

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****WRIT PETITION (PIL) NO. 128 of 2013****FOR APPROVAL AND SIGNATURE:**

**HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA**  
**and**  
**HONOURABLE MR.JUSTICE J.B.PARDIWALA**

- =====
- 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 ?
- =====

GOVINDBHAI NATHABHAI PATEL....Applicant(s)

Versus

STATE OF GUJARAT THRO.SECRETARY & 9....Opponent(s)

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Appearance:

MR AR THACKER, ADVOCATE for the Applicant(s) No. 1  
 MR VANDAN BAXI, ASSTT.GOVERNMENT PLEADER for the Opponent(s) No. 2  
 MR HS MUNSHAW, ADVOCATE for the Opponent(s) No. 8 - 9  
 MR MEHULSHARAD SHAH, ADVOCATE for the Opponent(s) No. 3 - 7  
 MR NIKHILESH J SHAH, ADVOCATE for the Opponent(s) No. 10

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR.**  
**BHASKAR BHATTACHARYA**  
**and**  
**HONOURABLE MR.JUSTICE J.B.PARDIWALA**

**Date :31/07/2014**

**CAV JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

By this writ-application in the nature of a public interest litigation, the petitioner, claiming to be a public spirited citizen, has prayed for an appropriate writ, order or direction to quash and set aside the order dated 30th March, 2012, passed by the

Collector, Kutch, and also the consequential order passed by the State Government in its Revenue Department, Gandhinagar. The petitioner has also prayed that the Collector, Kutch be directed to file a criminal complaint against the private respondents for creating false documents.

2. The case made out by the petitioner in this petition may be summarized as under:-

2.1 According to the petitioner, the respondent No.4 has encroached upon the Government land, whose market value as on today is more than rupees hundred crore and the respondent Nos. 4 to 7, in collusion with each other, have obtained permission for the conversion of the land in question from agricultural to non-agricultural use by creating false documents in that regard.

2.2 It is the case of the petitioner that the respondent Nos. 3 to 7 are highly influential persons in the district of Kutch and, therefore, the Revenue authorities are maintaining complete silence over the various complaints lodged by the petitioner in that regard.

3. In such circumstances referred to above, it has been prayed by the petitioner that the possession of the land in question should be taken over by the Government and criminal prosecution should be instituted against the respondent Nos. 3 to 7 for creating false documents.

4. Stance of the State Government:

On behalf of the Collector, Kutch, Bhuj, an exhaustive

affidavit-in-reply has been filed by the Assistant Collector denying all the allegations levelled by the petitioner in the petition.

On behalf of the respondent Nos. 3 to 5 also, an affidavit-in-reply has been filed denying all the allegations levelled by the petitioner.

5. We have heard Mr. A.R. Thacker, the learned advocate appearing for the petitioner, Mr. Mehul Sharad Shah, the learned advocate appearing on behalf of the respondent Nos. 3 to 7 and Mr. H.S. Munshaw, the learned advocate for the respondent Nos. 8 to 10.

6. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this petition is whether the petitioner is entitled to any of the reliefs as prayed for in this petition.

7. Ordinarily, Court would allow litigation in public interest if it is found:

- (i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;
- (ii) That the action complained of is palpably illegal or *mala fide* and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;
- (iii) That the person or a group of persons were approaching

the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

- (iv) That such person or group of persons is not a busy body or a meddlesome inter-loper and have not approached with *mala fide* intention of vindicating their personal vengeance or grievance;
- (v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;
- (vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;
- (vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;
- (viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;
- (ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons or groups with *mala fide* objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.

### ANALYSIS:

8. This litigation has a checkered history. It appears from the materials on record that the petitioner has been fighting tooth and nail against the respondent Nos. 3 to 7 past almost three decades. When a particular person is the object and target of the petition styled as "PIL", the Court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other *malafide* object.

8.1 It appears that one Kanji Devji Patel purchased a parcel of land bearing survey No. 26 paiki on 5th August, 1968, which later on was allotted new survey Nos. 27 and 51 paiki. The materials on record indicate that a Notification under Section 4 of the Indian Forests Act was published on 24th August, 1975, followed by a Section 6 notification published on 31st July, 1976, inviting objections from the public at large. It appears that the Mirzapur Gram Panchayat tendered its objections on 25th September, 1976, and submitted that the survey No. 173 admeasuring 1042 acres included the gamthal land, gaucher land and land for the military.

8.2 It also appears that hundred acres of land was allotted for industries, forests, agriculturists, road etc. Thereafter, the

Forest Settlement Officer fixed hearing as envisaged under Section 7 of the Forests Act, in the office of the Panchayat on 30th December, 1976. During the course of the hearing, it was found that out of survey No. 173, thirty acres of land was allotted to the military by the Government. The Forest Settlement Officer, in exercise of his powers under Sections 11, 12, 14 and 16 of the Indian Forests Act, vide order dated 27th January, 1977, held that in survey No. 173 paiki, land admeasuring 141 acres may be reserved for the forest.

8.3 Thereafter, the Notification under Section 20 was published on 25th July, 2000, and the land admeasuring 141 acres was declared as a reserve forest. The Forest Department and the DILR prepared a map and earmarked the area reserved for the forest, and it appears that neither the land bearing survey No. 27 or 51 paiki, nor the land admeasuring 1 acres 20 gunthas allotted to the respondents and other 22 agriculturists is forming part of the forest area.

8.4 The Deputy Collector, Bhuj, vide order dated 10th February, 1982, regularized the excess land of survey No. 26 and survey No. 27 owned by the predecessor in title of the respondent, namely, Kanji Devji Patel, on the basis of the Government circular dated 7th May, 1977.

8.5 The Revenue entry No. 738 in the record of rights indicates that 11 acres and 11 gunthas of excess land in revenue survey No. 51 paiki was regularized vide order dated 16th February, 1982, passed by the Deputy Collector. The entry No. 2004 indicates that a registered sale-deed dated 8th February, 1982 was executed by Kanji Devji in favour of the

respondent No.7 and respondent No.3 herein, and the said entry has also been certified.

8.6 It appears that the aforesaid order dated 10th February, 1982, passed by the Deputy Collector, Bhuj was taken in *suo moto* revision by the Collector, at the behest of the petitioner, after a period of 11 years and the Collector, vide his order dated 6th July, 1993, set aside the order passed by the Deputy Collector, regularizing the holding of the excess land by Kanji Devji Patel.

8.7 The aforesaid order was challenged by Kanji Devji Patel before this Court by way of a Special Civil Application No. 8617 of 1993. A learned Judge of this Court, vide order dated 6th July, 1993, set aside the order passed by the Collector, Bhuj, thereby confirming the order, which was passed by the Deputy Collector. Almost after a period of twenty years, the petitioner seeks to once again revive those proceedings by way of this public interest litigation.

8.8 It is pertinent to note that in the order passed by the learned Single Judge while disposing of the Special Civil Application No. 8617 of 1993, there is a reference of the present petitioner, which goes to show that he has been fighting this litigation past almost three decades.

8.9 So far as survey Nos. 27 and 173 paiki are concerned, the same admeasures 28,088 square meters, and an application for determining the premium amount for non-agricultural use came to be rejected by the Collector, vide order dated 3rd

March, 2010, on the ground that the title of the said land was not clear.

8.10 It appears from the record that thereafter the respondents herein filed Special Civil Application No. 9064 of 2010 and allied matters before this Court, and a learned Single Judge of this Court, vide order dated 6th August, 2010, directed the Collector to decide the application submitted by the present respondents in accordance with law. Pursuant to such directions issued by this Court, the Collector, Bhuj, passed the impugned order dated 30th March, 2012, wherein there is a reference of the earlier proceedings in details. The value of the land was assessed by the Collector to the tune of Rs. 6,31,98,000/-. As it exceeded more than rupees one crore, the proposal was forwarded to the Revenue Department of the State Government for an appropriate order.

8.11 Pursuant to the order dated 30th March, 2012, passed by the Collector, Bhuj, the State Government sanctioned the said proposal and thereafter, the respondents deposited an amount of Rs. 1,98,79,200/- with respect to survey No. 51/2 paiki admeasuring 25,800 square meters and an amount of Rs. 2,06,40,000/- was deposited with respect to survey No. 51/1 paiki. It appears that the respondents herein have paid the premium to the tune of Rs. 6,11,59,200/- in aggregate.

8.12 The Collector, thereafter, vide order dated 20th November, 2012, converted the land from new tenure to old tenure for non-agricultural purpose. It appears that thereafter, the Bhuj Area Development Authority granted the



development permission for the residential use, vide its order dated 13th January, 2013.

9. Thus, the picture that emerges from the chronology of events noted above is that this is not a public interest litigation in its true sense, but the petitioner has been targeting particular

individuals i.e. the respondents herein to wreck personal vengeance and vendetta.

10. In such circumstances, we have no hesitation in holding that this petition deserves to be rejected.

11. The petition fails and is hereby rejected. Interim relief granted earlier stands vacated. No costs.

**(BHASKAR BHATTACHARYA, C.J.)**

**(J.B.PARDIWALA, J.)**

Mohandas

**FURTHER ORDER**

After this order is passed, Mr. Thacker, the learned advocate appearing on behalf of the petitioner prays for stay of operation of our order.

In view of what has been stated above, we find no reason to stay our order. The prayer is rejected.

**(BHASKAR BHATTACHARYA, C.J.)**

**(J.B.PARDIWALA, J.)**

Mohandas