IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5730 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI : Sd/-

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Approved for Reporting	Yes	No
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RAJENDRAKUMAR VEDPRAKASH HANDATHRO
POA HOLDER SANJIVKUMAR
Versus
STATE OF GUJARAT THRO SECRETARY & ORS.

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Appearance:
MS KRUTI SHAH for MR SHUBHAM JHAJHARIA(10231) for the Petitioner(s) No. 1
MS HEMALI SONI AGP for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

Date : 18/08/2026

ORAL JUDGMENT

1. By filing present petition under Article 226 of the Constitution of India as well as under the provision of the Bombay Land Revenue Code (hereinafter referred to as “the Revenue Code” for short”), the petitioner has challenged the order dated 16.02.2012 passed by the respondent – Additional Secretary, Revenue Department (Appeals) in Revision Application No.MVV/JMN/Dahod/11/2004 and the order dated 26.05.2004 passed by the respondent – Deputy Collector.

2. The factual matrix of the matter is as under,

 2.1 The dispute pertains to Final Plot No.4/27 admeasuring 215-26 Sq.Mtrs. of Dahod, which was originally belonging to one Kurbanhusen Barodwala and after his sad demise, the land was transferred in the name of his heirs.

2.2 On 24.12.1975, the land in question was purchased by one Smt. Kaushalyaben Bharatsing Damor, from whom, the petitioner had purchased the land in question by way of executing registered sale deed on 17.08.1990 and on the basis of the said sale deed, Entry was mutated in the revenue record on 27.12.1990. It is required to be noted that before purchasing the said land, the petitioner had verified all revenue record.

2.3 However to the utter shock and surprise of the petitioner, after a period of five years, Entry came to be mutated in the revenue record on 06.10.1995, whereby restriction of Section 73AA of the Revenue Code has been imposed.

2.4 Upon imposing of the restriction, the respondent – Deputy Collector initiated proceedings under Section 73AA of the Revenue Code on the ground of breach as before entering into sale transaction, prior permission of the competent authority had not been obtained and show cause notice came to be issued upon the petitioner as well as original land owner.

2.5 On receipt of the notice, the petitioner appeared before the authority concerned and submitted his detailed reply and pointed out fact that at the time of purchase of the land, there was on restriction upon the land in question.

2.6 However without properly considering the facts of the case and the documents available on record, the respondent – Deputy Collector, by an order dated 31.12.1996, was pleased to hold that the sale transaction was in contravention of Section 73AA of the Revenue Code, therefore, the land in question has been vested to the Government and penalty of three times of the original sale amount has been imposed upon the petitioner.

2.7 Aforesaid order of the respondent – Deputy Collector was challenged before the respondent – SSRD, who after considering the facts of the case, the documents available on record as also the decision of this Hon'ble Court delivered in case of **Patel Maganlal Kesurbhai Vs. Bhogilal Punjabhai Vasava,** reported in **1998 (2) GLR 961**, remanded the matter back before the competent authority directing the petitioner to submit an application for post facto permission.

2.8 On the basis of the aforesaid order, the petitioner submitted an application before the District Collector for the grant of post factor permission on 08.12.1999, however, the said application was forwarded to the

District Development Officer, who in turn, by communication dated 31.05.2001, asked the petitioner to submit evidence and in response thereto, the petitioner submitted required information and, thereafter, the petitioner was informed that as soon as the proceedings will be concluded, he will be communicated.

2.9 However to the utter shock and surprise of the petitioner, once again the petitioner has been served with the show cause notice dated 25.08.2003 from the office of the respondent – Deputy Collector on the ground that the petitioner had purchased the land in question in contravention of Section 73AA of the Revenue Code, where the petitioner had appeared and pointed out his defence.

2.10 However without properly considering the facts of the case and the documents produced on record, the respondent – Deputy Collector, by an order dated 26.05.2004, declare the sale transaction as invalid and in contravention of Section 73AA of the Revenue Code, therefore, the land in question has been vested to the Government.

2.11 Against the aforesaid order, the petitioner preferred Revision Application before the respondent – SSRD, who by impugned order dated 16.02.2012, rejected the said revision application.

3. Heard learned advocate, Ms. Kruti Shah assisted by

learned advocate, Mr. Shubham Jhajharia for the petitioner and learned AGP Ms. Hemali Soni for the respondents.

4. Learned advocate, Ms. Shah referred to the facts of the case and submitted that the petitioner is the bonafide purchaser of the land in question by way of executing registered sale deed on payment of entire sale consideration and before entering into sale transaction, he had verified all the revenue record and while doing so, it had come to the notice of the petitioner that there was no restriction over the land in question as provided under Section 73AA of the Revenue Code, therefore, there was no reason for the petitioner to obtain prior permission of the competent authority and it is after a period of five years of the said sale transaction, restriction was imposed, therefore, the initiation of the proceedings for breach of Section 73AA of the Revenue Code is not justifiable.

5. Learned advocate, Ms. Shah submitted that in fact, after the initiation of the proceedings for breach of the provision, the original land owner i.e. the respondent no.4 herein had given her specific reply that she is well educated lady and is also aware about the prevailing position and she had entered into sale transaction with the petitioner with her own will and volition and also received entire sale consideration at market rate, therefore, there is no question of any loss

suffered by her, however despite the said fact, no heed was paid to the said contention and the order has been passed, whereby the sale transaction has been declared as invalid and in contravention of the provision of law and the land has been vested to the Government. She submitted that in fact, against the said order, Revision Application was preferred before the respondent – SSRD, where all the facts and the contentions were pin-pointed and after having considered the facts of the case, the respondent – SSRD was of the prima facie opinion that there was breach of provision of Section 73AA of the Revenue Code and before entering into sale transaction, prior permission has not been obtained by the parties, however, the respondent – SSRD has considered the decision of this Hon'ble Court in case of **Patel Maganbhai Kesurbhai (supra)** and remanded the matter back with a direction to the petitioner to submit an application for post facto permission from the authority concerned and pursuant to such direction, appropriate application has already been made but it is still pending for consideration and before any decision is taken on the said application, once again suo motu proceedings have been initiated, which is against the settled law and without properly considering the facts of the case, on the same set of evident, the petitioner has been served with the show cause notice for initiation of suo motu proceedings on the ground of breach of the provision of law and without properly considering the facts of the case, the impugned order came to be passed reiterating the same facts and the reasons, whereby the land has been vested to the Government and the said fact has not been properly considered by the respondent – SSRD while deciding the revision application and passed impugned order. She submitted that as on date, the application for the grant of post facto permission is pending and no decision is yet taken.

6. Learned advocate, Ms. Shah submitted that in fact, there is delay of more than six years in initiation of the suo motu proceedings and in view of the settled law, the impugned order may be quashed and set aside. It is, therefore, urged that the present petition may be allowed.

7. On the other hand, learned AGP Ms. Soni has opposed the present petition contending inter alia that the findings given and conclusion arrived at by the respondent authorities while passing impugned orders are just and proper and same do not require any interference at the hands of this Hon'ble Court. She submitted that in fact, the land in question belongs to scheduled tribe community, therefore as per the statutory provision, before entering into sale transaction, prior permission ought to have been obtained, which in the present case has not been obtained, therefore, there is clearly cut violation of the provision of Section 73AA of the Revenue Code,

which led to initiation of the suo motu proceedings. She further submitted that in fact, there are concurrent findings of facts, which may not be interfered with by this Hon'ble Court under Article 226 of the Constitution of India, therefore, the present petition may be rejected.

8. Having heard learned advocates appearing for the parties and having gone through the facts of the case including the documents produced on record, it is evident that the petitioner had purchased the land in question from the respondent no.4 herein by way of executing registered sale deed on payment of entire sale consideration and before entering into sale transaction, the petitioner had verified all revenue record and for the sale transaction, entry was mutated in the revenue record. However after a period of five years, suo motu proceedings have been initiated on the ground that sale transaction had taken place in contravention of the provision of Section 73AA of the Revenue Code, therefore, the land has been vested to the Government and three times fine of sale consideration has been imposed, which has been challenged before the respondent – SSRD, who after considering the facts of the case, remanded the matter back directing the petitioner to submit an application for post facto permission and pursuant thereto, the petitioner had submitted an application for grant of such permission, however before the said application is decided by the

authority concerned, once again suo motu proceedings have been initiated on the same ground and though all above facts have been pointed out, the respondent – Deputy Collector passed an order reiterating earlier facts and reasons and thereby vested the land into Government and the said order has been confirmed by the respondent – SSRD, therefore, the petitioner has assailed both the orders in the present petition.

9. However having considered above factual background, there is no dispute about the fact that when earlier the revision application was preferred by the petitioner before the respondent – SSRD, entire facts of the case and the merit were considered and in view of the decision of this Hon'ble Court in case of **Patel Maganbhai Kesurbhai (supra)**, the petitioner was permitted to submit an application before the authority concerned for the grant of post facto permission, pursuant to which, application has been made before the authority concerned, which is pending before the concerned District Development Officer for its adjudication, however pending said application, once again on the same ground, suo motu proceedings have been initiated, which in my considered opinion, cannot be permitted. It is required to be noted that while remanding the matter, the respondent – SSRD had considered the merits of the case and the said aspect has already been pointed out before the respondent authorities

but it has not been properly considered and passed impugned orders. It is not in dispute that at the time of purchase of the land by the petitioner, there was no entry mutated in the revenue record with regard to the restriction over the land in question as provided under Section 73AA of the Revenue Code and the said entry was mutated after a period of five years from the said transaction.

10. At this stage, it is pertinent to note that by the impugned orders, entry mutated in favour of the petitioner has been cancelled and the land has been vested in the Government but if the facts of the present case, as stated above, are examined, in that event, it is clear that in earlier round of litigation before the respondent – SSRD, the said revision application partly allowed and the matter was remanded back with a specific direction to the petitioner to submit an application for the grant of post facto permission and pursuant thereto, the petitioner has already submitted an application, which is pending for final adjudication. Therefore when specific direction was issued and the application is pending, it is not open for the revenue authority to take the matter suo motu again for the same issue and the said act and action on the part of the revenue authority is against the settled law and it ought not to have been initiated, that too, after much period. Be that as it may, I am not entering into merits of demerits of the matter as also on the

aspect of initiation of suo motu proceedings after reasonable period but issuing direction upon the authority concerned to decide the application preferred by the petitioner for the grant of post facto permission.

11. Therefore in view of the above observation and directions, the present petition stands allowed. The order dated 16.02.2012 passed by the respondent – Additional Secretary, Revenue Department (Appeals) in Revision Application No.MVV/JMN/Dahod/11/2004 and the order dated 26.05.2004 passed by the respondent – Deputy Collector are hereby quashed and set aside. The concerned District Development Officer, where the application preferred by the petitioner is pending, is hereby directed to decide the said application as expeditiously as possible preferably within a period of eight weeks from the date of receipt of this order. It is clarified that the concerned District Development Officer shall decide the said application in accordance with law after providing ample opportunity to the party concerned.

12. Rule is made absolute to the aforesaid extent. Direct service is permitted.

Sd/-
(DIVYESH A. JOSHI, J.)

Gautam