

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 22778 of 2005****With****SPECIAL CIVIL APPLICATION No. 22186 of 2006****For Approval and Signature:****HONOURABLE MR. JUSTICE MOHIT S. SHAH****AND****HONOURABLE MR. JUSTICE RAVI R. TRIPATHI**

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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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MITABEN HASMUKHABHAI BALDEV & 20 - Petitioner(s)**Versus****RAJKOT MUNICIPAL CORPORATION & 5 - Respondent(s)**

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Appearance :

NANAVATY ADVOCATES for Petitioner(s) : 1 - 21.

MR RM CHHAYA for Respondent(s) : 1,

None for Respondent(s) : 2,

Mr.U.R. BHATT, ASST GOVERNMENT PLEADER for Respondent(s) : 3 - 4,6 in SCA NO.22778 of 2005 and Ms.KRINA CALLA, AGP for respondent-State in SCA No.22186 of 2006.

M/S THAKKAR ASSOC. for Respondent(s) : 5,

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CORAM : HONOURABLE MR. JUSTICE MOHIT S. SHAH**and****HONOURABLE MR. JUSTICE RAVI R. TRIPATHI****Date : 30/12/2008**

COMMON CAV JUDGMENT**(Per : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI)**

1. The petitioners of Special Civil Application No.22778 of 2005 are the persons having their residential houses in respondent no.5-Ashok Cooperative Housing Society Limited, whereas the petitioners of Special Civil Application No.22186 of 2006 are the persons who are holding open plots in the said society. The petitioners of Special Civil Application No.22778 of 2005 are before this Court as they are served with an order dated 19.11.2005 passed by respondent no.1-Commissioner, Rajkot Municipal Corporation, whereas the petitioners of Special Civil Application No.22186 of 2006 are before this Court as the Revenue Secretary (Appeals) rejected the Revision Application filed by the petitioners against the order passed by the Collector bearing No.Land/ Revision/ 211-3/ 04-05 dated 23rd November 2005 by order dated 10th August 2006/ 22nd - 23rd August 2006 in Revision Application No.MVV/ JMN/ Rjt/ 1/ 06.

2. In both the matters the subject matter is the land bearing Final Plot No.939 in Town Planning Scheme No.1 of Rajkot, which was part of Original Revenue Survey No.466.

3. Except the difference of petitioners of Special Civil Application No.22778 of 2005 having constructed residential houses, whereas the petitioners of Special Civil Application

No.22186 of 2006 being owners of open plots of respondent no.5-society, the controversy is the same and therefore, both the matters were heard together and are decided by this common judgement and order.

The petitioners of SCA No.22778 of 2005 have prayed for the following final reliefs:

“(B) to quash and set aside the order dated 19.11.2005 passed by respondent no.1 at Annexure 'A' to this petition.

(C) to permanently restrain the respondents from removing the construction, i.e. residential houses of the petitioners situated on Final Plot No.939 of the Town Planning Scheme No.1 of Rajkot City.

The petitioners of SCA No.22186 of 2006 have prayed for the following final reliefs:

“(B) to quash and set aside the order dated 23rd November 2005 passed by the District Collector, Rajkot in Land Revision No.211-3/ 04-05 as well as the order dated 22nd - 23rd August 2006 passed by the learned Revenue Secretary (Appeals) in Revision Application No.MVV/ JMN/ RJT/ 1/ 06 (Annexures A & B);

4. To trace the history, it is required to be noted that the Original Revenue Survey No.466, admeasuring 58 acres, 15

gunthas, as contended by the petitioners, was originally allotted to one Shri Memon Walitar in the year 1944-45 by the erstwhile State of Rajkot, as a tenant. Out of the said land (58 acres, 15 gunthas), the land admeasuring 54 acres, 24 gunthas was declared to be cultivable, whereas the remaining land admeasuring 3 acres, 30 gunthas was declared to be '*Pot Kharaba*' (waste land). It is not in dispute that a revenue entry was made only for the land admeasuring 54 acres, 24 gunthas, in the name of Memon Walitar. Later on, the said land was divided into three parts. Land admeasuring 21 acres, 37 gunthas in the name of one Jaga Kana, the land admeasuring 7 acres, 2 gunthas in the name of one Sava Hira and the remaining 25 acres, 26 gunthas in the name of Bechar Bhavan. It is also submitted by the petitioners of Special Civil Application No.22778 of 2005 that the land which was marked as '*Pot Kharaba*' - admeasuring 3 acres, 27 gunthas also was allotted to Bechar Bhavan, that after the death of said Bechar Bhavan, the name of his heir Khoda Bechar was entered in the 'revenue records'. It is also the case of the petitioners that the aforesaid division of land in three parts was recorded in the 'revenue records' by making necessary entries.

It is the say of the petitioners of Special Civil Application No.22778 of 2005 that said Shri Khoda Bechar, out of his land, transferred 16 acres, 29 gunthas by registered sale deed dated 06.04.1962 to Shri Karsan Nagjibhai, Manhar Vallabhbbhai, Bachu Govabhai, Ratilal Tanna and seven others by a sale deed dated 06.04.1960. It is

further submitted by the petitioners that out of the said 16 acres, 29 gunthas land; 14 acres was cultivable agricultural land for which necessary entries were made in revenue records, whereas the remaining 2 acres, 29 gunthas land which was marked as '*Pot Kharaba*', the same was not entered into the revenue record, because it was not cultivable and also with a view to see that the liability of the revenue for the said land does not arise.

One of the petitioners-Shri Ratilal Tanna applied to the Collector for converting the said land admeasuring 16 acres, 29 gunthas into Non-Agricultural (NA) land in view of the sale deed dated 6th April 1960. It is the case of the petitioners that the Collector, Rajkot by order dated 4th August 1962 granted conversion of 14 acres of land into NA land and was pleased to observe that the applicant is in possession of 17 acres, 30 gunthas on the basis of the report submitted by DILR, Rajkot. The Collector, Rajkot declined to convert the entire land as NA land and ordered vide order dated 04.08.1962 to convert only 14 acres of land into NA land on the ground that rest of the land admeasuring 3 acres, 30 gunthas was a '*Pot Kharaba*' land and that there was no entry effected for the same in the revenue records and that being so the same could not be converted into NA land. It is submitted by the petitioners that the Collector, Rajkot directed the Mamlatdar to inquire about the rights of the applicants qua the excess land, which was in the possession of the then applicants within a period of one month.

5. It is the case of the petitioners that respondent no.5-society was registered with the Registrar of Cooperative Societies on 25.09.1964 under the provisions of the Gujarat Cooperative Societies Act, 1961. Shri Ratilal Tanna was the founder and the President of the said society. The society purchased the agricultural land admeasuring 3 acres, 30 gunthas bearing Revenue Survey No.466/Paiki from its original owner, Shri Karsan Nagji by registered sale deed dated 20.10.1965.

6. Pursuant to the order of the Collector, Rajkot dated 04.08.1962, an inquiry was held with regard to the possession of the aforesaid land and authenticity of holding of the said land being 3 acres, 3 gunthas. The City Survey inquiry officer, after perusal of various documents placed on record by the concerned officers, by its order dated 31.03.1973 held that respondent no.5-society is in possession of the said land.

It is the case of the petitioners that after the purchase of the said land, the society prepared lay out plan for putting up construction on various plots and placed the same before the competent authority for 'sanction'. The said lay out plan was approved by the Chief Town Planner of Municipal Corporation of Rajkot along with the building arrangement plan, a copy of which is produced at Annexure 'E', page 132. It is the case of the petitioners that out of 54 plots only 18 plots are developed, whereas the remaining plots

are vacant, that is the reason why the two petitions are filed. Special Civil Application No.22778 of 2005 is filed by the persons having their residential units on some of the plots of respondent no.5-society. As against that Special Civil Application No.22186 of 2006 is filed by the open plot-holders of the society.

7. Order passed by City Survey Inquiry Officer dated 31.03.1973 was quashed and set aside by the Collector, Rajkot by its order dated 11.01.1976 on the ground that the City Survey Inquiry Officer had no jurisdiction to hold inquiry regarding agricultural land because he has limited authority to inquire into the land situated within the limits of the Municipality.

8. It is the case of the petitioners that in the year 1982-83, Town Planning Scheme came to be finalised in the city of Rajkot. The Town Planning Officer was pleased to allot the land in question to the present petitioners bearing Final Block No.939, Original Block No.94 - Revenue Survey No.466. In the year 1985, the present petitioners were served with the notice under section 67 of the Gujarat Town Planning and Urban Development Act. As per the said notice respondent no.5-society was allotted Final Block No.939, which came to be sanctioned by the State Government on 25th March 1982 and it is also mentioned in the Draft Development Plan. It is also the case of the petitioners that pursuant to the sanction of the Draft Development Plan by the Government of

Gujarat, various permissions were granted to respondent no.5-Society under the provisions of the Town Planning Act by the Town Planning Officer. It is the case the petitioners that in view of the fact that the Draft Development Plan is sanctioned by the State Government and the permissions are granted by the Town Planning Authority, no other local authority has any authority to decide the disputes relating to the rights of the petitioners which stood resolved by the Town Planning Authority after holding due inquiry into the matter, except the civil court of the competent jurisdiction.

It is submitted on behalf of the petitioners that respondent no.5-society preferred an application before the Deputy Collector under the provisions of section 37(1) of the Bombay Land Revenue Code for holding an inquiry with regard to the disputes of title qua the land admeasuring 3 acres, 30 gunthas marked as '*Pot Kharaba*'. The application filed by the society was rejected by the Deputy Collector, Rajkot by order dated 28th April 1992. It is the case of the petitioners that while rejecting the said application the Deputy Collector did not decide their claim of title on the '*Pot Kharaba*' land admeasuring 3 acres, 30 gunthas. The Deputy Collector has noted in his order that while setting aside the order dated 31.03.1973 passed by the City Survey Inquiry Officer, the Collector, Rajkot has already decided the issue of 'title; of the land being 3 acres, 30 gunthas and that land is declared to be of the 'Government'. Thus, the Deputy Collector did not render any

decision on the claim of title on the aforesaid land (Pot-Kharaba) and the dispute still survives.

Pursuant to the aforesaid order dated 28th April 1992 of the Deputy Collector, the Mamlatdar, Rajkot issued notice dated 11.08.1996 under section 61 of the Bombay Land Revenue Code to the present petitioners for eviction.

9. Against the notice dated 11.08.1996, respondent no.5-society approached this Court by filing Special Civil Application No.7284 of 1996, which was rejected by order dated 14.08.1997. It is the case of the petitioners that at the time of hearing of the said petition, Rajkot Municipal Corporation was impleaded as party, which had filed its reply. At the time of hearing, no mention was made with regard to ascertainment of rights under the provisions of section 37(2) of the Bombay Land Revenue Code. However, the Court in its order dated 14.08.1997 did observe that,

“Issue of title will have to be decided before appropriate forum.”

The Court was pleased to substitute the order of 'status quo' and directed the petitioners to maintain 'status quo' so far as construction on the land and creating any third party right are concerned.

Against aforesaid order dated 14.08.1997 respondent no.5-society

preferred a Letters Patent Appeal being Letters Patent Appeal No.1358 of 1997. During the pendency of the said appeal, the Mamlatdar, Rajkot by order dated 03.04.1999, withdrew notice issued under section 61 of the Bombay Land Revenue Code.

The Collector, Rajkot by exercising suo motu power took order dated 03.04.1999 in Revision and stayed the same by his order dated 21.02.2000. Respondent no.5-society preferred revision application against this order before the Gujarat Revenue Tribunal.

10. It is the case of the petitioners that after sanctioning of the plan, the office bearers of the society offered the plots for sale, which were purchased by the petitioners and/ or their predecessors in title, after paying full consideration, after that the petitioners and/ or their predecessors in title were allotted the plots by the society. Some of the allottees have put up construction, who are the petitioners of Special Civil Application No.22778 of 2005, whereas some are still having open plots, who are the petitioners of Special Civil Application No.22186 of 2006. The petitioners submitted that the petitioners had received notices dt. 01.09.2005 from respondent no.1-Municipal Commissioner, Rajkot Municipal Corporation, signed by the Assistant Town Planner, who is joined as respondent no.2 in this petition, the said notices are produced at Annexures 'F' and 'G' to the petition, mentioning therein that it was given in exercise of powers under section 260(1) of the Bombay

Provincial Municipal Corporations Act (“BPMC Act” for brevity), stating that the addressee of the notice has put up construction in violation of section 260(1) of BPMC Act, without obtaining '*Raja Chithi*' (Permission letter). By the said notice the petitioners were called upon to explain within seven days as to why the construction should not be removed either by the addressee of the notice or by the authorised representative. It was also mentioned in the said notice that in the event the addressee defaults in giving satisfactory explanation and the evidence in support thereof, action will be taken under section 260(2) of the BPMC Act and the expenses incurred for the same will be recovered from the addressee of the notice.

11. The petitioners upon receipt of the aforesaid notice made inquiry to get copies of preliminary scheme as well as final scheme and extracts maintained by respondent no.1-Corporation under Town Planning Act. It is important to note that in the preliminary scheme proposed by respondent no.1-corporation, respondent no.5-society is shown at serial no.94. The said preliminary scheme has become final and therefore, now it forms part of the Act. It is also the case of the petitioners that Form No.'F' which is prescribed under Rules 21 and 36 of the Gujarat Town Planning and Urban Development Rules, 1979, in the column meant for mentioning the name of the owner of Final Plot, 'the President of Ashok Cooperative Housing Society Limited', respondent no.5 is shown as

the owner. Besides that it is on record that respondent no.5 is given possession of Final Plot after drawing Rozkam dated 05.07.1985 by respondent no.1-Rajkot Municipal Corporation.

The petitioners, therefore, filed a detailed reply to the notice dated 01.09.2005 on 06.09.2005, setting out all the aforesaid facts and circumstances and prayed that no proceedings be initiated as contemplated in the said notice/s. A copy of the said reply dated 06.09.2005 is produced at Annexure 'I' to the petition.

Even though a detailed reply was filed, the petitioners apprehended that the same may not be considered in true perspective by respondents no.1 and 2 and therefore, the petitioners approached this Court by filing the group of petitions being Special Civil Applications No.18814 to 18834 of 2005. The said petitions came to be dismissed by Division Bench of this Court consisting of the Hon'ble Mr.Justice K.R. Vyas & the Hon'ble Mr.Justice Akshay H. Mehta (as they then were) by order dated 26.09.2005.

“At present, the facts of the case show that the petitioners have been served with the notice and they have given reply to the same. However, the petitioners still have a chance to appeal before the Commissioner to explain to him in person regarding their construction being completely legal and in accordance with the norms prescribed under the Rules. When that stage is still remaining and the petitioners have a chance to

agitate all factual contentions before the said authority, in these petitions we cannot decide the legality or otherwise of the impugned notice. When the alternative remedy is available, the petitioners can always avail of the same and this court will not go into the merits of the case. We, however, hope that in the event of decision going against the petitioners, the concerned authority will not resort to the act of demolition immediately but afford reasonable time to the petitioners to take appropriate legal course available to them. With this observation, all these petitions stand dismissed. DS Permitted."

12. Pursuant to that, respondent no.1 fixed hearing on 29.09.2005, wherein the petitioners were represented by one Shri Jaisukhbhai Ramniklal Chandrana. At the time of hearing some of the petitioners remained present before respondent no.1 and gave detailed reply annexing various documents and explaining the facts and circumstances and requested respondent no.1 not to proceed further with the aforesaid notice/s.

It is the case of the petitioners that despite the detailed representation made by the petitioners, respondent no.1, the Municipal Commissioner, Rajkot Municipal Corporation passed the impugned order dated 19th November 2005 under section 260(2) of the Act, which was received by the petitioners on 21st November 2005. A copy of the order is produced at Annexure 'A' to the petition. The operative part of the order is to the effect that the

construction is put up by the petitioners on the land bearing Survey No.466/Paiki bearing Final Plot No.939 in Town Planning Scheme No.1 of Rajkot, admeasuring 10450 sq. meters, which is of the ownership of the State Government. Illegal construction is put up without permission. A notice dated 01.09.2005 was given under section 260(1) of the BPMC Act. Reply to the said notice was given on 6th September 2005, but as the construction in question is not carried out after getting the building plans sanctioned as required under section 253 of the BPMC Act and section 9 of the Gujarat Town Planning & Urban Development Act, and as the land is belonging to the State Government, such permission could not have been granted. Finally, a direction is issued for removing the construction within seven days. It is also stated in the order that if the order is not complied with within the time granted, the construction in question will be removed by Rajkot Municipal Corporation at the cost of the petitioners.

13. Both the petitions are contested. An affidavit in reply is filed by the Assistant Town Planner-Shri Suryakant Dholakia, affirmed on 4th February 2006. The main contentions raised therein are as under:

The deponent contended that it is obligatory, under section 253 of the BPMC Act, that every one who intends to develop land should declare his intention by way of application. However, none of the petitioners herein submitted any such application and have

developed the land without any permission from the respondent-authorities. Respondent no.1 being appropriate authority has, therefore, initiated proceedings under section 260(1) BPMC Act. The deponent further contended that as directed by the Hon'ble Court in a petition filed by the petitioners being Special Civil Application No.18814 of 2005, the respondents gave opportunity of hearing to the petitioners, considered the reply, evidence on record and the records and passed the impugned order (Annexure 'A').

The deponent further contended that no evidence of ownership is produced by the petitioners. In fact, the land in question being final Plot No.939 of Town Planning Scheme No.1, Rajkot being Original Survey No.466-part, is the Government land. The order passed by the District Collector, Rajkot under sec.37(1) of the Bombay land Revenue Code discloses the fact that the persons from whom the petitioners have purchased the land, knowing full well, that the land does not belong to them, sold them in favour of the petitioners. The petitioners have thus purchased the land with a cloud over the title and illegally developed the land. The petitioners' averment that they are occupying the land in question since 20-30 years is stoutly countered by the deponent by giving a detailed chronology of events. The Town Development Officer of the Corporation further contended that the name of Ashok Cooperative Housing Society has wrongly been inserted in the Town Planning records. Therefore, proceedings have been initiated

against the petitioners and variation in the scheme is proposed. With the aforesaid contentions the Town Development Officer of the Corporation has justified the impugned order.

14. The petitions are also contested by the State Government and an affidavit in reply is filed by Shri Mehul K. Dave, Resident Deputy Collector, Rajkot, affirmed on 5th May 2007. The main contentions are as under:

The deponent contended that the name of 'Bechar Bhavan' is shown as cultivator/ tenant. He relies on a document, wherein condition no.6 mandates that ownership remains with the State (Darbar); that no farmer/ tenant has any right to mortgage/ sell the land. The deponent also cites 'State Directory of Rajkot' to have prescribed similar condition. The deponent relied upon Promulgation Entry No.153 dated 25.11.1955 by which the name of Bechar Bhavan was entered qua land admeasuring 25 acres, 26 gunthas of Survey No.466 only and no objection was raised qua *Pot Kharaba* land which remains with the Government. It is contended that Khoda Bechar sold the land to 14 persons. The Mamlatdar noticed that the land belonging to State Government has also been included in the sale deed so as to frustrate the rights of the Government. It is contended that purchaser, Ratilal D. Tanna admitted/ conceded that only 14 acres of land be mutated in their names and consented for not mutating the Kharaba land.

It is contended that in 1973 when City Survey was introduced in Rajkot City, Ratilal and Ashok Cooperative Housing Society by suppression of fact of rejection of entries obtained entry qua '*Pot Kharaba*' land.

It is contended that in 1976 and 1992 orders were passed by the Revenue authorities holding that the land in question belongs to Government.

The deponent gave elaborate account of events including various litigations/ proceedings filed by the occupants of the land in question to contend that '*Pot Kharaba*' land is not mutated in favour of Bechar Bhavan, but then the fact remains that what was mutated was only the land admeasuring 25 acres, 26 gunthas and the purchasers had accepted this position as far back as in 1960.

Emphasis is laid by the deponent on the fact that Ashok Society has repeatedly tried to obtain NA Permission qua the disputed Kharaba land, but permission is denied all through out. The petitioners, therefore, ought not to have resorted to construction in absence of development permission/ approved plans. The deponent-Deputy Collector has narrated various events to show that the land in question belongs to the State of Gujarat, that the petitioners have lost all the proceedings taken by them, that the petitioners are lacking ownership of the land in question, that the construction

activities undertaken by them are illegal, unauthorised and in defiance of the orders passed by various authorities and courts.

15. Having noticed the rival contentions of the parties and having noticed the contents of the reply dated 6th September 2005 and the representations dated 29th September 2005, which are produced at Annexures 'I' and 'K' respectively, this Court is of the opinion that the petitioners are not rank encroachers. Taking into consideration the totality of the circumstances, it appears that the petitioner's claim is that they were duped by the persons concerned at the relevant time by misrepresenting the facts before the petitioners and that the petitioners are bona fide purchasers of the land in question without notice of the defect in the title and thereafter they put up their construction in good faith.

16. At this juncture, it will be appropriate to refer to the petition which was filed by respondent no.5 herein-Ashok Cooperative Housing Society Limited in the year 1996 being Special Civil Application No.7284 of 1996, which was heard and disposed of by this Court [Coram: H.L. Gokhale, J., (as he then was)] by judgement and order dated 14th August 1997. The relevant part of the order reads as under:

“ 6. In view of what is narrated above, I cannot say that there is any error on the part of the Town Planner of the Municipal Corporation rejecting the plans. It is

true that the Collector had not explained his position before the Town Planner but the above narration clarifies that the Government is very much claiming the 'Pot Kharaba' land. It also cannot be said that there is any error on the part of the Mamlatdar in issuing the notice under Sec. 61. Since the Government is claiming the particular land, it will be for the petitioners to file their reply to the notice which is given by the Mamlatdar and it is only after hearing the petitioners, that the Mamlatdar can and will decide the notice dt. 16th August, 1996 and pass necessary orders. As far as notice given by Rajkot Municipal Corporation is concerned, it is perfectly justified in the circumstances, inasmuch as no construction can be permitted in the meanwhile. Therefore, there is no reason for me to interfere into both these notices. Just as the State has issued the notice under Sec.61 of the Land Revenue Code, it will be for the petitioners to take appropriate proceedings to establish their title, if they deem it fit and obtain interim orders, failing which it will be open for the respondent no.4 Mamlatdar to proceed in accordance with law. Mr. Sompura informs me that in spite of the earlier mentioned order of Status Quo granted on 20th January, 1997, one Chantilly's Namdev Rajguru has started construction. A Panchnama has been drawn to that effect. (emphasis supplied)

This Rajguru who is the member of the petitioner society will stop this construction forth with and the respondent no.4 Mamlatdar will be within his power to see that construction be stopped. The Mamlatdar will however not proceed to evict the petitioner till

the proceedings before him are concluded. The petitioner will also maintain complete status quo with respect to the construction on the land and also will not create any third party right. The petitioner society will keep the parcel of land vacant. The Mamlatdar will, however, be within his rights to get the construction removed, if that is so done as informed with respect to one case.

7. This petition has been filed to challenge the validity of the notices of the Town Planner and Mamlatdar and the discussion hereinabove is only to ascertain whether they were in any way arbitrary or on some basis.

The petition is not being entertained only because the rationale behind the two notices is explained. It is however made clear that this decision does not decide the title of either of the parties with respect to the disputed land. It will have to be decided before the appropriate forum as stated above.

8. The petition is, therefore, rejected, with no order as to costs. The order of status quo granted earlier will be substituted by the direction given thereinabove. Notice is discharged."

17. The learned senior advocate for the petitioners submitted that this is not a case of a wilful default or of an intentional encroachment on Government land. He submitted that if viewed with sympathy, the petitioners deserve a favourable indulgence at

the hands of the authority and that is the stand taken by the petitioners which is clear from the reply dated 6th September 2005 filed before the authorities.

The learned senior advocate for the petitioners submitted that the petitioners are willing to abide by any terms and conditions which may be prescribed either by this Court or may be by the concerned authority. He submitted that the petitioners are conscious of the fact that they cannot claim a similar treatment as is accorded by the Government under various schemes to the persons who are going to be shelterless on account of dispossession from the land on which they build their nests but then one thing can definitely be put forward and that is, the policy of the Government is to provide shelter and not deprive the occupants of the shelter. Therefore, it is reiterated that on such suitable terms and conditions on which this Court deems fit the petitioners be not rendered shelterless and an appropriate order be passed so as to strike a balance between the petitioners on one hand and the Government on the other.

18. It appears from the record that the land in question was shown in the Town Planning Scheme as allotted to respondent no.5-Society. If the petitioners were led to believe on the basis of such record that respondent no.5 was the owner of the land and accordingly purchased the plots of land of the said society, it cannot be said that the petitioners were encroachers or

landgrabbers. Their case, therefore, deserves sympathetic consideration for regularization on payment of the appropriate price. As the petitioners have undertaken before the authority in their reply dated 6th September 2005, this direction is issued, which in the opinion of this Court will serve the ends of justice.

19. In the result, we partly allow these petitions. Order dated 19th November 2005 passed by respondent no.1, Rajkot Municipal Corporation, and order dated 23rd November 2005 passed by the District Collector, Rajkot in Land Revision No.211-3/ 04-05 as well as the order dated 22nd - 23rd August 2006 passed by the learned Revenue Secretary (Appeals) in Revision Application No.MVV/ JMN/ RJT/ 1/ 06 shall remain in abeyance till respondent no.6-State Government decides the petitioners' application for regularization of occupation of the land in question on such terms and conditions as may be deemed fit taking into consideration the petitioner's case that they are bona fide purchasers of the land in question without notice of the defect in the title at the relevant time.

If the petitioners' application is granted, respondent no.6 shall give sufficient time to the petitioners to comply with the terms and conditions including that of payment of necessary amount either as regularization fee or an amount to be paid under any other nomenclature/ head, on which possession/ occupation may be regularised.

20. Rule is made absolute to the aforesaid extent. No order as to cost.

(M.S. SHAH, J.)

(RAVI R. TRIPATHI, J.)

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