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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**WRIT PETITION (PIL) NO. 134 of 2014****FOR APPROVAL AND SIGNATURE:**

HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA	Sd/-
HONOURABLE MR.JUSTICE J.B.PARDIWALA	Sd/-

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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, 1950 or any order made thereunder ?	No
5	Whether it is to be circulated to the civil judge ?	No

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GUJARAT STATE ENVIRONMENT PROTECTION COMMITTEE

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR NIRAV R MISHRA, ADVOCATE for the Applicant.

MS VACHA DESAI, AST. GOVT. PLEADER for the respondent No. 1.

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CORAM: **HONOURABLE THE CHIEF JUSTICE****MR. BHASKAR BHATTACHARYA**

and

HONOURABLE MR.JUSTICE J.B.PARDIWALA**Date : 09/05/2014****CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE
MR. BHASKAR BHATTACHARYA)**

1. By this Public Interest Litigation, the writ-petitioner, a Registered Association, namely: Gujarat State Environment Protection Committee, has prayed for the following reliefs:-

“20. The petitioner, therefore, approach this Hon’ble Court under Article 226 of the Constitution of India and pray that, Your Lordships may be pleased to issue a writ of Mandamus or any other writ in the nature of Mandamus or any other appropriate writ, order or direction by granting the following prayers:-

(A) Your Lordships may be pleased to admit and allow this Special Civil Application;

(B) Your Lordships may be pleased to hold and declare that the action and inaction on the part of the respondent authorities in allocating the lands to the private respondent No.6 herein – Ultratech Cement Limited approximately admeasuring 60.33.66 Hector-Are-Sq. Mtrs. Of total 89 survey numbers, as described in the order of the Collector dated 31.12.2011 at Annexure-‘D’ for industrial purpose by the State Government be declared as illegal, arbitrary, against the settled principles of law for the reason being that till date, the purpose for which the said lands were allocated in the year 1999 for setting up of the cement plant by the private respondent No.6 herein is not satisfied or the construction is

not carried out till date.

(C) Your Lordships may be pleased to hold and declare that the inability on the part of the private respondent No.6, namely Ultratech Cement Limited is not being able to establish the cement plant for which the land admeasuring 60.33.66 Hector-Are-Sq. Mtrs. Was granted to them for industrial purpose is in clear violation and is in breach of the grant order passed by the State authorities in the year 1999 and therefore, the same is against the public interest.

(D) Your Lordships may be pleased to hold and declare that the order passed by the Collector dated 31.12.2011 at Annexure-'D' cancelling the allocation of the land admeasuring 60.33.66 Hector-Are-Sq. Mtrs. Is just, proper and is in accordance with law and therefore, the order passed by the Revenue Department (Appeals) dated 31.1.2013 at Annexure-'E' is without any application of mind, is illegal, arbitrary, against the settled principles of law and is also against the interest of the public at large.

(E) Your Lordships may be pleased to hold and declare that the inaction on the part of the respondent State authorities is not taking any steps in not challenging the order passed by the Secretary (Appeals) dated 31.1.2013 at Annexure-'E' smacks of malafide, is illegal, arbitrary, against the settled principles of law and is not in consonance and not in the benefit of the interest of the public at large.

(F) Your Lordships may kindly be pleased to pass any other further order/s as are deemed fit, just and proper in the facts and circumstances of the case and in the interest of justice."

2. The case made out by the writ-petitioner may be summed up thus:

[a]. The private respondent No.6, Grasim Industries Limited, was allotted/granted land admeasuring approximately 26.19 Acre Gunthas of Survey No. 23 of village Barvela, Taluka Sutrapada, District Junagadh, 4.13 Acre Gunthas of land of survey No. 29 and 3.00 Acre Gunthas of Survey No. 31 of the said village, totally admeasuring approximately 136,783.00 sq. Mtrs for industrial purpose of development of a cement plant, by order dated 3rd April 1999.

[b]. Since construction on the land in question was not carried out, the Collector, Junagadh issued notice dated 1st May 2006 to the private respondent No.6 for breach of condition. However, considering the explanation submitted by the private respondent No.6, the said notice dated 1st May 2006 was withdrawn by the Collector.

[c]. On 15th April 2011, the Circle Officer, Sutrapada, visited the land in question and prepared a panch rojnam and had observed that the entire land is not utilized and there is no construction activity at any part of the land. Therefore, on 16th September 2011 the Collector issued a show cause notice to the private-respondent No.6 for breach of the conditions.

[d]. Ultimately, on 31st December 2011, after hearing the private-

respondent No.6, the respondent Collector passed an order dated 31st December 2011 by holding that as there is a breach of the conditions No. 12 and 16 of the order dated 3rd April 1999, the allocation of the said land was cancelled and the land was ordered to be returned by the private respondent No.6.

[e]. The private-respondent No.6 challenged the order dated 31st December 2011 passed by the Collector by preferring appeal being Appeal No. MVV/JMN/JND/2/2012 before the Additional Secretary, Revenue Department [Appeal].

[f]. On 31st January 2013, the Additional Secretary, Revenue Department [Appeal] allowed the appeal preferred by the private-respondent No.6 and set aside the order dated 31st December 2011 passed by the Collector.

[g]. According to the petitioner, pursuant to an application filed by the President of the petitioner under the Right to Information Act, the RTI Officer in the Collectorate replied to the RTI query on 18th January 2014 intimating therein that no steps have been taken by the Collectorate to challenge the said order passed by the Revenue Department [Appeals] dated 31st January 2013 and even no legal opinion was also sought in this regard.

[h]. Such being the position, the petitioner has come up with this

Public Interest Litigation questioning the validity of the order passed by the Additional Secretary, Revenue Department [Appeal] by which the order passed by the Collector was set aside.

3. Mr. Nirav R. Mishra, the learned advocate appearing on behalf of the petitioner, strenuously contended before us that there was no justification on the part of the State-respondent in setting aside the order of the Collector when the private-respondent No.6 could not commence the construction of the industrial unit even though more than ten years have passed by. Mr. Mishra, therefore, contends that setting aside the order of the Collector is nothing but an abuse of the process of law.

4. After going through the order passed by the State Government on 31st January 2013, we find that the State Government, in exercise of powers of revision under section 211 of the Gujarat Land Revenue Code, 1879, decided to set aside the order of the Collector and also the show cause notice dated 16th September 2011 issued by the Collector. It appears that the State Government has taken note of the replies dated 13th September 2011, 1st November 2011 and 28th November 2011 submitted by the private-respondent No.6. It was pointed out that the private-respondent N.6 could not be blamed for noncompliance of the condition of starting of the factory as the basic necessity of raw material of lime stone for cement industry had not been made available to the respondent No.6, and the matter was

pending before the State Government. It was also pointed out by the private-respondent No.6 that they have entered into four MOUs with the Government of Gujarat in Vibrant Gujarat 2013 for four mineral based projects in Gujarat, and out of the four projects, two projects are intended in the Junagadh District upon the subject-land and has produced the investment intention details. The Revisional authority has also considered the fact that agricultural lands of Barevala and Singsar have been purchased by the private-respondent No.6 from private farmers after obtaining permission from the Deputy Collector, Veraval under section 55 of the Saurashtra Gharkhed Settlement and Agricultural Lands Ordinance, 1949. The Revisional authority considered the fact that the basic necessity of raw material of lime stone for cement industry has not been made available to the private respondent No.6, and their application for approval of mining lease in different villages of Suttarpada has been pending before the Mines and Minerals Department of the State of Gujarat and no decision has been taken on those applications. The Revisional Authority also considered the fact that without raw material, the cement production cannot be commenced, and the respondent No.6 has made several efforts for approval of mining lease and after approval of the mining lease, the respondent No.6 will start the certified industry on the land in question. After taking all these aspects into consideration, the State Government decided to extend the time by five years.

5. We, thus, find that the State Government, in the facts of the

present case, reasonably found that a further period of 5 years should be given when the application of the private-respondent No.6 for mining lease is pending before the State Government. Therefore, this is not a case of deliberate inaction on the part of the respondent No.6 in not commencing the production, and, at the same time, this is also not a case of allotment of land at the instance of the Government. It is a case where the private respondent No.6 has purchased the lands from private farmers, and is awaiting the decision of the State Government for granting mining lease. Such being the position, we find that the order passed by the revisional authority, viz. the State Government, is quite justified and there is no justification of entertaining this Public Interest Litigation at the instance of a third-party to the proceedings.

6. Mr. Mishra, the learned advocate for the petitioner, placed reliance on a judgment of the Supreme Court in the case of **DIPAK BABARIA AND ANOTHERS vs. STATE OF GUJARAT AND OTHERS** reported in **(2014) 3 SCC 502**, in support of his case. In the said case, the lands in question was purchased in the year 2003 at a price of Rs.70 lakh for industrial purposes, and the land was sold at Rs.1.20 Crores on 19th January 2010. In the said case, the Supreme Court found that from the letter dated 16th June 2009 of the respondent No.4 proposing to sell the land to respondent No.5 itself made it clear that it was no more interested in putting up the industrial project, and, therefore, it wanted to dispose of the land to a prospective

client. That being the position, according to the Supreme Court, it was mandatory for the Collector at that stage itself, to act under section 89-A (5) to issue notice. In the instant case before us, the private-respondent No.6 is still interested to commence the industry and is waiting for the State Government's decision. Thus, the decision of the Supreme Court relied upon by Mr. Mishra has no application to the facts of the present case.

7. This writ-petition is devoid of any merits, and is, therefore, dismissed summarily.

Sd/-

(BHASKAR BHATTACHARYA, CJ.)

Sd/-

(J.B.PARDIWALA, J.)

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