

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 10465 of 2007****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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HANSRAJBHAI LALJIBHAI PITRODA....Petitioner(s)

Versus

STATE OF GUJARAT &amp; 2....Respondent(s)

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Appearance:

MR HARESH N JOSHI, ADVOCATE for the Petitioner(s) No. 1

MR BHARAT VYAS, AGP for the Respondent(s) No. 1 - 3

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**CORAM: HONOURABLE MR.JUSTICE RAJESH H.SHUKLA****Date : 17/10/2014****ORAL JUDGMENT**

1. The present petition is filed under Articles 14, 19 and 226 of the Constitution of India as well as under the provisions of Bombay Land Revenue Code (hereinafter referred to as 'the BLR Code') for the following prayers, on the grounds stated in the memo of petition:

*“(A) YOUR LORDSHIPS be pleased to issue a writ of mandamus or a writ in the nature of mandamus, or any other appropriate, writ, order or direction, quashing and setting aside the impugned orders dated 13.04.2007 and 20.02.2007 passed by the respondent no.1 and 2 respectively as being illegal, arbitrary, unreasonable, without application of mind, in breach of principles of natural justice, contrary to the decisions of this Hon’ble Court and violative of Art. 14 and 19 of the Constitution of India;*

*(B) YOUR LORDSHIPS be pleased to stay the implementation, operation and execution of the impugned orders dtd. 13.04.2007 and 20.02.2007 passed by respondent no.1 and 2, pending the hearing, admission and final disposal of this petition, in the interest of justice;*

*(C) YOUR LORDSHIPS be pleased to direct the respondent authorities to assess the amount of premium payable by the petitioner on the basis of market price of the subject land as on 17.06.1996 for regularization of the sale transaction, within stipulated time as may be deemed fit by this Hon’ble Court and communicate the same to the petitioner and further be pleased grant order of status quo in respect of the subject land pending the hearing, admission and final disposal of this petition, in the interest of justice;*

*(D) YOUR LORDSHIPS be pleased to grant such other and further reliefs as deemed fit in the interest of justice:”*

2. Heard learned Advocate Shri Haresh Joshi for the petitioner and learned AGP Shri Bharat Vyas for the Respondents.
3. The facts of the present case briefly stated are that the petitioner

is the original land owner and in 1955 it was requested to the Respondent No.1 to grant permission to change the use of the land, which is already occupied by Shri Munshiram Anand for the purpose of residential use. Thereafter, the original owner of the land sold the land to a partnership firm through one of the partner and the petitioner is also one of the partners of the firm, which was purchased by a registered sale-deed as stated in detail in the petition. Thereafter, though it applied for permission for construction to residential premises and Raja Chithhi No.261 dated 02.06.1970 was granted for the purpose of development. Development was made after development plan was submitted and approved by the authority. However, to the shock and surprise of the petitioner for the first time after a period of about 34 years, the show-cause notice came to be issued in *suo motu* exercise of powers for the alleged breach of the conditions, which has led to further proceedings under the BLR Code and the present petition is filed by the petitioner challenging the order passed by the authority including the Collector. As stated in detail in the petition, there was earlier round of litigation by way of Special Civil Application No.15558 of 2005 and the order was passed directing for regularization regarding the breach of the condition subject to payment of the amount of premium. Since no decision has been taken, the present petition came to be filed.

4. Learned Advocate Shri Haresh Joshi during the course of the hearing placed on record, the communication dated 20.02.2007 by which the amount of premium was fixed at Rs.34,00,816/- and the grievance made by the petitioner is that if such a huge amount is decided which is impossible or next to impossible and it would cause prejudice to the petitioner. He submitted that impugned decision is not in true spirit of the order of the Hon'ble

High Court passed in Special Civil Application No.15558 of 2005.

5. Learned AGP Shri Bharat Vyas for the Respondents however referred to the papers and strongly objected and referred to the affidavit-in-reply and tried to submit that earlier it was given for residential use and then as stated in detailed it was sold by the original holder of the land to a firm. Therefore, it resulted into litigation. He further submitted that powers are with the Government and as per the order referring to the details, the premium has been fixed considering the price. Therefore, the present petition may not be entertained and the premium may be directed to be paid, if the petitioner desires for regularization of the land.
6. In view of these rival submissions, it is required to considered whether the present petition can be entertained or not or whether the impugned order may be sustained or not.
7. As it transpires from the record, the main issue is with regard to the breach of conditions for which the *suo motu* powers are sought to be exercised after 34 years. Admittedly, after purchase of the land by the partnership firm, necessary applications were made for development alongwith plan and permissions have been granted and development has taken place. However, after a lapse of long time in purported exercise of *suo motu* powers, the notice came to be issued and the proceedings have been initiated to cancell such Sanad. It is required to be mentioned that earlier also the petition was filed being Special Civil Application No.15558 of 2005, which was disposed of by the High Court (Coram: Hon'ble Mr. Justice Akil Kureshi) vide its order dated 01.08.2005 and it has been observed that:

*“In view of the fact that even as per the Collector, the final decision is to be taken by the Government, it is directed that the application of the petitioner for regularisation of land in question shall be considered by the newly added respondent no.4. In facts of the present case at what rate the petitioner should be asked to pay premium should also be considered by respondent no.4 while bearing in mind the contention of the petitioner that since 1996 he had indicated his preparedness to pay premium as per the order passed by the Collector. In addition to the pending application of the petitioner, if the petitioner makes a representation within a period of two weeks from today, same shall also be taken into account by the respondent no.4 at the time of deciding the issue.....”*

Thus, the aspect of exercise of powers at belated stage after 34 years, which would not be justified in light of the settled legal position of law.

8. Thus, it has also been observed that things which have been settled cannot be permitted to be unsettled after such a long lapse of time. Therefore, the very exercise of such powers at belated stage, cannot be sustained. However, as referred to in the petition as well as in the papers that even in the year 1996 the petitioner was ready and willing to pay the premium and therefore the High Court while passing the order in Special Civil Application No.15558 of 2005 has made observations referring to the same aspect. Thus, it has to be taken in proper prospective when the petitioner is ready and willing to pay make payment of the premium by depositing the amount of Rs.34,00,816/- as per the communication dated 20.02.2007. The present petition deserves to be allowed and the prayer for regularization on payment of such premium deserves to be granted.

9. Therefore, it is directed that the Respondent No.4-State shall

consider the regularization of the petitioner's land on payment of the premium as per the communication dated 20.02.2007 by the Collector to the petitioner on depositing the amount of premium of Rs. 34,00,816/-. The petitioner shall deposit the said amount within a period of four weeks from receipt of this order and the Respondent- Collector and/or the State Government shall pass necessary orders regarding regularization of the land in question on payment of such premium within a period of four weeks thereafter.

10. Therefore, in view of the above directions, the present petition deserves to be allowed and accordingly stands allowed partly. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.

**(RAJESH H.SHUKLA, J.)**

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