

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7425 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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**KHADI GRAMODHYOG SAMITI MANAGED BY MN PATEL -
Petitioner(s)**

Versus

PATEL ISHWARBHAI PITAMBARDAS & 2 - Respondent(s)

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Appearance :

MR BHARAT JANI for Petitioner(s) : 1,

MR BS PATEL for Respondent(s) : 1,

MR M R MENGDEY, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 30/04/2007

ORAL JUDGMENT

1. By this writ application, petitioner Khadi
Gramodhyog Samiti, is before this Court

challenging the Order No. SRD/JMN/PTN/15/99, dated 20.8.99 passed by the Deputy Secretary [Appeals], Revenue Department, setting aside the order dated 21.4.99 passed by the Collector in REV/VASHI/561-66/99.

2. The short facts necessary for disposal of the present petition are that Smt. M.N. Patel Mahila Vikas Trust, said to be a registered trust and managing the Khadi Gramodhyog Samiti, applied for grant of particular land bearing part of survey no. 365 admeasuring 2 Acres or so of village Maktupur village, Taluka-Unjha so that employment is provided to number of the people and Khadi project is taken further. It appears that an application for allotment of the land was made by the petitioner Trust on 19.9.96, erstwhile body of the Panchayat, vide its Resolution No. 26 dated 14.10.96 submitted their No Objection to allotment of the land. The Collector accordingly fixed the premium etc. and directed allotment of land in favour of the petitioner.

3. It appears that on 21.5.99, very same Panchayat,

in its general body passed Resolution No. 11 resolving, *inter alia*, that earlier resolution be withdrawn and objections be filed. They also authorized Up Sarpanch to challenge the Collector's order dated 21.4.99.

4. The Up Sarpanch accordingly filed revision before the State Government which was heard and decided by the Deputy Secretary, [Appeals], Revenue Department, vide his order dated 14.8.99. As the revision application filed by the Up Sarpanch for and on behalf of the Panchayat was allowed, the petitioner Trust is before this Court.

5. Shri B.G. Jani, learned counsel for the petitioner, relying upon the two judgments of this Court in case of *Laxmichand Mafatlal Heruwala v. State of Gujarat*, reported in 1996 [3] GLR 510 and in the case of *Kanbi Arjan Kana v. State of Gujarat*, reported in 2000 [2] GLR 1697, submitted that under Section 37 read with Section 62 of the Bombay Land Revenue Code, 1879, if an action has been taken by the State Government, then, formal order passed by the

Collector cannot be revised by the State Government under Section 211 of the Code.

6. He also submits that the land was rightly allotted in favour of the petitioner and the Panchayat was not entitled to challenge the very same order.

7. Shri M.R. Mengdey, learned AGP for the State has opposed the writ application; Shri B.S. Patel, learned counsel appears for the Panchayat.

8. Judgment in the matter of Laxmichand Mafatlal Heruwala was not under the Bombay Land Revenue Code, specially sections 37 and 62. It was a case under Sections 65, 146 and 148 of the Gujarat Municipalities Act, 1963. In the said case, Their Lordships, on facts, observed that on perusal of the impugned order, it was clear that the disputed land was situated within the municipal limit and the proposal for its grant was sent to respondent no.1 [State Government], which by its order passed on 9th January, 1985, accepted the proposal, and thereafter the matter was referred to the Collector for passing ministerial/consequent orders. The Court

observed that if the final order relating to allotment was made by the State Government or by any authority at the instance of the State Government, then, the order passed by the State Government cannot be revised by the State Government as it would amount to review and such power does not vest in the State Government. In the matter of Kanbi Arjan Kala [supra], the Court observed that where Government delegates its statutory powers to a particular officer and in pursuance of the said delegation, such officer acts in particular manner, then, such act would be taken to be an action on the part of the government and such order would not be revisable by the government, because, such order would be deemed to have been passed by the State Government.

9. In the opinion of this Court, both the judgments on which strong reliance is placed are not applicable to the facts of the present case. Shri Jani, learned counsel for the petitioner, however, submits that juxtapose reading of Sections 37 and 62 of the Bombay Land Revenue

Code would make it clear that such orders for delegation are to be passed either by the government or at the instance of the government or under the delegated authority of the government, therefore, the State would not be entitled to revise such orders. Section 37 of the Bombay Land Revenue Code relates to the ownership of the government in all public roads etc. and all such other properties which do not belong to others, meaning thereby that where land or other property is not owned by anybody, then, the government would be deemed to be the owner of the property. Section further provides that in relation to the property, which is deemed to be govt. property, it shall be lawful for the Collector subject to the orders of the State Government to dispose of them in such manner as he may deem fit, or as he may be authorized by general rules sanctioned by the government concerned. Section 62 of the Code, however, authorizes the Collector subject to such rules as may from time to time be made by the State Government in this behalf, to require

the payment of a price for unalienated land or to sell the same by auction and to annex such conditions to the grant as he may deem fit. A juxtapose reading of these two sections simply say that the property which does not belong to anybody would be succeeded or owned by the government and the Collector, under Section 62 would be entitled to allot or in case of owned and occupied land, in favour of the allottee subject to payment of the price or premium and on attaching certain conditions.

10. Section 62 nowhere provides that order is required to be made by the State Government. In some other provisions, specially in cases of Municipality, property which belongs to the Municipality, if is to be settled in favour of a third party, then, the Municipality/Municipal Corporation has to pass a resolution and thereafter the State Government would grant permission for alienation or transfer of the property. Under Section 62 of the Code, even the Collector has absolute powers to allot the land and the State has no role to play, then, it

cannot be said that the State would not be entitled to interfere in the matter if a revision challenging the correctness, validity and propriety of the order passed by the Collector is filed.

11.The above-referred two judgments do not apply to the facts of the present case. It was then submitted that the resolution passed by the Gram Panchayat could not be challenged by the Up Sarpanch as representative of the general body/Gram Sabha. Shri B.S. Patel, learned counsel for the respondent no.1 submits that the land was allotted in a surreptitious manner, it was to create problem for the public and inhabitants of the area and everybody was interested in developing a water tank to meet the water scarcity. His submission is that in the entire area, there was no hand pump or any other source of water, therefore, making of the water tank or reservoir was must.

12.Shri M.R. Mengde, learned AGP, supporting the order passed by the Deputy Secretary [Appeals] submits that from a perusal of the order passed

by the Deputy Secretary [Appeals], it would clearly appear that he has taken into consideration the realities of the life such as logging of the water, future damage to the railway track and public inconvenience. Learned counsel for the respondents submit that the petition be dismissed.

13. From the order passed by the Deputy Secretary, it would clearly appear that he has taken into consideration the flow of the water, water stream and the condition of the land in dispute during the rainy season. It would also appear that he has taken into consideration the spot map and the lay out plan. He has also taken into consideration that the land is just abutting the railway track and if the construction is later on raised on the land, it would create water logging and such water logging would be dangerous to the railway track. He has also found and rightly in the opinion of this Court that possession of the land has not been handed over to the present petitioner, but only entry of the name has been made in the

record of rights. It is to be seen that the Deputy Secretary did not pass a whimsical, cavalier or capricious order, but has taken into consideration water logging, public requirement and that whole of the Gram Sabha was opposed to the allotment.

14. In the opinion of this Court, when all pros and cons have been taken into consideration, then, it would not be proper for this Court to substitute its own reasoning for the reasons which persuaded the subordinate authority to take a particular view. Apart from the merits, it is also to be seen that the Deputy Secretary [Appeals] had reserved the authority in favour of the present petitioner to apply for some land in the same village, because, they have already deposited the allotment money/sale price with the Collector. In the opinion of this Court, such action would certainly meet the ends of justice and would make the order impeccable.

15. The petition on the merits, so also, on the legal count, is dismissed. It is, however, made clear that if the petitioner is desirous of

obtaining some other land of the same village, then, it would be entitled to make an application to the Collector for allotment of that particular land, within the period of eight weeks from this order. If no application to that effect is made by the petitioner, then, this order/concession would lapse and the petitioner would be entitled to withdraw/refund of the money which it has deposited on an earlier order of allotment.

16.The petition is dismissed. Rule is discharged.

No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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