IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 120 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI

==========

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 or any order made thereunder ?	

==========

RAMTUJI LILAJI THAKOR & 1 other(s)
Versus
STATE OF GUJARAT & 2 other(s)

==========

Appearance:
MR HM PARIKH for the Petitioner(s) No. 1,2
GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3

==========

CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

Date : 22/06/2017

ORAL JUDGMENT

1. The petitioners, the heirs and legal representatives of the late Shri Lilaji Thakor, are the owners of the lands bearing Survey No.31/1 admeasuring 8 Acres and 13 Gunthas and Survey No.31/2 admeasuring 8 Acres and 12 Gunthas situated in the outskirts of village Khanusa, Taluka Vijapur, District Mehsana (hereinafter referred to as 'the said land'). The said land was purchased by the

predecessor-in-title of the petitioners under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act').

2. It is the case of the petitioners that adjacent to the said land of the petitioners, there is a land belonging to the Saint Joseph Education Trust, which runs the Christian Catholic School and Saint Joseph's English Higher Secondary School at Village Khanusa, imparting education to the children. The school was initially at village Pilvai since June, 1980. Thereafter, it was shifted to Khanusa in June, 1992. It was running classes from Kindergarten to Std.12 (Science Stream). The said school is recognised and affiliated to the Gujarat Secondary and Higher Secondary Education Board at Gandhinagar. The medium of education in the said school is English. It is further the say of the petitioners that the school offers hostel facility only for boys.

3. The said institution though located in a small village has made out its name in the field of

education, sports and other games. Therefore, the family members of the petitioners had decided to donate the said lands to the said Trust so that the Trust could extend its educational activities. It is further added that the Trust maintains 'Gaushala' and the total number of cows in the 'Gaushala' were 80 and the total number of students in the hostel were 400 at the time of filing of the petition.

4. In pursuance of the same, an application was made by the petitioners seeking permission under section 43 of the said Act to the respondent-Collector, Mehsana, to call for report of the Mamlatdar, Vijapur, who in turn, sought for report of the Talati-cum-Mantri. It is the case of the petitioners that the application which had been made by the petitioners on October 14, 2003, came to be decided on September 01, 2004. In the meantime, the policy of the Government changed with regard to payment of premium and the new Government Resolution dated September 01, 2004, came into effect. Unlike the previous Government Resolution,

the later Government Resolution charged at higher rates and this has aggrieved the petitioners and, therefore, they have approached this Court *inter alia* praying for the following reliefs :

"21. The petitioner, therefore, pray that Your Lordships be pleased to :

> *(A) Issue a writ of certiorari or any other appropriate writ, order and/or direction, quashing and setting aside the impugned Resolution dated 01.09.2004 passed by the respondent No.1(at annexure E) and the letter dated 22/28.09.2004 issued by the respondent No.2 Collector, Mehsana (at Annexure G), in the interest of justice.*
> *(B) Pending admission and till final disposal of the present petition, Your Lordships be pleased to grant stay of the impugned Resolution dated 1.09.2004 passed by the respondent No.1 (at annexure E) and the letter dated 22/28.9.2004 issued by the respondent No.2, Collector, Mehsana (at Annexure G), and further direct the respondent No.2 Collector, Mehsana to process of the application of the petitioners for permission under section 43 of the said Act of 1948, ignoring the Resolution dated 1.9.2004 at Annexure E, in the interest of justice.*
> *(C) Award costs.*
> *(D) Your Lordships be pleased to grant such other and further reliefs as may be deemed fit, just and proper in the interest of justice."*

5. Though served, the State has chosen not to file any

reply affidavit.

6. When the matter was taken up for hearing, the leaned counsel Shri H.M. Parikh appearing for the petitioners, has been heard and the State is represented by the learned Assistant Government Pleader Shri K.P. Raval.

7. It is urged by the learned counsel Shri H.M. Parikh that the permission under section 43 of the Tenancy Act ought to have been granted when the Government Resolution of the year 1994 was in operation, with the token amount of fees. Now with the change in the policy, the onerous burden is upon the petitioners to transfer the land by way of gift or donation. The Government Resolution dated September 01, 2004, cannot come into effect retrospectively and, therefore, since their application for transfer of land was of the year 2003, the earlier Government Resolution ought to have been applied in the case of the petitioners. The direction on the part of the respondent-State to make a fresh application by making payment in view of the latest Government Resolution dated September 01, 2004, is, therefore, not challenged.

8. He has further argued that the period of around 11 months is not a reasonable period. It is further urged that when the Talati had given his opinion in the month of January, 2004, there was no earthly reason for the State to delay the matter.

9. The learned Assistant Government Pleader submits without entering into the merits of the present petition, that the time taken to process the application of the petitioners was not so grossly unreasonable to intervene the same under Article 226 of the Constitution of India. It was only the implementation of the Government Resolution which has come into being. It is not even the case of the petitioners that only with an oblique motive or to defeat the interest of the petitioners, the State has come out with such Government Resolution. He has, therefore, urged that the Government Resolution which is prevalent on the date will have an effect and not the one which was prevailing on the earlier date and, therefore, this Court may not entertain the present petition. He has relied upon a decision of the Apex Court in the case of ***Gohil***

Jesangbhai Raysangbhai v. State of Gujarat, (2014) 5 SCC 199, wherein the Apex Court has observed and held as under :

> *"[21] It was submitted by the appellants that assuming that the valuation of the land is permitted to be done as per the Jantri rates, it must be so done on the basis of the rates as prevalent on the date of the application. The resultant injustice was highlighted in the case of Savitaben in Civil Appeal No. 4129/2012. The fact however, remains that the Section speaks of previous sanction. As noted earlier, Section 4(2) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 also speaks about the previous sanction. Thus, this is the theme which runs through all such welfare agricultural enactments, and a similar provision in the said Act has been left undisturbed by the bench of three Judges of this Court. Therefore, the Jantri rate to be applied will be on the date of the sanction by the Collector, and not on the date of the application made by the party.*
>
> *[22] Rule 25C of the Rules framed under the Bombay Tenancy and Agricultural Lands Act, 1948, was relied upon by the appellants. It speaks about the circumstances in which, and conditions subject to which sanction shall be given by the Collector under Section 43 for transfer. The rule was relied upon by the appellants to submit that Government cannot charge any disproportionate amount under Section 43. The rule however, does not create any such restrictions on the provisions under Section 43. In fact, the rule makes it clear*

that transfer of an agricultural land for non-agricultural purpose is not easy. It is only sub-clause (e) thereof under which such a transferor will have to make his case which is when a transfer is sought for a bonafide purpose. Even so, this does not absolve one from taking any prior sanction. It will only mean that if the application is bonafide, normally the transfer will be sanctioned, because as such there is no right to insist on a transfer for non-agricultural purpose.

[23] As far as the levy of the 80 per cent of the amount is concerned, it was submitted that it was unconscionable, and it would mean expropriation, and will be hit by Article 300A of the Constitution. Once we see the scheme of these provisions, in our view, no such submission can be entertained. In any case Mr. Nariman has pointed out that after the impugned judgement, the State Government has reduced the levy to 40 per cent which is obviously quite reasonable.

[24] The last point which requires consideration is with respect to the period for considering the application, and granting the sanction. There is some merit in the submission of the appellants in this behalf. Such application cannot be kept pending indefinitely, and therefore we would expect the Collector to decide such applications as far as possible within 90 days from the receipt of the application, on the lines of the judgement of this Court in Patel Raghav Natha . In the event the application is not being decided within 90 days, we expect the Collector to record the reasons why the decision is getting belated.

[25] For the reasons stated above we do not find any reason to interfere in the impugned judgement rendered by the

Division Bench, approving the decisions rendered by the Single Judges in the Writ Petitions. All appeals are, therefore, dismissed with no order as to costs."

10. Having thus heard learned counsel appearing for both the sides, the only question that requires to be addressed in this case is as to whether from the date of application made by the petitioners under section 43 of the Tenancy Act, the time taken by the State is so unreasonable which deserves interference and corollary to that is the premium which has been decided by the new Government Resolution, which has come into being on September 01, 2004, would govern the case of the petitioners or the Government Resolution of the year 1994 would hold the field so far as the present petition is concerned.

11. The answer to the said question has already been given by the Apex Court in the case of G***ohil Jesangbhai Raysangbhai***(supra), wherein the Apex Court has held that what would be applicable is the date of sanction by the Collector and not the

date of the application made by a party. This was in respect of an application made under section 43 of the Tenancy Act.

12. This being the case, the only question that would be relevant is as to whether the time taken by the State of about 11 months can be said to be unreasonable for this Court to intervene and then to apply the new Government Resolution. In the opinion of this Court, the time taken by the respondent-authority of 11 months since is claimed for undertaking the process and also for seeking opinion of the different authorities may not be termed as grossly unreasonable and unjustifiable warranting any interference at the hands of this Court.

13. For the foregoing reasons, the present petition fails and the same is, accordingly, dismissed. Rule is discharged. There shall be, however, no order as to costs.

(MS. SONIA GOKANI, J.)

SUDHIR