

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 21055 of 2005****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS.JUSTICE HARSHA DEVANI**

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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 or any order made thereunder ?	

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**SHANKERBHAI SOMABHAI PRAJAPATI....Petitioner(s)****Versus****STATE OF GUJARAT THRU SECRETARY & 4....Respondent(s)**

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**Appearance:****Mr.SHEETAL PATEL, ADVOCATE for Mr.A.J. PATEL, ADVOCATE for petitioners no.1.1. to 1.5.****Mr.HARDIK VORA, ASSISTANT GOVERNMENT PLEADER for respondent no.1.****RULE SERVED BY DS for the Respondent(s) No. 2 - 4****MR DEVAL N MODI, ADVOCATE for the Respondent(s) No. 5****Mr.RAJESH DEWAL, ADVOCATE for MR R.M. CHAKWAWALA, ADVOCATE for respondent(s) No. 5**

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**CORAM:HONOURABLE MS.JUSTICE HARSHA DEVANI****Date: 22/12/2017**

**ORAL JUDGMENT**

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioners, who are heirs of the original petitioner Shankerbhai Somabhai Prajapati, have challenged the order dated 24.7.1989 passed by the Mamlatdar & Agricultural Lands Tribunal, City- Taluka Ahmedabad (hereinafter referred to as the "Mamlatdar & ALT"), in Tenancy Case No.84C/61/87 Thaltej, as well as the order dated 30.8.2005 passed by the Gujarat Revenue Tribunal (hereinafter referred to as the "Tribunal") in Revision Application No. TEN.B.A. 623/96, whereby the Tribunal has reversed the order passed by the Deputy Collector (LR) Appeals, Ahmedabad, in Tenancy Appeal No.139 of 1995, who in turn had reversed and set aside the order dated 24.7.1989 passed by the Mamlatdar & ALT.

2. The facts as averred in the petition are that the original petitioner owned, possessed and cultivated the land bearing Revenue Survey No.171, 173, 177/1, 177/2 and 178/2 of village Thaltej, taluka Dascroi, district Ahmedabad. It is the case of the petitioners that the name of the original petitioner appeared in the Village Form No. 7 & 12 along with the names of his two other brothers. Out of the above referred lands, the land bearing Revenue Survey No.171, 173, 177/1 and 177/2 of village Thaltej, taluka Dascroi, district Ahmedabad was purchased by the original petitioner and his two brothers by a registered sale deed dated 2.2.1962 for a total consideration of Rs.28,000/- from one Patel Lalbhai Maneklal and others. Similarly, the original petitioner had purchased the land bearing Revenue Survey No.178/2 of village Thaltej, taluka

Dascroi, district Ahmedabad by a registered sale deed dated 15.5.1967 for a total consideration of Rs.4793.50 from one Patel Somabhai Chhaganbhai.

2.2 The present petition relates to the land bearing Revenue Survey No.178/2 of village Thaltej, taluka Dascroi, district Ahmedabad (hereinafter referred to as the “subject land”). It is the case of the petitioners that the original petitioner was already holding and cultivating the land bearing Revenue Survey No.171, 173, 177/1 and 177/2 of village Thaltej, taluka Dascroi, district Ahmedabad, along with his brothers since 2.2.1962 and therefore, on the date when he purchased the subject land, he was already an agriculturist. It is the case of the petitioners that the original petitioner having purchased the said land had cultivated it for some time. However, during the period between 1971-72 and 1974-75, he had used the said land for manufacture of bricks after obtaining the requisite NA (non-agricultural purpose) permission from the Collector. A corresponding entry is shown in the Village Form No.7 & 12 for the said years showing that the land in question was used for manufacture of bricks. Thereafter, the original petitioner cultivated the said land till the year 1981-82. However, since the surrounding lands were already developed and housing societies had come into existence on the surrounding lands, the petitioner could not cultivate the subject land and accordingly in Village Form 12, the subject land was shown to be ‘fallow’ from the years 1981-82 to 2004-05. However, the original petitioner’s name appeared in the columns of ‘name of the occupant’ and ‘name of agriculturist’ in Village Form No.7 & 12 from the years 1971-72 to 2004-05.

2.3 It is further the case of the petitioners that upon the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the “ULC Act”) coming into force, the original petitioner had filed Form No.1 under sub-section (1) of section 6 of the ULC Act, wherein he had disclosed his holdings, including the land bearing Revenue Survey No.178/2 of Village Thaltej, Taluka Dascroi, District Ahmedabad. However, notwithstanding the aforesaid facts, the Mamlatdar & ALT initiated proceedings under section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the “Tenancy Act”) by issuing a notice dated 12.2.1985 to the petitioner to show cause as to why proceedings under section 84C of the Tenancy Act should not be initiated as the transaction of sale dated 15.5.1967 in respect of the subject land was violative of section 63 of the Tenancy Act as the original petitioner was not an agriculturist on the date of purchase of the said land.

2.4 It is the case of the petitioner that upon service of notice, the original petitioner had engaged Shri Hiren G. Pandit, an advocate practising on the revenue side, to represent his case before the Mamlatdar & ALT, and handed over all the case papers to him, signed the vakalatnama and paid the requisite fee to him. It appears that said Shri Hiren G. Pandit had appeared before the Mamlatdar & ALT to represent the case of the petitioner from time to time; however, on 24.7.1989, he could neither remain present before the Mamlatdar & ALT nor did he advise the petitioner to remain present. Consequently, the matter proceeded *ex parte*. Inquiry was held and the impugned order dated 24.7.1989 came to be passed by the Mamlatdar & ALT, whereby it was held that the transaction in

question was violative of the provisions of section 63 of the Tenancy Act and therefore transfer was declared invalid. The Mamlatdar & ALT further directed that the land should vest in the State Government. It was further directed that after taking over possession of the subject land, the Mamlatdar, Dascroi shall initiate proceedings under section 84C(4) of the Tenancy Act for disposal of the said land. It appears that mutation entry No.6583 was made in Village Form No.6 on 17.8.1989, recording the aforesaid order in the relevant column of the said form and such entry came to be certified on 3.11.1989 by the Mamlatdar, Dascroi.

2.5 It is the case of the petitioners that in fact, possession of the land was never taken away at any point of time pursuant to the above order of the Mamlatdar & ALT, and that though a paper panchnama is alleged to have been made in respect of the subject land on 20.5.1993, the subject land continues to be in possession of the petitioners even today and the petitioner's name appears in the Village Form No.7 & 12 in respect of the subject land right from 1971-72 to 2004-05 in the column of 'name of the occupant' and also in the column of 'name of agriculturist'.

2.6 It is further the case of the petitioners that the form filed by the original petitioner under section 6(1) of the U.L.C. Act came to be processed by the Competent Authority and Deputy Collector, U.L.C., Ahmedabad (hereinafter referred to as the "Competent Authority"), who, by order dated 23.5.1990/6.6.1990 held that the petitioner did not hold any excess vacant land and dropped the proceedings.

2.7 It is the case of the petitioners that ultimately, the Mamlatdar & ALT, Dascroi passed order dated 19.7.1993 directing that the subject land be sold to respondent No.5 herein for an amount of Rs.624/- only on new and impartible tenure basis. It is the case of the petitioners that the original petitioner did not know about the said order because he was never communicated the original order dated 24.7.1989 passed by the Mamlatdar & ALT for initiation of proceedings under section 84C(4) of the Tenancy Act and that he came to know about the said order only in the last week of October 1995, when he approached the Talati of Village Thaltej in connection with the other land held by him in Thaltej. After coming to know of the said order the petitioner immediately applied for copies of the relevant orders and approached his advocate one Mr. Kantibhai Patel, an advocate practising on the revenue side and had instructed him to file appropriate proceedings against the said order.

2.8 Accordingly, Tenancy Appeal No.139 of 1995 came to be filed before the Deputy Collector, challenging the above referred orders dated 24.7.1989 and 19.7.1993. By an order dated 11.4.1996 the Deputy Collector (Land Reforms) (Appeal), Ahmedabad allowed the appeal and set aside the order dated 24.7.1989 passed by the Mamlatdar & ALT as well as the order dated 19.7.1993 passed by the Mamlatdar & ALT, Dascroi, and dropped the proceedings under section 84C of the Tenancy Act. Being aggrieved by the order passed by the Deputy Collector (Land Reforms) (Appeal), Ahmedabad, the respondent No.5 filed a revision application being Revision Application No.TEN.B.A.623 of 1996 before the Gujarat Revenue Tribunal, which, by an order dated 30.8.2005, allowed

the revision application and set aside the order passed by the Deputy Collector (Land Reforms) (Appeal), Ahmedabad, and restored the orders passed by the Mamlatdar & ALT, City/Taluka Ahmedabad, and the Mamlatdar & ALT, Dascroi. Being aggrieved by the order dated 30.8.2005 passed by the Tribunal, the original petitioner had filed this petition. Upon the original petitioner's death, the present petitioners were brought on record as his heirs and legal representatives.

3. The record of the case reveals that earlier by a judgment and order dated 18.10 2005, a learned Single Judge of this court had dismissed the petition on merits. Being aggrieved the petitioner preferred a letters patent appeal being Letters Patent Appeal No.181 of 2006. By a judgment and order dated 10.2.2006, the Division Bench allowed the appeal by observing that various contentions, and more particularly, the contention regarding delay in initiation of proceedings under section 84C of the Tenancy Act, raised on behalf of the petitioner had not been dealt with in the judgment and order passed by the learned Single Judge, and restored the special civil application to file for fresh hearing and decision on the merits of the matter. That is how the matter has come up for hearing.

4. Mr. Sheetal Patel, learned advocate for the petitioners, submitted that the proceedings under section 84C of the Tenancy Act were initiated in respect of the transaction in question after a lapse of about twenty years from the date of such transaction. It was submitted that by the order dated 24.7.1989, the Mamlatdar & ALT City/Taluka Ahmedabad has declared the sale to be null and void on the ground that the original petitioner was not an agriculturist on the date when he

purchased the subject land. It was submitted that in the year 1995, section 63 of the Tenancy Act came to be amended, which was subsequently made retrospectively effective with effect from the date of enactment, whereby the restrictions for holding agricultural land within radius of 8 kilometres was removed. Moreover, the petitioner was an agriculturist even before the subject land was purchased. It was urged that the petitioner has already produced relevant documents in order to demonstrate such facts. Reference was made to the provisions of subsection (2) of section 84C of the Gujarat Tenancy and Agricultural Lands Act, 1948, which provides thus:

*“84C. (2) If after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land to be invalid, he shall make an order declaring the transfer or acquisition to be invalid, unless the parties to such transfer or acquisition give an undertaking in writing that within a period of three months from such date as the Mamlatdar may fix, they shall restore the land along with the rights and interest therein to the position in which it was immediately before the transfer or acquisition, and the land is so restored within that period.”*

It was submitted that while passing the impugned order, the Mamlatdar & ALT has completely ignored the provisions of section 84C (2) of the Tenancy Act, which contemplates that an opportunity be given to the parties to restore the land within a period of three months from the date that may be fixed by the Mamlatdar. It was submitted that the order passed by the Mamlatdar is in breach of the above referred mandatory requirements, and hence, the direction given to vest the lands in the State Government, is invalid.



4.1 It was further submitted that after the order dated 24.7.1989 was passed by the Mamlatdar & ALT, City/Taluka Ahmedabad, the Mamlatdar & ALT, Dascroi, had initiated proceedings for disposal of the subject land. It was pointed out that the Mamlatdar & ALT, Dascroi passed an order on 20.5.1993, directing that since the procedure followed earlier was found to be defective, a fresh notification was required to be published after possession of the subject land was taken over by the Government. He, therefore, directed that the notice of the notification dated 8.4.1993 be filed and a public notice be issued after possession of the subject land was taken over by the Government for its permanent disposal. It was pointed out that upon inquiry it was found that on the same day on which the above order dated 20.5.1993 came to be passed by the Mamlatdar & ALT, Dascroi, the Talati made a panchnama showing that the notification dated 20.5.1993 was published in presence of panchas; and on the same day itself, the Mamlatdar & ALT, Dascroi passed the order dated 20.5.1993 directing issuance of a public notice regarding disposal of the subject land, pursuant to which the Talati of the village, on the same day, that is 20.5.1993, published a notification for permanent disposal of the subject land being Notification No. Tenancy Case No.79 of 1993. It was submitted that the manner in which public notice came to be issued speaks volumes about the collusion between respondent No.5, the Mamlatdar and ALT, Dascroi and the concerned Talati, with a view to see that the subject land is disposed of in favour of the respondent No.5 without any obstruction.

4.2 It was pointed out that the panchnama (Annexure f 5) is

made in presence of panchas sometime in the month of June 1993, recording that the subject land is of the ownership of the Government, nobody is in possession of the land; there is no cultivation or any kind of tilling on this land, due to which there is no objection if the land is given to anyone. It was pointed out that upon coming to know that the subject land was put up for disposal, on 17.6.1993, the respondent No.5 made an application to the Mamlatdar & ALT, Dascroi, for grant of the subject land to him, wherein he has stated that he was a member of the Rabari community and that he carries on the business of cattle breeding and agricultural labour and accordingly he had requested that the land be given to him for cultivation. It was pointed out that respondent No.5 obtained a certificate from the Chairman, Social Justice Committee, Thaltej Gram Panchayat, to the effect that if the land is granted to somebody else, it had no objection, because there no member of the scheduled castes or scheduled tribes was interested in getting the subject land. The attention of the court was also invited to the certificate (Annexure f-9) issued by the President of the then Ghatlodia Nagar Panchayat certifying that the respondent No.5 was residing in Bungalow No.56, Umed Park Society, Ghatlodia and the he knows the respondent no.5 since the five years and that he is carrying on the business of cattle breeding and agricultural labour. It was submitted that upon making inquiry, the petitioner had come to know that Bungalow No.56, Umed Park Society, Ghatlodia is a huge building, worth Rs.35 lakh and that the respondent No.5 was carrying on the business of selling milk and milk products even in the year 1993 and that he had made a false statement in his application that he was an agricultural labourer and was carrying the business of cattle breeding in

the year 1993, with a view to mislead the Mamlatdar and ALT and to make him believe that he was a poor man and was entitled to the grant of agricultural land. It was submitted that on the basis of the aforesaid documents, the Mamlatdar & ALT, Dascroi passed an order dated 19.7.1993 granting the subject land to the respondent No.5. It was pointed out that thus land admeasuring 3541 square meters situated in village Thaltej was given to the respondent No.5 for a meagre amount of Rs.624/-, which would come to Rs.0.20 paise per square metre in the year 1993. Reference was made to the provisions of rule 21 of the Bombay Tenancy and Agricultural Land Rules, 1956 (hereinafter referred to as "the Tenancy Rules"), which provide for disposal of land by the Collector, to submit that the procedure provided there under had not been followed prior to disposing of the land.

4.3 It was further submitted that on the one hand, the authorities have initiated the proceedings after a lapse of twenty years, whereas on the other hand, the Tribunal had held that the delay of about six years on the part of the petitioner in challenging the impugned order, is untenable. It was submitted that in the facts of the present case, at no point of time, possession of the subject land has been taken over from the petitioner and the entire proceedings that are stated to have been undertaken under rule 21 of the Tenancy Rules, are only on paper. It was submitted that apart from the manner in which the land has been allotted to respondent No.5, the impugned order passed by the Mamlatdar & ALT under section 84C of the Tenancy Act, itself is null and void, as such proceedings have been initiated after a reasonable period of time, and as such are required to be quashed and set aside

and consequently, the subsequent allotment made in favour of respondent No.5 would also be required to be quashed and set aside.

4.4 In conclusion, it was submitted that the Deputy Collector (L.R.)(Appeals), Ahmedabad, has rightly appreciated the facts of the present case and the Tribunal was not justified in setting aside the said order. It was, accordingly, urged that the petition deserves to be allowed by granting the reliefs as prayed for in the petition.

5. Mr. Hardik Vora, learned Assistant Government Pleader for the respondent State of Gujarat, submitted that the impugned order passed by the Tribunal is just, legal and proper and there is no warrant for interference by this court. It was submitted that the petitioner had approached the Deputy Collector after an inordinate delay of about six years and the Tribunal, after considering the facts as emerging from the record, had found that such delay could not have been condoned. It was accordingly urged that the petition being devoid of merits deserves to be dismissed.

6. Mr. Rajesh Dewal, learned advocate for Mr. R.M. Chakwawala, learned advocate for respondent No. 5, who is the main contesting party, submitted that the petitioner had approached the Deputy Collector after a delay of about six years from the date of the order passed by the Mamlatdar & ALT, City/Taluka Ahmedabad. It was submitted that the petitioner had preferred the appeal under section 74 of the Tenancy Act, and hence, in view of the provisions of sub-section (2) of section 74, the provisions of Chapter XIII of the

Bombay Land Revenue Code (hereinafter referred to as “the Code”), would apply to such appeals. Reference was also made to section 205 of the Code, which provides for the periods within which appeal must be brought, to submit that the same bars an appeal being brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector. It was submitted that in view of the provisions of section 206 of the Code, an appeal under that Chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer or the State Government to whom or which he appeals, that he had sufficient cause for not presenting the appeal within such period; however, in the facts of the present case, the petitioner had not made any application seeking condonation of delay in filing the appeal. It was contended that therefore, the Deputy Collector was not justified in condoning the delay without any such application having been made by the petitioner.

6.1 Reference was also made to the findings recorded by the Tribunal to submit that the Tribunal has appreciated the facts as emerging from the record in proper perspective. It was further pointed out that the Tribunal has taken into consideration the fact that in the year 1993 proceedings under section 84C of the Tenancy Act came to be undertaken and the land was ordered to be allotted to the respondent No.5 on 19.7.1993, on payment of the price as determined by the Mamlatdar & ALT and that the petitioner having paid such price, a certificate conferring the status of the owner of the land had been issued on 11.11.1993. It was submitted that the Tribunal has found it difficult to comprehend as to how the

petitioner was not aware of the subsequent events that took place and has observed that the Deputy Collector could not have condoned the delay in preferring the appeal, when the land was vested with the Government and allotted to some other person under the provisions of the Tenancy Act.

6.2. Insofar as the eligibility of respondent No.5 for allotment of land under section 84C(4) of the Tenancy Act is concerned, the learned advocate pointed out that priority for allotment is required to be decided in terms of section 32P of the Tenancy Act. Referring to sub-section (2) of section 32P of the Tenancy Act, it was pointed out that in view of clause (b) of the second proviso thereto, in the case of persons falling under items (ii), (iii) and (iv) preference is required to be given in the following order, namely,

- (1) a person belonging to a Scheduled Tribe;
- (2) a person belonging to a Scheduled Caste;
- (3) other persons.

It was submitted that the petitioner would fall within the ambit of item (ii) 'agricultural labourers' as well as item (iv) 'small holders' specified in the priority list under sub-section (2) of section 32P of the Tenancy Act and therefore in view of the second proviso to section 32P(2)(b) of the Tenancy Act, he is entitled to preference in the category of 'other persons'. It was submitted that therefore, since the petitioner falls within the ambit of categories mentioned in section 32P(2) of the Tenancy Act and met with the necessary requirements, he was entitled to allotment of land under section 84C of the Tenancy Act. Under the circumstances, the land having been allotted to

the petitioner in accordance with law, this court may not interfere at this belated stage.

6.3 Alternatively, it was submitted that the respondent No.5 has been allotted the subject land in the year 1993, whereafter he is cultivating such land in accordance with law, and now, after a passage of twenty three to twenty four years, if the allotment is set aside, the respondent No.5 would be seriously prejudiced. It was submitted that therefore, if the court is at all inclined to allow the petition and set aside the allotment, the respondent No.5 may be permitted to make a representation to the State Government for allotment of alternative land, if the court is inclined to.

7. It is in the back drop of the facts and contentions noted hereinabove that the validity of the impugned orders is required to be examined. From the facts as emerging from the record, it is apparent that proceedings under section 84C of the Tenancy Act came to be initiated against the original petitioner by issuing notice dated 12.2.1985 for breach of the provisions of section 63 of the Tenancy Act in the purchase of land bearing Revenue Survey No.178/2 of Village Thaltej, Taluka Dascroi, District Ahmedabad, pursuant to which his name had been entered in the revenue record vide mutation entry No.3860. A perusal of the order dated 24.7.1989 passed by the Mamlatdar & ALT reveals that in the entire order, the date of purchase of the subject land as well as the date of the mutation entry has not been mentioned. The record of the case reveals that the subject lands came to be purchased by the petitioner by a sale deed dated 15.5.1967. Therefore, admittedly proceedings under section 84C of the Tenancy Act

came to be initiated after a period of about eighteen years from the date of purchase of the subject land by the petitioner. In the impugned order passed by the Mamlatdar, he has recorded that despite various adjournments having been granted, no one has remained present and, accordingly, he has held that that the purchaser has not produced any material on record to show that he was an agriculturist on the date of such purchase and that there was breach of section 63 of the Tenancy Act and has ordered that the subject land be vested in the State Government. He has further directed the Mamlatdar, Dascroi to take over the possession of the land so vested in the State Government and take action for disposal of such land under section 84C(4) of the Tenancy Act.

8. On behalf of the petitioners it has been pointed out that the original petitioner was holding the land bearing Revenue Survey No.171, 173, 177/1, and 177/2 of village Thaltej, taluka Dascroi, district Ahmedabad ever since 2.2.1962. It is further the case of the petitioners that the original petitioner also held the land bearing Revenue Survey No.125/1, 125/2, 99 and 100 of village Hebatpur, taluka Dascroi, in respect of which proceedings under section 84C of the Tenancy Act came to be initiated, which had culminated into an order dated 22.6.1989 passed by the Mamlatdar and ALT, holding that the transaction was in breach of the provisions of section 63 of the Tenancy Act. The matter was carried further before the higher authorities and ultimately, after remand, by order dated 21.8.1991, the Mamlatdar & ALT, Dascroi, held that the sale was legal and valid and dropped the proceedings under section 84C of the Tenancy Act. It appears that the Mamlatdar & ALT, Dascroi had also initiated proceedings in relation to the land



bearing Revenue Survey No.177/1 and 177/2 of village Thaltej, taluka Dascroi, district Ahmedabad, held by the original petitioner, which came to be dropped by an order dated 13.3.1991. Thus, the petitioner was an agriculturist right from 2.2.1962.

9. Insofar as the impugned order dated 24.7.1989, passed by the Mamlatdar & ALT, City Taluka Ahmedabad is concerned, he has proceeded *ex parte* as the learned advocate for the petitioner had not remained present and had not produced any material to show that the petitioner was an agriculturist at the relevant time when the purchase was made. However, it is the categorical case of the petitioner that such order was never served upon him. It was only after a period of about six years, when the petitioner went before the Talati to inquire about some other land, that he came to know about such order having been passed under section 84C of the Tenancy Act and about the land having been allotted to the respondent No.5.

10. At this stage, the original petitioner filed an appeal before the Deputy Collector (Land Reforms) (Appeal), Ahmedabad, under section 74 of the Tenancy Act. Before the Deputy Collector it was contended on behalf of the petitioner that in respect of the transaction dated 15.5.1967, after twenty years, in the year 1987, an R.T.S. Team had made a report to the Mamlatdar & ALT, City Taluka Ahmedabad. On the basis of such report made by the R.T.S. Team to the effect that the petitioner was not an agriculturist, the Mamlatdar & ALT had initiated proceedings under section 84C of the Tenancy Act and ultimately vide the impugned order dated 24.7.1989, vested the land in the State Government. It was submitted that

the impugned order was passed *ex parte* and in breach of the principles of natural justice. It was further contended that the order dated 24.7.1989 passed by the Mamlatdar & ALT, was passed *ex parte* and that the petitioner was never informed about the same and that pursuant thereto mutation entry No.8583 dated 17.8.1989 was made, in relation to which no notice has been issued to the petitioner under section 135D of the Code. It was further contended that despite the fact that the petitioner's land has been vested in the State Government and disposed of, he was not informed about the same and that he was still holding possession of the subject land. On behalf of respondent No.5, the appeal was contested on the ground that it was filed beyond the period of limitation. It was further argued that neither the petitioner nor his advocate had remained present before the Mamlatdar & ALT, and ultimately in their absence the impugned order was passed, which cannot be said to be an *ex parte* order as the petitioner has not chosen to remain present nor is there any breach of the principles of natural justice. It was submitted that the petitioner had not produced any evidence regarding his being an agriculturist and the respondent No.5 being eligible to purchase the subject land, he had purchased the same under section 84C (4) of the Tenancy Act.

10.1 The Deputy Collector, (L.R.) Appeals, Ahmedabad, vide order dated 11.4.1996 allowed the appeal. After hearing the parties and after perusing the record of the case, the Deputy Collector found that the land was vested in the State Government; however, the petitioner was not informed about the same. He has further noted that the fact that the petitioner was not informed about the order is clear upon a perusal of

pages 85 to 95 of the record, because the intimation of the order which was sent to Shankarbhai Somabhai Prajapati by Registered Post has not been served upon him and was returned. Thereafter, there is no entry regarding the order having been served upon the petitioner. Therefore, from the record of the Mamlatdar it is not clear as to when the impugned order came to be served upon the petitioner. The Deputy Collector has, therefore, thought it fit to accept the submission made on behalf of the petitioner that it was only when he went to obtain a copy of the Village Form No.7 & 12 that he came to know about the impugned order. Accordingly, he has thought it fit to condone the delay in filing the appeal and to consider the order of the Mamlatdar & ALT on merits.

10.2 The Deputy Collector has recorded that the sale deed of the subject land was executed on 15.5.1967 and mutation entry in respect thereof was made on 14.4.1971 and was certified on 2.4.1972, whereas proceedings under section 84C of the Tenancy Act were initiated in the year 1984-85. Taking into consideration various decisions of the High Court of Gujarat laying down that proceedings under section 84C of the Tenancy Act should be initiated within a reasonable time, the Deputy Collector was of the opinion that in the facts of the present case, the proceedings under section 84C of the Tenancy Act had been initiated after a considerable delay from the date when entry came to be certified, and hence, were barred by limitation.

10.3 The Deputy Collector has also taken into consideration the documentary evidence produced by the petitioner to show that he was an agriculturist as on the date of the transaction in

question. He has also noted that the boundaries of Village Hebatpur and Thaltej are adjoining each other and distance between them was less than 8 kilometres and that since the petitioner was held to be an agriculturist in relation to the land held by him in village Hebatpur, the order passed by the Mamlatdar & ALT deserves to be set aside on merits also. In light of the above findings recorded by him, the Deputy Collector allowed the appeal filed by the petitioner and set aside the order dated 24.7.1989 passed by the Mamlatdar & ALT. He has also set aside the order dated 19.7.1993 allotting the subject land to the respondent No.5, as the basic order whereby the land vested in the State Government, was set aside.

11. The Tribunal, in the impugned order dated 30<sup>th</sup> August, 2005, has recorded that so far as exercise of *suo motu* revisional powers under section 84C of the Tenancy Act is concerned, it is no longer *res integra* that such powers cannot be exercised after the lapse of a reasonable period. The Tribunal has however, noted that if these powers are exercised against the settled position of law resulting into the order being void or illegal, such order does not carry any label of voidness or illegality. Any party aggrieved by such an order has to approach the competent forum for challenging such order within a reasonable time. Otherwise, it continues to be binding on all concerned. The Tribunal has expressed the view that the order of the Mamlatdar & ALT passed in the year 1989, was holding the field for nine years and could not have been set aside on merits without condoning the delay of nine years. (The learned advocate for the petitioner has pointed out that the period of nine years as computed by the Tribunal is

not correct and that the actual period is five years. The record indicates that the orders passed by the Mamlatdar and ALT, City Taluka Ahmedabad and Dascroi respectively are dated 24.7.1989 and 19.7.1993, whereas the appeal was preferred on 1.11.1995, that is after about six years from the first order and two years from the second order.)

11.1. The Tribunal has further observed that the Deputy Collector has noted that the order of the Mamlatdar & ALT has not been communicated to the petitioner by referring to the returned envelop at page 85 in the case file of the Mamlatdar & ALT. The Tribunal has perused the record and noted that the address of the petitioner on that envelop and the address mentioned thereon by the Mamlatdar & ALT is the same as the address shown in the memorandum of appeal preferred by the petitioner. The Tribunal has noted that the envelop was not intact and there was no endorsement of the Postal Department showing as to why the same has been returned to the Mamlatdar & ALT. Keeping in mind this situation coupled with the fact that the petitioner, after appearing before the Mamlatdar & ALT, through his advocate, on 9.12.1987, did not appear to have remained present in the proceedings before the Mamlatdar & ALT, and by virtue of the order passed in Tenancy Case No.61/87 dated 24.7.1989 mutation entry No.6583 came to be made and certified vesting the land in the Government on 3.11.1989, the Tribunal was of the view that since the land-holder is required to pay land revenue assessment every year to the Talati, it is not possible to believe that the petitioner did not have knowledge of the order passed by the Mamlatdar & ALT and was accordingly of the opinion that the Deputy Collector could not have condoned the

delay in preferring the appeal.

11.2 The Tribunal has further recorded that when proceedings under section 84C(4) of the Tenancy Act came to be initiated in 1993 and the land was ordered to be allotted to the respondent No.5 by an order dated 19.7.1993 on payment of the price determined by the Mamlatdar & ALT and upon payment of such price, a certificate conferring the status of owner of the land had been issued to him on 11.11.1993, it was difficult to comprehend as to how the petitioner did not have any knowledge of disposal of the land in the year 1993. The Tribunal was accordingly of the view that considering the subsequent events that had taken place, the Deputy Collector could not have condoned the delay in preferring the appeal. Thus, on the ground that the Deputy Collector could not have condoned the delay in preferring the appeal, the Tribunal has set aside the order of the Deputy Collector and has allowed the revision application.

12. From the facts noted hereinabove, it is apparent that in the entire proceedings, there has been delay at two stages. Initially, there was a delay of eighteen to twenty years in the initiation of proceedings under section 84C of the Tenancy Act against the petitioner, and subsequently, there was a delay of five to six years on the part of the petitioner in preferring appeal against the order dated 24.7.1989 passed by the Mamlatdar & ALT, City Taluka, Ahmedabad. Insofar as the delay of more than eighteen to twenty years in initiating proceedings under section 84C of the Tenancy Act is concerned, no explanation worth the name has come forth explaining such delay. The Supreme Court in the case of

**Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim,** (1997) 6 SCC 71, has, in the context of section 84C of the Tenancy Act, held that *suo motu* power under section 84C of the Tenancy Act is required to be exercised within a reasonable time. In the facts of the said case, transfer took place in the year 1972 and *suo motu* inquiry was started by the Mamlatdar in September 1973. The court held that delay in initiating proceedings under section 84C of the Tenancy Act was not within a reasonable time. In the facts of the present case, the delay from the date of transaction to the date on which first notice under section 84C of the Tenancy Act was issued is about eighteen years. Even from the date on which mutation entry No.3860 came to be certified, that is, 2.4.1972, the delay in initiation of proceedings is of about twelve to thirteen years. Evidently, therefore, the proceedings under section 84C of the Tenancy Act were hopelessly time barred. The Tribunal, in the impugned order, has held that the powers under section 84C of the Tenancy Act cannot be exercised after the lapse of a reasonable time. It, however, has stressed upon the delay in the second stage, viz., the delay on the part of the petitioner in challenging the order passed under section 84C of the Tenancy Act.

13. Insofar as the delay on the part of the petitioner in challenging the impugned order dated 24.7.1989 passed by the Mamlatdar & ALT, City Taluka Ahmedabad, is concerned, it is the categorical case of the petitioner right from the beginning that he was not aware of the order about passing of the said order inasmuch as he was represented by an advocate, who had unfortunately not attended the proceedings and let the matter be decided *ex parte*. It is also the case of

the petitioner that he was never informed about passing of the said order nor was any notice issued to him under section 135D of the Code prior to making the mutation entry in the record of rights pursuant the impugned order. The Tribunal has expressed the view that it was difficult to comprehend as to how the petitioner could be unaware of the passing of the order inasmuch as the land had already been allotted to respondent No.5 in the year 1993.

14. In this regard it would be apposite to refer to the original record of the case which has been produced before the court by the learned Assistant Government Pleader. The record reveals that on 8.4.1993, the Mamlatdar & ALT, Dascroi informed the Talati-cum-Mantri, Thaltej, to publish the public notice dated 8.4.1993 forwarded by him and send a report thereof to him on or before 9.5.1993. On 20.5.1993, the Mamlatdar & ALT, Dascroi, passed an order under section 84C(4) of the Tenancy Act, recording that he had prepared a notice dated 8.4.1993 for disposal of the subject land under section 84C(4) of the Tenancy Act; that till the date fixed in the public notice, no person had come forward with any application for grant of such land. For this reason it was not possible to permanently dispose of the land. Thus, no person entitled to priority as per the public notice issued for permanent disposal of the subject land, or any other person, has made any request for grant of the land as well as possession of the subject land has also not been taken over on behalf of the Government. Hence, after taking over the possession of the subject land on behalf of the State Government, public notice is required to be issued. He has, accordingly, ordered that the public notice dated 8.4.1993 be filed and a public notice for permanent



disposal of the subject land be issued after possession of the subject land is taken over by the State Government. As noted hereinabove, such order under section 84C of the Tenancy Act was made by the Mamlatdar on 20.5.1993. The record further shows that on 20.5.1993, namely, on the day on which the Mamlatdar had passed the order under section 84C(4) of the Tenancy Act, the Mamlatdar had also addressed a notice to the Talati-cum- Mantri, Village Thaltej along with which a public notice in Form-11 appears to have been forwarded, with directions to publish the public notice dated 20.5.1993 and send him report in respect thereof by 19.6.1993. Thereafter, by a communication dated 20.5.1993 addressed to the Mamlatdar & ALT, Dascroi, the Talati-cum-Mantri Thaltej informed him that the public notice issued by him has been published on 20.5.1993 in respect of which panchnama had been made in presence of panchas. The record also contains an undated panchnama stating that the public notice dated 20.5.1993 for disposal of the land bearing Revenue Survey No.178/2 of village Thaltej, taluka Dascroi, district Ahmedabad, has been published in the presence of panchas. The record also contains a communication dated June 1993 of the Talati-cum-Mantri, Thaltej addressed to the Mamlatdar & ALT, Dascroi, enclosing therewith the Talati's report along with a panchnama of the site position of the Survey No.178/2 of Thaltej, and stating that the land bearing Revenue Survey No.178/2 is vacant land and no cultivation or tilling has been carried on; that presently the ownership of the land is of the Government is the owner. There is yet another panchnama on record dated June 1993, wherein it has been recorded that the panchas have remained present at Revenue Survey No. 178/2 of Moje Thaltej, Taluka Dascroi and the land belongs to the

Government; no person is in possession of the land and there is no cultivation over the land, and that if the land is given to any individual, there is no objection to the same. It appears that in connection with this panchnama, the Talati-cum-Mantri, Thaltej had forwarded the communication dated June 1993 to the Mamlatdar & ALT and that such communication had been received by the Mamlatdar on 7.6.1993.

15. The record further reveals that on 17.6.1993, the respondent No.5 Raimalbhai Lilabhai Rabari made an application to the Mamlatdar & ALT, Dascroi to the effect that land bearing Survey No.178/2 of village Thaltej, admeasuring 3541 was running in the name of the State Government; as per his information such land was to be given for agricultural purposes. He has further stated that he belongs to the Baxipanch Rabari community and is carrying on agricultural labour at Ghatlodia village as well as the business of cattle breeding. He has accordingly, request for grant of the subject land in accordance with the rules. The respondent No.5 has shown his address as "56, Umed Park Society, Ghatlodia, Ahmedabad." Subsequently, the Chairman, Social Justice Committee, Thaltej Gram Panchayat has addressed a communication dated 18.6.1993 to the Mamlatdar and ALT, Dascroi, stating that the land bearing Revenue Survey No.178/2 of village Thaltej is running in the name of the Government. A public notice has been issued for allotment of the land to agricultural labourers or agriculturists; however, no person belonging to the Scheduled Tribes or Scheduled Castes from their village was desirous of getting such land. Therefore, if the land is granted to anyone else they do not have any kind objection thereto. He has further requested that there be no

discussion in this matter. The respondent No.5 has submitted a certificate dated 19.6.1993 issued by the Chairman, Ghatlodia Nagar Panchayat certifying that the respondent No.5 Raimalbhai Lilabhai Desai is a resident of Bungalow No.56, Umed Park Society, Ghatlodia, whom he knows since five years, and that he is engaged in the business of cattle breeding and agricultural labour.

16. By an order dated 19.7.1993 made under section 84C(4) of the Tenancy Act, the Mamlatdar & ALT, Dascroi, has recorded that no person belonging to the Scheduled Castes or the Scheduled Tribes is ready and willing to purchase the subject land and Shri Raimalbhai Lilabhai Desai (the respondent No.5 herein) belongs to the Rabari community and he is engaged in cattle breeding and is an agricultural labourer and that no application other than his has been received hence, there does not appear to be any impediment in granting him the land on merits. He, accordingly has ordered that the land bearing Revenue Survey No.178/2 situated within the limits of mouje Thaltej, taluka Dascroi, admeasuring 0-35-41 square metres be sold to the respondent No.5 at the sale price of Rs.624/- to be paid in installments and that such land be sold on new and impartible tenure. On 4.8.1993, the respondent No.5 paid the amount of Rs.624/- in the Government Treasury.

17. Thus, the record of the case reveals that in this case the Mamlatdar and ALT, Dascroi had forwarded a public notice dated 8.4.1993 to the Talati-cum-Mantri, Thaltej, for publishing the same and submitting a report in connection therewith by 9.5.1993. It appears that in response to such notice there were

no applications for grant of such land and therefore, the Mamlatdar & ALT, Dascroi passed an order dated 20.5.1993 for filing the public notice dated 8.4.1993 and directed that a public notice for permanent disposal of the subject land under section 84C(4) of the Tenancy Act be published after possession of the subject land is taken over on behalf of the State Government. However, contrary to the order passed by him, without waiting for the possession to be taken over, on the same day, that is, on 20.5.1993, the Mamlatdar & ALT, Dascroi forwarded a public notice in Form-11 to the Talati-cum-Mantri, Thaltej to publish the same and submit a report by 19.6.1993. With astounding promptitude, the Talati-cum-Mantri addressed a communication dated 20.5.1993 to the Mamlatdar & ALT, Dascroi, informing him that the public notice had been published in the presence of panchas. Thus, on 20.5.1993, the Mamlatdar & ALT, Dascroi, while ordering that the public notice dated 8.4.1993 be filed directed that a public notice be issued after possession is taken over, however, for some inexplicable reason, without waiting for the possession to be taken over, on the very same day, that is on 20.5.1993, the Mamlatdar & ALT, Dascroi issued another public notice under section 84C(4) of the Tenancy Act for permanent disposal of the subject land. The matter does not rest there. Not only did the Mamlatdar & ALT, Dascroi issue a public notice on the same day as he passed the order for filing the earlier public notice, such notice is received by the Talati-cum-Mantri, Thaltej on the very same day, and with lightening speed, the Talati-cum-Mantri, who surprisingly does not appear to have any other duties to discharge, published the public notice on the same day by drawing a panchnama thereof in the presence of panchas and submitted a report to the Mamlatdar & ALT, Dascroi, on the

same day along with the panchnama evidencing such publication. Considering the normal lethargy on the part of the revenue authorities, the sequence of events that have taken place in one day, viz. 20.5.1993, is mind boggling to say the least. One wonders as to at what time the initial order dated 20.5.1993 was passed by the Mamlatdar & ALT, Dascroi, whereby he ordered that the earlier public notice be filed and directed that the public notice to be issued after possession is taken over. Thereafter, at what time did the Mamlatdar & ALT, Dascroi, have second thoughts and without waiting for the possession to be taken over, issued another notice in Form 11 for disposal of the subject lands under section 84C(4) of the Tenancy Act? How and when was the notice delivered to the Talati-cum-Mantri, Thaltej? And at what time did the Talati-cum-Mantri, Thaltej, cause the public notice to be published in the presence of panchas and submit the report? All within the space of one working day! It may be noted that the subject land is situated in the Thaltej area of Ahmedabad, which even in the year 1993 was a prime location, and, therefore, valuable land. It, therefore, defies logic that such prime land is put up for final disposal for a song and yet there are no takers, which gives rise to a belief that a mere show of the procedure having been followed has been put up.

18. Insofar as the taking over of possession of the subject land is concerned, the Talati-cum-Mantri, Thaltej, allegedly took possession of the subject land by drawing a panchnama dated June 1993 in the presence of panchas and forwarded a report along with the panchnama to the Mamlatdar & ALT, Dascroi in June 1993. The specific date is not mentioned either in the panchnama or in the communication addressed to the

Mamlatdar & ALT, Dascroi. A perusal of the contents of the panchnama reveals that the same does not mention taking over possession of the subject land from anyone, but merely mentions that the land is running in the name of the Government and at present is not in anyone's possession and there is no cultivation or tilling at site and therefore, there is no objection if the land is given to anyone. Evidently, therefore, the panchnama has been drawn in the most perfunctory manner. Significantly, there is no material whatsoever on record to show as to when the possession of the subject land passed over from the petitioner to the State Government and thereafter to the respondent No.5. If there was some material other than the so called panchnama of June 1993, to show as to when possession of the subject land was taken over from the petitioner, there would be reason to believe that the petitioner ought to have been aware of the passing of the order by the Mamlatdar & ALT, City Taluka Ahmedabad.

19. As noted earlier, in response to the public notice dated 20.5.1993 a solitary application was received by the Mamlatdar & ALT, Dascroi for grant of such land, viz. the application made by the respondent No.5 claiming to be in the business of agricultural labour and cattle breeding. The respondent No.5 also produced an undated certificate issued by the Chairman, Ghatlodia Nagar Panchayat certifying that the respondent No.5 was engaged in the business of rearing cattle and agricultural labour. Surprisingly, the Chairman of the Social Justice Committee, Thaltej Gram Panchayat, addressed a communication dated 18.6.1993 to the Mamlatdar & ALT, Dascroi, informing him that they are aware of the public notice

issued for grant of land bearing Revenue Survey No.178/2 of village Thaltej to agricultural labourers or agriculturists, however, none of the individuals belonging to the Scheduled Castes and Scheduled Tribes of their village desire to obtain such land and therefore, they have no objection if the land is granted to anyone else and requesting him not to enter into any discussion in that regard. Such letter addressed by the Chairman of the Social Justice Committee of the village is to say the least confounding. As to on what basis he has spoken on behalf of the persons belonging to the Scheduled Castes and Scheduled Tribes of the village is not comprehensible. As to what was the necessity of addressing such a communication is another thing that one fails to understand. As noted hereinabove, valuable land (worth lakhs of rupees at the relevant time, presently worth crores of rupees) situated in the heart of the city was to be sold for a meagre Rs.624/- and there were no takers, is something which the court finds difficult to believe. Evidently, therefore, the entire manner in which the proceedings under section 84C(4) of the Tenancy Act have been conducted is highly suspicious and appear to have been contrived with a view to hand over the land to the respondent No.5. In view of the surreptitious manner in which the entire exercise has been conducted, the version of the petitioner that he was not aware of the fact regarding the land being sold to the respondent No.5 gains credence.

20. Another legal aspect of the matter is that sub-section (2) of section 84 C of the Tenancy Act provides that if after holding such inquiry [in terms of sub-section (1)], the Mamlatdar comes to a conclusion that the transfer or acquisition of land is invalid, he shall make an order declaring the transfer or

acquisition to be invalid, unless the parties to such transfer or acquisition give an undertaking in writing within a period of three months of such date as the Mamlatdar may fix, that they shall restore the land along with the rights and interest therein to the position in which it was immediately before the transfer or acquisition, and the land is so restored within that period. Thus, section 84C of the Tenancy Act does not contemplate immediate vesting of land in the State Government, the transfer or acquisition whereof is found to be invalid. After the transfer or acquisition is found to be invalid, the parties to such transfer or acquisition are required to be given an opportunity to restore the land along with the rights and interest therein to the position in which it was immediately before the transfer or acquisition. However, the Mamlatdar and ALT, City Taluka Ahmedabad did not comply with the provisions of sub-section (2) of section 84C of the Tenancy Act and after declaring the transfer of land to be invalid ordered the same to be vested in the State Government. Had the Mamlatdar followed the procedure under sub-section (2) of section 84C of the Tenancy Act, the petitioner would have been aware of the passing of the order by him.

21. At this juncture it may be apposite to refer to the decision of this court in ***Suchita Gas Service v. Shankerbhai Bhagabhai*** (supra) wherein the court has held that even if the parties have not remained present in response to the show cause notice, the Mamlatdar is required to make the declaration for providing time for restoration of the land in question within stipulated time limit and thereafter a further declaration was required under section 84C(2) if the restoration is not made and then only the land could be



ordered to be forfeited for vesting to the State Government. The court has held that such an exercise is mandatory. In the facts of the present case, a bare perusal of the impugned order dated 24.7.89 passed by the Mamlatdar & ALT, City Taluka, Ahmedabad shows that such exercise has not been carried out by him, inasmuch as, after holding that in view of the breach of the provisions of section 63 of the Tenancy Act, the transaction is invalid under section 84C thereof, he has ordered that the land be forfeited and vested in the State Government and has further directed the Mamlatdar, Dascroi to take possession of the land and dispose of the same under section 84C(4) of the Tenancy Act. He has further ordered the Talati to make a mutation entry in that regard and forward a copy and to take possession on behalf of the Government and forward a report. Thus, the Mamlatdar & ALT has completely ignored the mandatory provisions of sub-section (2) of section 84C of the Tenancy Act, which renders his order unsustainable. Besides, not giving such opportunity to the petitioner has caused him serious prejudice. Firstly, he has lost the opportunity to avail the benefit of sub-section (2) of section 84C of the Tenancy Act and secondly and more importantly, if such an opportunity had been granted to him he would have been aware of the passing of the impugned order and would have been in a position to challenge it at the relevant time.

22. Insofar as the proceedings under section 84C(4) of the Tenancy Act are concerned, rule 51 of the Bombay Tenancy and Agricultural Lands Rules, 1956 (hereinafter referred to as the "Tenancy Rules") provides that when the Mamlatdar grants land under sub-section (4) of section 84C he shall so far as may be follow the same procedure as is prescribed in rule 21.

23. Rule 21 of the Bombay Tenancy & Agricultural Lands Rules, 1956 provides for “Disposal of land by Collector” and lays down thus:

*“21. Disposal of land By Collector. - (1) When the Collector directs the sale of any land under clause (c) of sub-section (2) of section 32P, he shall publish or cause to be published in the village in which the land is situated a public notice in Form XI stating therein (i) survey number and other description of the land; (ii) the price fixed for the land under sub-section (5) of section 32P and requiring the persons who are included in clause (c) of sub-section (2) of section 32P to intimate to him within one month of the date of publication of notice whether they are willing to accept the land. The notice shall be published in the village by beat of drum and also by affixing a copy of it in the chavdi.*

*(2) (a) If only one person who is included in the priority list intimates to the Collector his willingness to accept the land for the price fixed, the Collector, if he is satisfied that the person is eligible for such inclusion, shall, after due notice to such person, fix under sub-section (5) of section 32P the instalments by which the price shall be payable and shall call upon such person by a notice in writing to pay the first instalment of the price within one month or such further period as he may consider reasonable from the date of receipt of the notice by such person;*

*(b) If more than one person intimate to the Collector their willingness to accept the land and are eligible for inclusion in the priority list he shall, after giving due notice to the person having the highest priority in the “priority list”, laid down in clause (c) of sub-section (2) of section 32P, fix the instalments by which the price shall be payable and shall call upon such person by a notice in writing to pay the amount of the first instalment within one month or such further period as he may consider reasonable from the date of receipt of notice by such person.*

*(c) Where more than one person having the highest*

*priority in the priority list are willing to accept the land, the Collector shall give notice under clause (b) to such one of them who in his opinion is most suitable having regard to -*

- (i) the agricultural implements in the possession of such person,*
  - (ii) other land cultivated by such person personally, if any,*
  - (iii) the financial condition of such person, and*
  - (iv) any other factor which may be relevant for ascertaining the capacity of such person to cultivate the land.*
- (3) The certificate to be issued by the Collector to the purchaser under sub-section (6) of section 32-P, shall be in Form XI-A."*

Thus, rule 21 contemplates sale of land to the persons who are included in clause (c) of sub-section (2) of section 32P of the Gujarat Tenancy and Agricultural Lands Act, 1948.

24. Clause (c) of sub-section (2) of section 32P of the Act reads thus:

*"32P. Power of Collector to resume and dispose of land not purchased by tenant (and appeal against Collector's order) :*

*(2) Such direction shall, subject to the provisions of sub-section (2AA) and (2A), provide -*

*(c) that the entire land or such portion thereof, as the case may be, notwithstanding that it is a fragment, shall subject to the terms and conditions as may be specified in the direction be disposed of by sale to person in the following order of priority (hereinafter called "the priority list") : -*

*and conditions as may be specified in the direction be disposed of by sale to person in the following order of priority (hereinafter called "the priority list") :-*

- (a-i) the tenant whose tenancy in respect of that land is terminated if such tenant is willing to accept the offer of sale, provided the occasion for the issue of such direction has not arisen by reason of an act of collusion between such tenant and the landlord.*
- (i) a co-operative farming society, the members of which are agricultural labourers, landless persons or small holders or a combination of such persons.*
- (ii) agricultural labourers;*
- (iii) landless persons;*
- (iv) small holders;*
- (v) a co-operative farming society of agriculturists (other than small holders) who hold either as owner or tenant or partly as owner and partly as tenant, land less in area than an economic holding and who are artisans:*
- (vi) an agriculturist (other than a small holder) who holds either as owner or tenant or partly owner and partly as tenant, land less in area than an economic holding and who is an artisan;*
- (vii) an other co-operative farming society;*
- (viii) any agriculturist who holds either as owner or tenant or partly as owner and partly as tenant land larger in area than an economic holding but less in area than the ceiling area;*
- (ix) any person not being an agriculturist, who intends to take to the profession of agriculture:*

*Provided that the State Government may, by notification in the Official Gazette, give, in relation to such local areas as it may specify, such priority in the above order as it thinks fit to any class of persons who, by reason of the acquisition of their land for any development project*

*approved for the purpose by the State Government, have been displaced, and require to be re-settled;*

*Provided further that -*

*(a) where there are two or more co-operative farming societies falling under item, (i), (v) or (vii), preference amongst them shall be given in the following order, namely:-*

*(1) a co-operative farming society each of the members of which belongs to a Scheduled Tribe;*

*(2) a co-operative farming society the membership of which is held partly by persons belonging to a Scheduled Tribal (sic., Tribe) and partly by persons belonging to a Scheduled Caste;*

*(3) a co-operative farming society each of the members of which belongs to a Scheduled Caste;*

*(4) a co-operative farming society the membership of which is not solely held by persons belonging to a Scheduled Tribe or Scheduled Caste;*

*(b) in the case of persons falling under items (ii), (iii) and (iv) preference shall be given in the following order, namely:-*

*(1) a person belonging to a Scheduled Tribe;*

*(2) a person belonging to a Scheduled Caste;*

*(3) other persons."*

Thus, clause (c) provides for a priority list of persons to whom land can be sold.

25. Form XI as contained in the Schedule to the Tenancy Rules prescribes the format of the public notice to be issued under rule 21(1) of the Tenancy Rules. The public notice in this format specifically calls upon the persons and the bodies specified thereunder to intimate the Collector whether such person or body is willing to purchase the land at the price

mentioned in the schedule. Therefore, what the public notice contemplates is for persons or bodies willing to purchase the land to intimate the Collector. It does not contemplate the reverse, namely to inform the Collector that a person or body is not willing to purchase the land as has been done by the Chairman, Social Justice Committee, Thaltej Gram Panchayat.

26. On behalf of the petitioner it has been contended that the respondent No.5 does not fall within any of the categories specified in Form XI [relatable to clause (c) of section 32P(2)], whereas it is contended on behalf of the respondent No.5 that he falls within the categories of 'agricultural labourers' and 'small holders'.

27. 'Agricultural labourer' has been defined under clause (1A) of section 2 of the Tenancy Act to mean a person whose principal means of livelihood is manual labour on land. The expression 'small holder' has been defined under clause (16B) of section 2 of the Tenancy Act to mean an agriculturist cultivating land less in area than an economic holding who earns his livelihood principally by agriculture or by agricultural labour.

28. By virtue of clause (b) of the second proviso to sub-section (2) of section 32P of the Tenancy Act, in case of persons falling within the categories of 'agricultural labourers', 'landless persons' and 'small holders' preference is required to be given in the following order, namely:-

- (1) a person belonging to a Scheduled Tribe;
- (2) a person belonging to a Scheduled Caste;

(3) other persons.

On behalf of the respondent No.5, it has been contended that he falls in the category of other persons.

29. At this juncture it may be germane to refer to the application dated 17.6.1993 made by the respondent No.5 in response to the public notice issued by the Mamlatdar and ALT, Dascroi. The said application as translated into English reads thus:

*“Applicant:- Raimalbhai Lilabhai Rabari  
Resident of: 56, Umedpark, Ghatlodia,  
Ta. City, District Ahmedabad*

*To,  
The Mamlatdar & Agricultural Lands Tribunal,  
Dascroi,*

*Subject: For Government land for agricultural purpose.*

*This is to respectfully inform you that Raimalbhai Lilabhai requests that as per his knowledge land bearing survey No.178/2, 0.35.41 is running in the name of the Government. As per my knowledge, this land is to be given for agricultural purpose.*

*It is my request to you Sir that I belong to the Baxipanch Rabari community. I am engaged in agricultural labour and in the business of cattle breeding and hence it is my request to you to grant me this land for agricultural purpose.*

*If the land is granted to me then I am bound to comply with the Government rules and I agree to pay the amount payable to the Government for the land. Hence, I request you to grant me the land.*

*(Raimal Leela)”*

30. Thus, the respondent No.5 claims that he is an agricultural labourer and is also engaged in the business of cattle breeding. The sole evidence to show that the respondent No.5 is an agricultural labourer is the certificate issued by the Chairman, Ghatlodia Nagar Panchayat, stating that he knows the respondent No.5 since the last five years and that he is carrying on the business of cattle breeding and agricultural labour. The certificate is an undated one and does not bear any number. On what basis such certificate has been issued has not come on record. From the address of the respondent No.5, it is apparent that he has an affluent background and does not appear to be an agricultural labourer. Moreover, even if it is assumed that he is engaged in agricultural labour, he is also engaged in the business of cattle breeding. ‘Agricultural labourer’ as defined under clause (1A) of section 2 of the Tenancy Act, means a person whose principal means of livelihood is manual labour on land. In the case of the respondent No.5, his principal means of livelihood appears to be from cattle breeding and not agricultural labour, and therefore, he clearly does not fall within the ambit of the expression ‘agricultural labourer’ as envisaged under the Act. Insofar as the respondent No.5 falling in the category of ‘small holder’ is concerned, there is no material whatsoever on record



to show that the respondent No.5 is an agriculturist cultivating land less in area than an economic holding who earns his livelihood principally by agriculture or by agricultural labour. Besides, it is not even the case of the respondent No.5 in his application that he is a small holder. Under the circumstances, the respondent No.5 does not fall within the ambit of either 'agricultural labourer' or 'small holder' as contemplated under the Act, so as to be eligible for grant of land under section 84C(4) of the Tenancy Act. The Mamlatdar & ALT, Dascroi, without making any inquiry worth the name as to whether or not the respondent No.5 satisfies the requirements of section 84C(4) of the Tenancy Act read with rule 51 of the Tenancy Rules, has by merely relying upon a certificate issued by the Chairman of the Nagar Panchayat, granted valuable land to the respondent No.5 for a pittance. Thus, the entire proceedings for disposal of the subject land under section 84C(4) of the Tenancy Act appear to have been conducted in a surreptitious manner.

31. Moreover, there is no document on record evidencing the taking over of the possession of the subject land from the petitioner and handing over of the possession of the subject land to the respondent No.5. There is nothing on record to indicate that the petitioner has been served any notice for taking over possession of the subject land from him. Except for the panchnama stated to have been made sometime in June 1993 recording that the land is running in the name of the State Government and is lying vacant and is not cultivated or tilled, which according to the respondents is the panchnama of taking over possession of the subject land, there is no other material whatsoever to show that possession of the subject

land has in fact been taken over after intimation to the petitioner. Under the circumstances, there is substance in the stand of the petitioner that he was not aware of any such proceedings having been undertaken.

32. The record reveals that the order dated 24.7.1989 passed by the Mamlatdar & ALT, City Taluka, Ahmedabad, has not been served upon the petitioner. The mere fact that the address stated in the envelope and the current address of the petitioner is the same does not detract from the fact that the same has been returned un-served by the postal department. Therefore, the order passed by the Mamlatdar & ALT, City Taluka Ahmedabad has not been served upon the petitioner. Furthermore there is no material on record to establish that the petitioner was served with a notice under section 135D of the Code prior to making the mutation entry recording the order passed by the Mamlatdar & ALT. Thus, there is no material whatsoever on record to show that the petitioner was aware of the order passed by the Mamlatdar & ALT and the subsequent steps taken thereafter under section 84C(4) of the Tenancy Act. According to the petitioner it was only when in connection with some other land held by him, he visited the office of the Talati-cum-Mantri that he became aware of the fact of passing of the impugned order by the Mamlatdar & ALT as well as the order disposing the land in favour of the respondent No.5. At this stage the petitioner has promptly challenged both the orders before the Deputy Collector, who allowed the appeals.

33. The question that now arises for consideration is whether the petitioner has explained the delay on his part in preferring

the appeal against the orders passed by the Mamlatdar & ALT, City Taluka Ahmedabad as well as Mamlatdar & ALT, Dascroi. Before adverting to the merits of the issue, reference may be made to the decision of a Division Bench of this court in the case of **Chandrakant Shankerlal Shah v. Liquidator Anand Peoples Co-operative Bank Ltd.**, 2103 (3) GLH 245, on which reliance has been placed on behalf of the petitioner, wherein it has been held thus:

*“43. It is a cardinal principle of law that every party to the litigation before an appropriate forum is entitled to an adequate notice about the pronouncement and passing of a judgment or order against him or in his favour, particularly so, against him because only after he comes to know of the passing of the adverse order that he sets in motion the process to file an appeal against such an order. It is essentially fair and just that the said decision should be communicated to such a party because the knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered, the passing of an order by a forum or a Court, particularly so by a Tribunal having judicial trapping cannot consist merely in the physical act of writing the judgment or order or signing it or even consigning to record in his office; it must hand over the appropriate and actual communication of such an order or judgment to the party concerned, especially when the judgment is against such a party. The communication may be either actual or constructive. If the order is pronounced in the presence of the parties, whose rights are affected by it, it can be said to be made when pronouncing it. If the date of the pronouncement, of the order is communicated to the party and it is pronounced accordingly, on the date previously communicated, the order is said to be communicated to the said party even if the party is not actually present on the date of its pronouncement. Similarly, if without notice of the date of pronouncement, an order is pronounced and the party concerned, especially the party against whom the order is pronounced, is not present when the*

*pronouncement is made, the order can be said to be made only when it is actually communicated to the parties later. The knowledge of such a party adversely affected by order, either actual or constructive, being an essential requirement of fair play and natural justice, the expression "date of the order" used in Section 102 of the Act 1961 must mean the date when the order was either actually communicated to the party or was known by it either actually or constructively."*

34. As noted hereinabove, the petitioner was not served with a copy of the order dated 24.7.1989 nor did the Mamlatdar resort to the mandatory provisions of sub-section (2) of section 84C of the Tenancy Act and permit the parties to restore the land to its earlier position in which it was immediately before the transfer. Therefore, the petitioner had no means of knowing about the passing of the said order. Insofar as the subsequent proceedings under sub-section (4) of section 84C of the Tenancy Act are concerned, in terms of rule 21 of the Tenancy Rules, the public notice is published in the village by beat of drum and also by affixing a copy of it in the chavdi. Considering the manner of publication, not everyone would be aware of the publication of the public notice. The Mamlatdar & ALT while passing the order under section 84C of the Act has directed that the possession of the land be taken over on behalf of the Government and then be disposed of in terms of section 84C(4) of the Tenancy Act, but as noted hereinabove, there is nothing to show that the actual possession was ever taken over from the petitioner and even the panchnama drawn by the Talati-cum-Mantri does not refer to possession having been taken over. In any case it is beyond comprehension as to how possession can be taken over without notice to the person in possession of such land. Therefore, the petitioner had no

notice whatsoever of any part of the proceedings and therefore, the explanation put forth by the petitioner that he came to know of the impugned orders only when he visited the office of the Talati in respect of some other land held by him, appears to be plausible and acceptable. The Deputy Collector, therefore, rightly condoned the delay caused in filing the appeal.

35. The Deputy Collector, based on record of the case which shows that a copy of the order dated 24.7.1989 passed by the Mamlatdar & ALT, City Taluka, Ahmedabad had not been served upon the petitioner, having given sufficient and cogent reasons for condoning the delay in filing the appeal, the Tribunal was not justified in reversing the same and holding that it was not possible that the petitioner was not aware of the passing of such order. Moreover, the Tribunal has failed to consider the fact that the delay in initiation of proceedings under section 84C of the Tenancy Act was more than eighteen years, as compared to the delay of six years in preferring the appeal. Considering the fact that the delay in initiation of the proceedings was three times more than the delay in preferring the appeal, the Tribunal ought not to have interfered with the order passed by the Deputy Collector.

36. Once the petitioner had made out a case for condonation of delay, on the merits of the case, the petitioner was on a really strong footing, inasmuch as, the proceedings under section 84C of the Tenancy Act, having been initiated after a period of more than eighteen years were hopelessly time barred. Moreover, the order passed by the Mamlatdar & ALT, vesting the land in the State Government was also bad on the

ground of non-compliance with the provisions of sub-section (2) of section 84C of the Tenancy Act. Under the circumstances, the Deputy Collector was wholly justified in setting aside the impugned orders and the Tribunal was not justified in reversing such order. The impugned order passed by the Tribunal, therefore, cannot be sustained.

37. Insofar as the events subsequent to the passing of the order dated 24.7.1989 are concerned, as discussed hereinabove, the entire procedure under section 84C(4) of the Tenancy Act, has been conducted in a very suspicious manner by the Mamlatdar & ALT, Dascroi. From the facts as emerging from the record, it is highly doubtful that possession of the subject land has been handed over to the respondent No.5 as claimed by him. The respondent No.5 who does not fall under any of the categories envisaged under clause (c) of sub-section (2) of section 32P of the Tenancy Act was not entitled to the grant of the same. The consequence of granting the subject land to the respondent No.5 is that transfer of the land in favour of the petitioner is held to be bad on the ground that he is not an agriculturist and the land is granted to a non agriculturist who does not fall within any of the categories prescribed under the statute for grant of such lands. The respondent No.5 cannot, therefore, claim any equity.

38. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned order dated 30<sup>th</sup> August, 2005, passed by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A. 623/1996 is hereby quashed and set aside and the order dated 11.4.1996, passed by the Deputy Collector (L.R.) Appeals, Ahmedabad in Tenancy Appeal

No.139/95 is hereby restored. Rule is made absolute accordingly, with no order as to costs.

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**HARSHA DEVANI, J.)**