

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 15627 of 2025**

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SATISHBHAI MANIBHAI PATEL

Versus

STATE OF GUJARAT & ANR.

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Appearance:

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

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

NOTICE SERVED BY DS for the Respondent(s) No. 2

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**Date : 12/02/2026****ORAL ORDER**

1. Heard Mr. Kishan Kotak, learned advocate for Mr. Vimal A. Purohit, learned advocate appearing for the petitioner and Mr. Jayneel Parikh, learned AGP appearing for the respondent authorities.

2. By way of the present petition, the petitioner herein is aggrieved by the impugned order passed by the respondent no. 2 - District Collector, Vadodara dated 13.06.2025 wherein, the petitioner applied for grant of Non-Agricultural (NA) permission for land bearing Survey No. 1106 admeasuring 18919 sq. mts. of Village: Por, Taluka and District: Vadodara, originally owned and occupied by Ishwardas Gurukeshavdas by application no. 31902202502777.

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

3.1. Ishwardas Gurukeshavdas was originally the owner and occupier of the land bearing Survey No. 1106 of Village: Por, Taluka and District: Vadodara admeasuring 18919 sq. mts. In the year 1998 the said land in question came to be sold in favour of one Patel Arvindbhai Chimanbhai and Patel Chandrakant Chimanbhai by way of registered sale deed dated 16.10.1998. The mutation entry with respect to sale transaction came to be mutated in the revenue record vide Entry No. 4681. Thereafter, the land in question remained in the name of the purchaser till 2022. Both the aforesaid owners thereafter, sold the land in question to the petitioner by way of registered sale deed dated 29.04.2022 and the mutation entry with respect to the aforesaid sale transaction came to be mutated in the revenue record vide Entry No. 7824 dated 15.06.2022.

3.2. The petitioner preferred application dated 02.07.2022 before the learned District Collector for N.A. use permission, which came to be rejected vide order dated 10.08.2022 on the ground that the petitioner has sought to withdraw the same with a liberty to file fresh. Thereafter, once again such application came to be preferred vide application dated 05.01.2024, which came to be rejected by order dated 22.03.2024 by stating that upon perusal of the revenue record of the land in question old Survey No. 1026 consist of Entry No. 17 in the name of Ranchodbhai Mahraj Pujari and by virtue of Entry No. 291, the land in question is gifted to Rachhodji Mahraj and that

therefore, it is not clear as to whether the land in question originally Devasthan Inam or not. Moreover, it was further stated that the learned Prant Officer, Vadodara by virtue of opinion dated 01.03.2024 had opined that the tenure of the land in question is not clear and therefore, no opinion can be granted. Once again the petitioner preferred application dated 10.04.2024, which came to be rejected vide order dated 12.07.2024 on the ground that the learned Deputy Charity Commissioner vide communication dated 03.06.2024 has opined negatively and thereafter upon perusal of the document produced by the petitioner along with application dated 17.06.2024 it transpires that the learned Assistant Charity Commissioner vide Application No. 214 of 1974 dated 16.05.1979 passed an order which clearly transpires that the application is to be decided only after ascertaining the fact as to whether the land is of Devasthan Inam or not.

3.3. It further transpires that thereafter once again the petitioner preferred application for grant of NA permission on 27.08.2024 which came to be rejected vide order dated 25.11.2024 on the ground that the order passed by the learned Charity Commissioner in Change Report No. 214 of 1974 is contemplated to be challenged under Section 70A of the Bombay Public Trust Act, 1950, (for short, “the Act”) and only after appropriate orders are availed, the procedure can be initiated. The petitioner clarified all the aspect and preferred an

application for reconsideration dated 25.04.2025 before the District Collector. The said application vide communication dated 13.06.2025 came to be rejected by stating that Charity Commissioner vide communication dated 08.10.2024 opined that they are contemplating to prefer appropriate proceedings/proposal to take into revision the order passed in the Change Report No. 214 of 1974.

3.4. As such said change report is passed almost before five decades and no proceedings are ever undertaken.

3.5. The resultant effect of the said order is such that the Assistant Charity Commissioner refused to consider the properties claim to be a trust property including the present property in question. It is submitted that present Survey No. 1106 was recognized by old Survey No. 1026. The said aspect can be verified from the order of the Charity Commissioner which consisted said survey which was also sought to be declared as property of the trust which ultimately came to be denied. The reference of the old revenue survey is also narrated in the communication dated 22.03.2024. The aforesaid has given rise to the filing of the present petition.

4. Mr. Kotak, learned advocate submits that the impugned order is passed on the ground that the proceedings under Section 70A of the Act are required to be initiated against the petitioner herein upon perusal of the records, and the application stands filed. It is submitted

that such ground is erroneous based on which the petitioner's application for grant of NA permission stood rejected.

4.1. It is submitted that such opinion for initiation of proceedings under Section 70A of the Act are contrary to the position of law as laid down in case of ***Tusharbai Harjibhai Ghelani versus State of Gujarat*** reported in ***(2019) 4 GLR 2578***. Reliance is also placed on the ratio laid down in ***Bhayabhai Vajshibhai Hathalia Versus State Of Gujarat*** reported in ***2012 (2) GLR 1741*** as also on ***Bankim Bipinbhai Desai Vs. State of Gujarat and others*** in ***Special Civil Application No. 7354 of 2005***.

5. Mr. Parikh, learned AGP relies on the affidavit in reply filed by the respondent no. 2 herein and submits that no interference is called for by the impugned orders passed by the competent authority wherein, name of Ranchhodji Maharaj came to be entered into the revenue record pursuant to a donation letter and accordingly, mutation Entry No. 291 came to be posted on 07.07.1932 thereafter, the name of Ishwardas Guru Keshavdas continued to be reflected in the revenue record in the subject land. It is submitted that thereafter, mutation Entry No. 4681 dated 09.05.2000 came to be posted on the basis of a registered sale deed whereby the names of Patel Arwindbhai Chimanbhai and Patel Chandrakant Chimanbhai are entered into the revenue records by registered sale deed dated 16.10.1998. It is

submitted that subsequent thereto, the heirs in turn sold the land in question to Nileshbhai Muljibhai Patel and Jigneshkumar Kantibhai Desai and Satishbhai Manibhai Patel by way of a registered Sale Deed No. 824 dated 29.04.2022 pursuant to which Mutation Entry No. 7824 is posted. Upon verification of the record, it is not clear whether the land in question was a Devasthan Inam land.

5.1. It is also submitted that an objection is raised by the Superintendent Public Trust Registration Officer, Vadodara vide communication dated 08.10.2024 on account of the fact that the letter has been issued to initiate proceedings to take order passed by Charity Commissioner and change Report No. 214 of 1974 under the Act. Accordingly, the application was consigned to be filed on 25.11.2024. In view of the aforesaid, by way of the impugned order, the petitioner's application is stated to be filed, the same being defective.

6. Mr. Kotak, learned advocate in rejoinder submits that the reasons assigned by the competent authority are contrary to the provisions of Section 65 of the Gujarat Land Revenue Code, 1879 (for short, "the Code") wherein, the respondent authority while exercising the powers under Section 65 of the Code are required to undertake a summary inquiry whether the person applying for such permission is the occupier of the land in question and is using such land for

agricultural purpose.

7. In the facts of the present case, the petitioner's application is rejected on grounds other than as provided under Section 65 of the Code. It is further submitted that the change report bearing No. 214 of 1974 has attained finality by order dated 16.05.1979, which is still inforce and in view thereof also, the impugned order is required to be quashed and set aside in absence of any prohibitory order.

8. Having heard the learned advocate appearing for the respective parties, it is not in dispute that the upon perusal of the documents on record, the impugned order passed by the respondent no. 2 is required to be interfered with on the sole ground that the same is passed relying on the grounds other than those that can be considered while deciding an application under Section 65 of the Code as referred to herein-above.

8.1. The respondent authority is required to follow the ratio laid down in case of ***Tusharbhai Harjibhai Ghelani versus State of Gujarat*** reported in ***(2019) 4 GLR 2578***, relevant paragraph nos. 35 to 44 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 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.

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

that two civil suits are pending.

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

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

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

8.2. It is apposite to refer to the decision rendered in the case of **Bankim Bipinbhai Desai Vs. State of Gujarat and others** in **Special Civil Application No. 7354 of 2005**, relevant portion of which is reproduced herein:

"It appears to us that in accordance with the Gujarat circular that

has been issued by the Revenue Department, 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 under the land is a new tenure land under 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 the 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."

9. It further emerges that the order dated 16.05.1979 appears to have attained finality. Further as submitted by Mr. Kotak, learned advocate that there is no revenue entry in the name of public trust with respect to the land in question. Even otherwise, if the proceedings are to be initiated against the petitioner under the Gujarat Public Trust Act, the same can be under taken in accordance with the said act, however, in the facts of the present case, the petitioner has prayed for N.A. use permission under the provisions of

the Gujarat Land Revenue Code, 1879 and in view thereof, the respondent – Collector is expected to act in accordance with the powers provided under Section 65 of the Code as referred to herein-above.

10. In view thereof, the impugned order dated 13.06.2025 passed by the respondent no. 2 - District Collector, Vadodara is required to be quashed and set aside the same is quashed and set aside. If the petitioner were to make a fresh application, the same be decided in accordance with law and in accordance with the ratio laid down in case of ***Tusharbhai Harjibhai Ghelani versus State of Gujarat*** reported in ***(2019) 4 GLR 2578***, as referred to herein-above within the statutory period.

11. With the aforesaid directions, the present petition stands disposed of.

(VAIBHAVI D. NANAVATI,J)

KUMKUM

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: KUMKUM MAHENDRA SHARMA(HC02349), ENGLISH STENO GRADE-II, at High Court of Gujarat on 27/02/2026 15:01:45