

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 10944 of 2012****With****SPECIAL CIVIL APPLICATION NO. 10959 of 2012****With****SPECIAL CIVIL APPLICATION NO. 10953 of 2012****With****SPECIAL CIVIL APPLICATION NO. 10956 of 2012****With****SPECIAL CIVIL APPLICATION NO. 10952 of 2012****With****SPECIAL CIVIL APPLICATION NO. 10949 of 2012****With****SPECIAL CIVIL APPLICATION NO. 10960 of 2012****With****SPECIAL CIVIL APPLICATION NO. 10945 of 2012****With****SPECIAL CIVIL APPLICATION NO. 10996 of 2012****With****SPECIAL CIVIL APPLICATION NO. 10612 of 2013****With****SPECIAL CIVIL APPLICATION NO. 8341 of 2012****TO****SPECIAL CIVIL APPLICATION NO. 8349 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE RAJESH H.SHUKLA**

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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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STATE OF GUJARAT & 1....Petitioner(s)

Versus

MEMBER & 3....Respondent(s)

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Appearance:

SPECIAL CIVIL APPLICATION NOS. 10944/2012, 10959/2012, 10953/2012, 10952/2012, 10949/2012, 10960/2012, 10945/2012

SHRI BHARAT VYAS, AGP for the Petitioner(s) No. 1 - 2

SHRI S.I.NANAVATI, SENIOR ADVOCATE with MR MRUGEN K PUROHIT, ADVOCATE for the Respondent(s) No. 3 - 4

RULE SERVED BY DS for the Respondent(s) No. 1 – 2

Appearance:

SPECIAL CIVIL APPLICATION NOS. 10956/2012,

SHRI BHARAT VYAS, AGP for the Petitioner(s) No. 1 - 2

SHRI S.I.NANAVATI, SENIOR ADVOCATE with MR MRUGEN K PUROHIT, ADVOCATE for the Respondent(s) No. 4

MR. M.P.SHAH, ADVOCATE for Respondent No.3

MS. KRUTI M. SHAH, ADVOCATE for Respondent No.3

RULE SERVED BY DS for the Respondent(s) No. 1 – 2

Appearance:

SPECIAL CIVIL APPLICATION NOS. 10996/2012, 8341/2012 TO 8349/2012

SHRI S.I.NANAVATI, SENIOR ADVOCATE with MR MRUGEN K PUROHIT, ADVOCATE for Petitioner No.1

SHRI BHARAT VYAS, AGP for Respondent No.1

RULE SERVED BY DS for the Respondent(s) No. 1 – 3

Appearance:

SPECIAL CIVIL APPLICATION NOS. 10612/2013

SHRI R.S.SANJANWALA, SENIOR ADVOCATE with SHRI DILIP L. KANOJIYA, ADVOCATE for the Petitioner No. 1-7.2

SHRI BHARAT VYAS, AGP for Respondent No.1

RULE SERVED BY DS for the Respondent(s) No. 1 – 4

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CORAM: **HONOURABLE MR.JUSTICE RAJESH H.SHUKLA**

Date : 30/09/2014

COMMON ORAL JUDGMENT

**JUDGMENT AND ORDER IN SPECIAL CIVIL APPLICATION NOS..
10944/2012, 10959/2012, 10953/2012, 10956/2012,
10952/2012, 10949/2102, 10960/2012, 10945/2012:**

1. The present group of petitions have been filed by the State under Articles 226 and 227 of the Constitution of India as well as under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “the Tenancy Act”) challenging the impugned judgment and order passed by the Gujarat Revenue Tribunal in respective applications stated hereinafter:

SCA No.	Revision Application No.	Date
10944/2012	TEN.BS.12/2009	02/11/11
10959/2012	TEN.BS. 20/2009	03/16/11
10953/2012	TEN.BS. 9/2009	01/18/10
10956/2012	TEN.BS. 13/2009	01/10/10
10952/2012	TEN.BS. 21/2009	01/18/10
10949/2012	TEN.BS. 22/2009	01/10/10
10960/2012	TEN.BS. 16/2009	01/28/10
10945/2012	TEN.BS. 11/2009	02/11/11

2. As all these group of matters involve the same issues namely the premium for the purpose of conversion of the land from new tenure to old tenure as required under the provisions of Section 43 of the Tenancy Act, they have been considered and heard together.
3. Heard Learned AGP Shri Bharat Vyas for the Petitioners – State,

learned learned Senior Counsel Shri S.I.Nanavati appearing with learned Advocate Shri Mrugen K. Purohit and learned Advocate Ms. Kruti M. Shah for the Respondents.

4. Learned AGP Shri Bharat Vyas referred to the background of the facts of the case with regard to conversion of the land from new tenure to old tenure for the purpose of conversion of the lands from agricultural use into to non-agricultural use and the applicability of Section 43 which require approval as stated in the respective tenancy cases. Learned AGP Shri Bharat Vyas has also referred to the background of the facts where earlier some of the original owners like Respondent No.3 in Special Civil Application No. 10944 of 2012 had filed writ petition being Special Civil Application No.8347 of 2012 and the matter was remanded back by the High Court to the Mamlatdar. The Mamlatdar & ALT in Tenancy Cases decided in favour of the original owner and removed the restriction of transfer of the land. However, there are subsequent transactions and ultimately the Tribunal by the impugned order upheld such transfer on the conversion and also the order passed by the lower authority. It is this order passed by the Tribunal which has been assailed in the present group of petitions by the State.
5. However, when the matters were taken up for hearing, learned Senior Counsel Shri S.I.Nanavati appearing with learned Advocate Shri Mrugen Purohit for some of the Respondents /

Original Petitioners have referred to the order passed by the Hon'ble Division Bench in Letters Patent Appeal No.408 of 2014 in Special Civil Application No.10553 of 2012 and allied matters, where according to learned Senior Counsel Shri S.I.Nanavati similar issues were involved and the facts were also almost similar. He referred to the government notification with regard to amendment in the Gujarat Tenancy and Agricultural Lands Act, 1948 regarding amendment in Section 70 by which Section 70-A has been added, which provide Regularization of certain sale of land:

"70A. In case where a person is or was declared as a permanent tenant under section 70 by the Mamlatdar and Agricultural Lands Tribunal and subsequently on the basis of such order sale or more than one sale in respect of the land in question has taken place and if thereafter the order declaring a person as the permanent tenant is found not in accordance with law, then, the Collector, on an application made by the present occupant in this regard, shall, subject to other provisions of this Act or any other law for the time being in force, proceed to impose the restrictions of section 43 of this Act in respect of such land and shall, after levying rupee one as the penalty and in consideration of payment of such amount as may be determined by the State Government by general or special order from time to time, pass an order regularising such sale, subject to such conditions as may be specified by him."

Learned Senior Counsel Shri Nanavati pointedly referred to this provision and submitted that in view of this amendment in the statute the regularization has been provided for payment of

rupee one for the penalty for the subsequent transaction and thereafter it could be considered for conversion of land on payment of premium that may be decided by the Collector.

6. Learned Senior Counsel Shri Nanavati pointedly referred to the observations made by the Hon'ble Division Bench in LPA 408/2014 and emphasized the observations made in paragraphs 10, 11 and 12:

“10. On examination of the record of the present appeal, it clearly reveals that the original owner was declared as the permanent tenant as the ancestors of the original tenant i.e. Bhavanbhai Naranbhai as well as Lallubhai Naranbhai were tenant since 1934/1935 i.e. prior to tillers' day i.e. 1st April 1957. Indisputably, it also reveals from the record that the name of original owner also came to be mutated in the revenue record and thereafter he moved an application for removal of the restrictive tenure of the aforesaid land and the aforesaid land was converted into Old Tenure Land and the restriction so far as the transfer of the land was removed by the learned Mamlatdar vide his order 20.02.2008 and thereafter the original owners executed a sale deed on 14.03.2008 and transferred the aforesaid land in favour of respondent Nos. 1 to 6 herein. Indisputably, on the date of transfer of the land, i.e. on 14.03.2008, the land in question was not of restrictive tenure i.e. new tenure land having no restriction for transfer. It also appears that thereafter questioning the competence of learned Mamlatdar to grant such permission, one chapter came to be initiated. In the

meantime, as noted above and as vehemently argued by learned advocate Mr. Thakkar for the respondent Nos. 1 to 6, the Government has inserted Section 70A of the Act by way of the Gujarat Tenancy and Agricultural Lands (Amendment) Act, 2014. The said Section 70A reads thus:

“70A. In case where a person is or was declared as a permanent tenant under section 70 by the Mamlatdar and Agricultural Lands Tribunal and subsequently on the basis of such order sale or more than one sale in respect of the land in question has taken place and if thereafter the order declaring a person as the permanent tenant is found not in accordance with law, then, the Collector, on an application made by the present occupant in this regard, shall, subject to other provisions of this Act or any other law for the time being in force, proceed to impose the restrictions of section 43 of this Act in respect of such land and shall, after levying rupee one as the penalty and in consideration of payment of such amount as may be determined by the State Government by general or special order from time to time, pass an order regularising such sale, subject to such conditions as may be specified by him.”

11. In view of the aforesaid clearcut provisions of Section 70A, it clearly indicates that now the question as to whether the Mamlatdar has any power to remove the restriction or

not has become irrelevant and even if the Mamlatdar has exercised the power of conversion of land from New Tenure to Old Tenure and thereafter if the transaction of sale has been taken place, the power to regularize such sale by levying rupee one as the penalty and in consideration of payment of such amount as may be determined by the State Government, is vested with the Collector in view of provisions of Section 70A.

12. In view of the above, in our opinion, the learned Single Judge has not committed any error while directing the appellants herein to decide the original petitioners' application dated 19.02.2011, seeking conversion of land from new tenure to old tenure for nonagricultural use purpose on payment of premium as per the current policy of the Government within a time frame. It appears that the State Government by way of amendment, inserted Section 70A in the Act, which makes it abundantly clear that the direction issued by the learned Single Judge is in accordance with law and in accordance with the provisions of Section 70A of the Act. Furthermore, Mr. Thakkar, learned advocate for the respondents has also submitted that the State Authority has already fixed the premium but as the State Authority has fixed double premium, it should be refixed by the State Authority in accordance with the law and as per the prevailing policy of the Government."

7. Therefore learned Senior Counsel Shri S.I.Nanavati submitted that in view of this amendment in the law by which Section 70A

has been added to the Tenancy Act, the same procedure may be followed and the petitions may be allowed with a direction that the applications of the original petitions / respondents that may be made, if not already made, may be considered by the Collector within a reasonable period.

8. Therefore the Collector shall consider the applications made or that may be made as stated above, within a reasonable period of six months from today in light of the aforesaid order of the Hon'ble Division Bench as well as the amendment in the Tenancy Act namely Section 70 of the Tenancy Act and the Collector shall re-fix the premium as per the prevalent policy of the government and shall determine the premium as stated above preferably within a period of six weeks thereafter. It is also clarified that the issue with regard to the payment of premium within a statutory period shall be condoned and the Respondent / original petitioners shall make the payment of premium that may be decided by the Collector within a period of six weeks and the Collector shall also decide within a period of six weeks from today.
9. With the aforesaid observations and directions, the present petitions accordingly stands allowed partly to the aforesaid extent in light of the judgment of the Hon'ble Division Bench in LPA 408/2014. It is also clarified that while deciding the applications the Respondent Collector / State Government shall keep in mind the observations made in the order of the Hon'ble

Division Bench dated 23.9.2014 in LPA 408/2014 in SCA 10553/2012 and allied matters. Rule is made absolute to the aforesaid extent.

JUDGMENT AND ORDER IN SPECIAL CIVIL APPLICATION NOS. 10996/2012, 10612/2013, 8341/2012 To 8349/2012:

10. Heard learned Counsel Shri S.I.Nanavati appearing with learned Advocate Shri Mrugen K. Purohit and learned Senior Counsel Shri R.S.Sanjanwala for the Petitioners and learned AGP Shri Bharat Vyas for the Respondent State.
11. In view of the order passed in Special Civil Application Nos. 10944/2012, 10959/2012, 10953/2012, 10956/2012, 10952/2012, 10949/2012, 10960/2012 and 10945/2012, Special Civil Application Nos. 10996/2012, 10612/2013 and 8341/2012 To 8349/2012 stands allowed. Rule is made absolute.

(RAJESH H.SHUKLA, J.)

JNW