an agriculturist. However, she had relinquished her right by Relinquishment Deed No.457 dated 06.02.1990 and therefore entry No.2020 was mutated in the revenue record on 20.02.1990. Thereafter, she had purchased another parcel of agriculture land by a registered Sale Deed dated 11.12.1990 and entry No.965 was posted in the revenue record on 04.06.1991. The said aspect is not disputed by the respondent authorities. Thereafter, when the petitioner has submitted an application under Section 65 of the Code for grant of NA permission, the respondent Collector observed that petitioner was not an agriculturist for a period of 10

months and therefore relying upon the Resolutions passed by the State Government and more particularly Resolution dated 01.07.2009, request of the petitioner was not entertained. The said order is confirmed by the SSRD.

9. At this stage, the observations made by the Division Bench of this Court in the case of Bankim Bipinbhai Desai (supra) are required to be referred to. In the said decision, the Hon'ble Division Bench of this Court has observed as under:

“It appears to us that in accordance with the circular that has been issued by the Revenue Department, Government of Gujarat dated 15th November, 2001 the Collector can refuse NA Permission only on the grounds stated in the said circular. The said circular states that the permission can be refused if there is breach of Ribbon Development Rules committed by the concerned applicant or on the ground that the said land is under acquisition or under proposed acquisition or if the land is a new tenure land under the Tenancy Act or grant of such permission is prohibited in any such law unless the requisite premium is paid. The impugned order does not indicate that the NA Permission has been refused on any of these grounds. It, therefore, clearly appears to us that the permission has been denied on irrelevant ground and hence the impugned order is required to be quashed and set aside and it is hereby ordered to be quashed and set aside. We now remit the matter back to the Collector to consider the application of the petitioner afresh and decide the same on its merits in light of the observations made in this order.”

13. Keeping in view the aforesaid decisions rendered by this Court, if the facts as discussed hereinabove are carefully examined, it is revealed that the respondent Collector, while considering the application submitted under Section 65 of the Code has wrongly considered the status of the petitioner by observing that the petitioner was not an agriculturist for a period of 10 months and on

that ground application submitted by the petitioner is rejected. Learned AGP has failed to point out from the record that there was any policy in the year 1990 which is now prevailing as per Resolution dated 01.07.2009 upon which the reliance is placed by the Collector.

14. Even otherwise, while considering the application under the Code, it was not open for the respondent Collector to consider as to whether the petitioner was an agriculturist or not and more particularly when the competent authority under the Bombay Tenancy and Agricultural Lands Act has till date not passed any adverse order against the petitioner by holding that the petitioner is not an agriculturist.”

The aforesaid was challenged in the Letters Patent Appeal No.937 of 2020.

10.1 In the case of Dinesh Karshanbhai Kangad vs. State of Gujarat, Special Civil Application No.6165 of 2023 judgment dated 24.4.2023, paragraphs 10 and 11 read thus :-

“10. In such circumstances, the District Collector, Kutch could not have taken into consideration the entry no. 9247 which was certified in the year 2012 for rejecting the N.A. permission prayed by the petitioner as the District Collector can only look into the aspect whether the applicant is an

occupant of the land which is being assessed or held for the purpose of agriculture. Under the circumstances, it is not open for the Collector to consider as to whether the predecessor of the petitioner was an agriculturalist or not, more particularly, when the competent authority has found while certifying the entry no. 9247 that predecessor of the petitioner was an agriculturalist when he purchased the subject land in the year 2012.

11. Under the circumstances, since the competent authority has not passed any adverse order under the provision of the Act, 1958 in respect of the subject land, which is purchased by the petitioner in the year 2021, the respondent – Collector cannot question the entry which has been mutated in the year 2012 as well as the status of the predecessor of the petitioner so as to refuse the N.A. permission to the petitioner who is an occupant of the subject land.”

10.2 In the case of Dudabhai Bhutabhai Rabari vs. State of Gujarat, Special Civil Application No.6616 of 2023 judgment dated 12.6.2025, paragraph-24 reads thus :-

“24. In the present case, the petitioner himself is an occupant of the land in question. A perusal of the impugned order shows that the respondent District Collector has filed

the application of the petitioner on the ground that the purchaser, vide mutation entry No.2174 as per the revenue record, may not be an agriculturist since there is no clarity in respect of the same. Further, similar doubt has been raised in respect of mutation entry No.693. The impugned order further records that if the persons in respect of the said revenue entry are agriculturists, then the issue with respect to the payment of stamp duty will have to be examined. The impugned order further records that in respect of mutation entry No.821, the issue of the stamp duty paid will have to be examined. On the said grounds, the application under Section 65 of the Code preferred by the petitioner has been filed. In the considered opinion of this Court, the impugned order ordering filing of the application of the petitioner on the ground of questionable status and assessment of stamp duty on the earlier transactions is not in accordance with the provisions of Section 65 of the Code and is contrary to the settled position of law as laid down by this Court. It is not open to the respondent collector to consider whether the predecessors in title were agriculturist or not, more so, when no any proceedings in that regard have been initiated by the competent authority.”

11. It is further submitted by Ms. Rana, the learned AGP upon instructions that there is no initiation of proceedings under the provisions of the Fragmentation Act or the Tenancy Act.

12. Upon such submission made by Ms. Rana, the learned AGP and in the facts of the present case, position of law, as referred to hereinabove, the impugned order dated 5.8.2021 passed by the respondent No.2 - District Collector, Gir-Somnath in Order No.166/29/11/101/2021, wherein the petitioner's application for grant of N.A. Use Permission for land bearing Survey No.787/P2/P1 admeasuring Hector 0-14-16 Sq.Mtrs., situated at Village : Prabhas Patan, Taluka : Veraval, District : Gir-Somnath was rejected is quashed and set aside. The matter is remanded back to the respondent authority with a direction to the petitioner to apply afresh which is directed to be decided within the statutory period independently and in accordance with law taking into consideration the observations made by this Court in the present order and position of law that is relied upon while arriving at final conclusion.

13. The present petition is partly allowed.

(VAIBHAVI D. NANAVATI,J)

K.K. SAIYED

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SAIYED KAZIMALI(HC00169), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 23/01/2026 17:12:08