

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12388 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE DR. JUSTICE A. P. THAKER

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

HIRABHAI LAKHABHAI BHARWAD @ VIRABHAI LAKHABHAI BHARWAD
Versus
STATE OF GUJARAT & 5 other(s)

Appearance:

MR JIGAR P RAVAL(2008) for the Petitioner(s) No. 1

MR NIKUNJ KANARA, AGP for the Respondent(s) No. 1,2,3,4,5

NOTICE SERVED BY DS for the Respondent(s) No. 6

CORAM: **HONOURABLE DR. JUSTICE A. P. THAKER**

Date : 10/02/2022

ORAL JUDGMENT

1. **Rule.** Learned AGP waives service of notice on behalf of respondent State.

2. The present petition is filed under Article 226 and 227 of the Constitution of India, challenging the

order dated 04.04.2015 passed by the learned Special Secretary (Appeals) Revenue Department (hereinafter referred to as “the SSRD”) in Revision Application No.MVV/JMN/BHN/27/2012 filed by the petitioner herein.

3. The brief facts of the case as emerges from the record is that the dispute is in respect of land admeasuring 5 Acre of Survey No.119 paiki of Village Meghvadiya, Taluka Gadhada, District Bhavnagar. The petitioner’s husband became the owner and occupier of the land admeasuring 15.09 Acres of Survey no.119 paiki of Village Meghvadiya, Taluka Gadhada, District Bhavnagar by virtue of grant of order passed by the learned Mamlatdar, Gadhada dated 13.06.1959 an entry no.99 dated 07.05.1959 came to be mutated in this regard in the revenue record. Thereafter, an entry no.174 dated 20.11.1970 came to be mutated regarding the family partition and the same came to be in the share of the private respondent. That the present petitioner purchased the said land from the private respondent by registered sale deed dated 12.01.1981, entry no.263 was mutated on 15.04.1982 which came to be certified on 30.06.1982.

2.1. The Deputy Collector, Palitana initiated proceedings in respect of the breach of condition

regarding the transaction of petitioner being case no. Breach condition Case No.147/06-07 and by order dated 23.07.2009 the Deputy Collector came to the conclusion that the transaction in favour of the petitioner is in breach of the original grant order and further held that the said land now required to be considered as the Government land. Against that order, the petitioner filed Appeal No. RO/Appeal/31/09-10 before the learned Collector, Bhavnagar who by his order dated 23.01.2011 rejected the appeal.

2.2. Against the said order, the petitioner preferred revision application, which ultimately came to be rejected.

2.3. According to the petitioner, the land in question was purchased by the petitioner way back in the year 1981 and the entry thereof were already certified in the year 1982. It is contended that the authority initiated proceedings in respect of land for the first time in the year 2006-07 i.e. after a period of 24 years. It is submitted that on the ground of delay, the proceedings ought to have been cancelled by the higher revenue authority. It is also contended that the authority below had granted the land to the husband of the private respondent by order dated 13.06.1956 and the predecessor of the present

petitioner participated in the public auction and being a highest bidder, the government granted the said land to him. According to him, in view of all these facts, the said land cannot be designated as new tenure land.

2.4. The petition has been resisted by the respondent government by way of filing affidavit. It is the stand of the government that the original land was granted to Mr.Bhalchandra D. Dave vide order dated 13.06.1956 with certain condition as a new tenure land. It is contended that the heirs of Mr.Bhalchandra D. Dave sold the said land to the present petitioner vide registered sale deed dated 12.11.1981 and accordingly mutation entry was made in the revenue record bearing entry no.265 dated 15.04.1982. It is also averred that as soon as it came to the notice of the authorities herein that there is a breach of the said condition and that permission has not been sought by the original allottee namely Mr.Bhalchandra D.Dave, the proceedings under Section 84 were initiated by the Deputy Collector by initiating the *suo motu* proceedings being a Breach of Condition Case no.147/2006-07, whereby the present petitioner as well as the heirs of Mr.Bhalchandra D. Dave were heard and the impugned order was passed. It is contended that the impugned order passed by both

the authorities is in consonance with law and as there was a breach of the condition, now the land would vest in the Government.

4. Heard learned advocate Mr.Jigar P. Raval for the petitioner and learned AGP Mr.Nikunj Kanara for the respondent State at length and perused the material placed on record.

5. Learned advocate Mr.Jigar P. Raval for the petitioner has submits the same facts which are narrated hereinabove and has submitted that there is a gross delay of 24 years in initiating RTS proceedings. He has also contended that the land was originally purchased by the deceased as an auction purchaser and therefore, there can not be any condition of new tenure land. He has also submitted that there is no condition mentioned in the original order, which is at page no.19/A. He has submitted that, since there was not any condition attached as the land was purchased in a public auction, the entire exercise carried out by the authority cancelling the entries and forfeiting the land in the Government is devoid of merits and it is not sustainable in the eyes of law. He has also submitted that the exercise of powers after a period of 24 years is also factor which needs to be taken into consideration for setting aside the impugned

order. He has also relied upon the decision in the case of ***Ibrahimpatnam Taluk Vyavasasya Collie Sangham Versus K. Suresh Reddy*** reported in **2003 (7) SCC 667** and has prayed to allow the present petition by setting aside the impugned order.

6. Per contra, learned AGP Mr.Nikunj Kanara for the respondent State has vehemently supported the impugned orders and has submitted that since there is a breach of condition of the original allotment, the initiation of proceedings even after lapse of 24 years is justified. He has also submitted that the authority below has not committed any error in passing the impugned order. He has prayed to dismiss the present petition.

7. In the case of ***Ibrahimpatnam Taluk Vyavasaya*** (Supra), while dealing with the provisions of Section 50 B(4) of the Andhra Pradesh (Telangana Area) Tenancy And Agricultural Land Act, 1950 , wherein the words 'at any time' was used, it was observed by the Apex Court that; Exercise of *suo motu* power 'at any time' only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that it does not mean that 'at any time' should be unguided and arbitrary. In this view, 'at any time' must be understood as

within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation.

8. Having considered the submissions made on behalf of both the sides and considering the material placed on record, it appears that the government waste land of Village Meghvadiya came to be sold in a public auction by the revenue authority. It also reveals from the records that, it was purchased by Mr. Bhalchandra D. Dave by paying the price thereof and the order thereof is produced in the matter at page no.18 and 19, the endorsement thereof is also reflected in the village form no.6. Thus, when the land was sold in a public auction and when there is no any condition attached to the said order of sale, then there can not be a feater of the rights of the person concerned to sale of the land in question. At the same time, it is pertinent to note that the sale transaction was admittedly entered into the year 1981 and the same came to be mutated in the year 1982. It is also admitted facts that after lapse of almost 24 years of the said transaction, the *suo motu* power has been exercised by the revenue authorities. Thus, the exercise of *suo motu* power itself is long delayed it is not within the reasonable period of time. Further, it is initiated based upon the presumption that there is a breach of condition,

however, as observed hereinabove, no condition whatsoever is found in the order granting the land to the deceased who has purchased it in a public auction. Therefore, the entire exercise undertaken by the revenue authorities from lower strata upto the learned SSRD is devoid of merits and not sustainable in the eyes of law.

9. In view of the above, the petition deserves to be allowed and the same is hereby allowed. The order dated 04.04.2015 passed by the learned Special Secretary (Appeals) Revenue Department in Revision Application No.MVV/JMN/BHN/27/2012 is hereby quashed and set aside and the order of learned Collector, Bhavnagar dated 23.01.2011 below Appeal No.31/2009-10 and the order of Learned Deputy Collector, Palitana dated 23.07.2009 below Breach of Condition/ Case No./147/2006-07 are also hereby quashed and set aside. Rule is made absolute. Direct service is permitted. No order as to costs.

Sd/-
(DR. A. P. THAKER, J)

URIL RANA