HIGH COURT OF GUJARAT

MIHIRBHAI RAMESH MEHTA & 11
V/S
STATE OF GUJARAT & 20

Date of Decision: 26 November 2015

Citation: 2015 LawSuit(Guj) 2229

Hon'ble Judges: C L Soni

Case Type: Special Civil Application

Case No: 12710 of 2015

Subject: Constitution, Criminal

Acts Referred:
Constitution Of India Art 227, Art 226
Indian Penal Code, 1860 Sec 193, Sec 219, Sec 228
Code Of Criminal Procedure, 1898 Sec 482, Sec 195, Sec 480
Bombay Tenancy And Agricultural Lands Act, 1948 Sec 70(NB), Sec 88C, Sec 74, Sec 13, Sec 32, Sec 32G, Sec 29, Sec 70, Sec 31, Sec 70(b), Sec 76
Bombay Revenue Tribunal Act, 1957 Sec 13, Sec 9, Sec 12
Bombay Town Planning Act, 1954 Sec 19

Final Decision: Petition disposed

Advocates: Mihir Thakore, Salil M Thakore, Niraj Ashar, K S Nanavati

Reference Cases:
Cases Referred in (+): **10**

Judgement Text:-

C L Soni, J

[1] Present petition is filed by the Registered Trust and its Trustees under Article 226/227 of the Constitution of India seeking to quash and set aside the order dated 6.7.2015 passed by the Gujarat Revenue Tribunal ("the Tribunal") in Revision Application No. TEN-BS-173-14 preferred by respondents No.4 to 8 herein against the order dated 2.8.2014 passed by the Deputy Collector City Prant, Surat.

[2] By the impugned order, the Tribunal has granted stay of the order of the Deputy Collector and also ordered to maintain status-quo as per the site location and the record of the land in question till the revision application is finally decided.

[3] Learned Senior Advocate Mr. Mihir Thakore appearing with Mr. Salil Mr. Thakore, learned advocate for the petitioners and learned Senior Advocate Mr. K.S.Nanavati appearing with Nanavati Associates for contesting respondent No.4 to 8 original appellants before the Deputy Collector since agreed to hear the matter for final disposal at the admission stage, the matter is taken up for final hearing and disposal. The other respondents though served with the notice have not appeared. Even otherwise, they are formal parties and their presence shall not be required to finally decide the controversy involved in the petition.

[4] The respondents No.4 to 8 filed appeal no.7 of 2013 under section 74 of the Gujarat Tenancy and Agricultural Lands Act, 1948 ("the Act") on 16.3.2013 to declare that order dated 17.5.1962 in Ganot (Tenancy) Case No. 1262 of 1957 of the Mamlatdar and A.L.T. of Panchkayas for taking ex-parte possession since not in existence, is null and void, to declare that entry no. 782 dated 20.5.1962 since got up, is void and nullity, to declare respondent no.4 to 8 as legal tenants of disputed land and to pass order to fix the purchase price under sec. 32G of the Act in Ganot Case No.2 of 2011 pending before the A.L.T. The case of respondent Nos. 4 to 8 in their appeal is that their ancestor named Nandku Jagannath was permanent tenant since 1928 and after his death, his widow Bai Jadi continued to cultivate the land as tenant; that the name of Bai Jadi was recorded in the revenue record as tenant and the entry to that effect was certified on 17.1.1948 and since as on 1.4.1957, the land in question was cultivated by Bai Jadi as permanent tenant, she had become deemed purchaser under section 32 of the Act but only formality of fixation of purchase price was left to be completed. It is their further case that the respondent landlord never made an application under section 29 of

the Act for taking possession from the tenant nor even tenancy was ever terminated by issuing any notice to the tenant under section 31 of the Act, that the respondent landlord by utilizing their influence and in collusion with the revenue officers, created a bogus story of taking possession from the tenant in presence of the panchas on 17.5.1962 and got the entry no.782 dated 20.5.1962 recorded in the revenue record, that at no point of time, any notice was served nor any hearing was afforded before taking possession and since there is no provision in the Act to take forcible possession, the whole chapter of taking possession and proceeding of the case appears to be fabricated and bogus, and that by fraudulent, forged and non-est proceedings, their rights as tenant are not affected, and that the record of the Ganot Case No.1262 of 1957 since not in existence, the proceedings of such case and entry No. 782 are nullity,non-est and void, ab-initio.

[5] With the appeal, the respondent No.4 to 8 preferred separate application seeking condonation of delay. The Deputy Collector kept preliminary hearing to decide whether the appeal should be registered or not. The Deputy Collector found that after 50 years, respondents No.4 to 8 challenged order passed in 1962 without any evidence to establish their right as tenant. The Deputy Collector, therefore, rejected the application for condonation of delay and ordered to de-register the case (to remove the case from the register) vide order dated 2.8.2014. This order of the Deputy Collector has come to be challenged by respondent Nos. 4 to 8 before the Gujarat Revenue Tribunal ("the Tribunal") by filing Revision Application No. TEN-BS-173-14. With the revision application, respondent Nos. 4 to 8 also preferred separate application to stay the order dated 2.8.2014 passed by the Deputy Collector in tenancy appeal no.7 of 2013 and to grant any other relief which may be deemed fit to be granted in the facts of the case.

[6] Learned Senior Advocate Mr. Mihir Thakore submitted that as such, the appeal before the Deputy Collector for the prayers made therein is not maintainable and since the appeal is rejected as time barred, the revision before the Tribunal could be considered on the limited issue as to whether the delay of 50 years in filing appeal before the Deputy Collector could be condoned and the appeal could be heard on merits or not. Mr. Thakore submitted that since the revision application is to be decided only on the issue of delay, there was no question of entering into the merits of the case by the Tribunal and to issue injunction of status quo. Mr. Thakore submitted that neither before the Deputy Collector nor before the Tribunal, respondent Nos. 4 to 8 ever prayed for interim injunction and, therefore, the Tribunal was not justified in granting interim order of status quo. Mr. Thakore submitted that the Tribunal while exercising power under section 76 of the Act has no jurisdiction to grant injunction. Mr. Thakore submitted

that the Tribunal seriously erred in granting interim order of status quo ignoring the conduct of respondent nos. 4 to 8 in filing appeal before the Deputy Collector after gross delay of 50 years. Mr. Thakore submitted that not only on the conduct of respondent nos. 4 to 8 of filing appeal at very belated stage but on the aspect of prima facie case and balance of convenience, the Tribunal ought not to have granted interim order of status quo. Mr. Thakore submitted that simply because the respondent nos.4 to 8 alleged fraud and non availability of the record of Ganot Case No. 1262 of 1957, same would not be a ground for grant of status quo against the petitioners after a long period of 50 years. Mr. Thakore submitted that even as per the case of the respondent nos. 4 to 8, the petitioners have been in possession of the land in question for the last fifty years and under the Town Planning Scheme finalized under the Town Planning Act in the year 1977, the petitioners have been allotted final plots against their original plots to which no objection was raised by respondent No. 4 to 8. Mr. Thakore submitted that the petitioners have been running educational institutions and undertaking different activities on the land with the permission of the Charity Commissioner. Mr. Thakore submitted that the appeal preferred before the Deputy Collector is only by 5 heirs of Bai Jadi out of 13 heirs with oblique purpose as the land in question is in the posh area of Surat city. Mr. Thakore submitted that as per section 88C of the Act, the petitioners' trust was exempted from the Tenancy Law and, therefore, there was no question of breach of the provisions of the Tenancy Law when possession was handed over to the petitioner trust before 50 years. Mr. Thakore submitted that once the rights in the land are finally decided under the Town Planning Scheme, in absence of any objection raised by respondent nos. 4 to 8 or any other heir of Bai Jadi, it is not permissible now for respondent Nos. 4 to 8 to claim any right in the land in question.

[7] As against the above arguments, learned Senior Advocate Mr. K.S. Nanavati appearing for respondent Nos. 4 to 8 submitted that the Tribunal has discretionary jurisdiction to grant interim relief to preserve the subject property in exercise of its powers under section 76 of the Act which may not be interfered with by this Court in exercise of its powers under Article 226/227 of the Constitution of India. Mr. Nanavati submitted that it is not correct to say that there was no prayer before the Tribunal for grant of interim relief. Mr. Nanavati submitted that over and above the prayer for stay of the order passed by the Deputy Collector, the respondent Nos.4 to 8 also prayed to grant any other relief as may be deemed proper to be granted by the Tribunal in the facts of the case, and therefore, it could not be said that the Tribunal granted interim order of status quo without there being any prayer made before it. Mr. Nanavati submitted that indisputably, Bai Jadi was the tenant as on 1.4.1957 and as per the

provisions of the Act, Bai Jadi became deemed purchaser of the land in question and her right as tenant could not have been divested by the method unknown to the law. Mr. Nanavati submitted that there is no concept of taking forcible possession under the order of the Mamlatdar from a person who has become deemed purchaser of the land and, therefore, so called order of 1962 under which the possession of the land in question was alleged to have been taken from Bai Jadi was nullity in the eye of law. Mr. Nanavati submitted that to seek declaration that such order was null and void or that the entry made in connection with such void order is also nullity, limitation would not come in the way of respondent nos.4 to 8. Mr. Nanavati submitted that the Tribunal having found prima facie case in favour of respondent nos.4 to 8 and having also found that the so called order passed in Ganot Tenancy Case in the year 1962 is nonexistent, committed no error in entertaining the revision application and granting interim order of status quo to prevent miscarriage of justice. Mr. Nanavati submitted that section 76 of the Act read with regulation 14 of the Gujarat Revenue Tribunal Regulations would take within its sweep grant of status quo for preserving rights of the parties in connection with the subject-matter and, therefore, it cannot be said that the Tribunal has no jurisdiction to grant interim order of status quo. Mr. Nanavati submitted that whether the petitioner trust was exempted under section 88C of the Act from the provisions of the Act is a question to be gone into by making inquiry in the matter and therefore, such contention cannot be accepted at this stage. Mr. Nanavati submitted that the finalization of the Town Planning Scheme under the Town Planning Act would not take away the rights of respondent nos. 4 to 8 as the heirs of Bai Jadi under the Act. Mr. Nanavati submitted that even if the Town Planning Scheme has become final, if the rights of respondent nos. 4 to 8 are recognized under the Act, they will be entitled to the claim the land in possession of the petitioners or at least compensation in lieu of the land in question but it cannot be said that for ever, the rights of respondent nos. 4 to 8 were foreclosed. Mr. Nanavati submitted that the question whether the Ganot Case of 1957 wherein the order dated 17.5.1962 was stated to have been made was the creation of fraudulent and collusive act or whether the Ganot Case and the so called order passed therein are non-existent would be a matter of inquiry and could not be thrown out simply on the ground of delay. Mr. Nanavati submitted that the petition itself is not maintainable before this Court as it is not filed by all the trustees. Mr. Nanavati submitted that in fact, the land was not owned by the trust but it was a company in the name of the petitioner No.1 which held the land and, therefore, the present trust could not get any benefit either of the exemption from the provisions of the Act or as an educational institution so as to destroy the the rights of respondent nos.4 to 8 under the Act.

[8] In rejoinder, Mr. Thakore submitted that the respondent nos.4 to 8 having selected the petitioners as parties while filing appeal before the Deputy Collector and while preferring the revision application before the Tribunal, cannot raise objection against the maintainability of the petition on the ground that all the trustees are not joined in the present petition. Mr. Thakore submitted that in any case, when the impugned orders affect the interests of the trust, the trust alone can invoke the writ jurisdiction of this Court. Mr. Thakore submitted that considering the conduct of respondent nos. 4 to 8 in filing the appeal after the period of about 50 years from the date of dispossession of Bai Jadi in the year 1962 and in not raising any objection under the Town Planning Act to claim any interest in the land in question when the Town Planning Scheme was finalized, it could not be said that the respondent no.4 to 8 had made out any prima facie case for grant of injunction in their favour.

[9] Having heard learned Advocates for the petitioners and for the contesting respondents, it appears that the preliminary objection against maintainability of the petition on the ground that the petition is not filed by all the Trustees of the Trust is without substance.

[10] The respondents No. 4 to 8 when filed the appeal before the Deputy Collector, selected the petitioners as their opponents with the other parties and the parties who select their opponents for the original proceedings at the inception cannot be permitted to raise objection against the maintainability of the petition on the ground of non-joinder of the other parties as petitioners. It is required to note that a party who suffers any order from any court or the authority is entitled to seek the remedy available under law before the higher forum. Non joinder of the other parties as petitioners in the proceedings before the higher forum is no ground to urge that the proceedings before the higher forum are not maintainable. In any case, the petitioners having subsequently joined the other parties who were the opponents and having given reasons for not joining them as petitioners as they are not presently trustees, the objection raised by Mr. Nanavati should not survive.

[11] In the case of Atmaram Ranchhodbhai v. Gulamhusein Gulam Mohiyaddin and another, 1973 AIR(Guj) 113 relied on by Mr. Nanavati, the question was whether one co-trustee can determine the tenancy by giving notice to the tenant or whether it is necessary that all co-trustees must join in giving such notice. Further question was whether all co-trustees must join in the suit from the tenancy after determine of lis. In such fact situation, the Court held in the said case that unless the instrument of the trust

otherwise provide, all co-trustees must join in filing the suit to recover the possession of the property from the tenant. Such decision in the facts of the case shall have no application.

[12] The revision application filed before the Tribunal is under Section 76 of the Act and against the order passed by the Deputy Collector in appeal preferred by respondent No.4 to 8 under section 74 of the Act. Section 74 and 76 of the Act read as under:

> "Section 74 - Appeals
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> (1) An appeal against the orders of the Mamlatdar and the Tribunal may be filed to the Collector in the following cases-
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> (a) an order under section 4,
>
> 1. * * *
>
> 2. * * *
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> (d) an order under section 9, [(da) an order under section 9A,] (e) an order under section 10,
>
> 4. * * *
>
> (g) an order under section 13.
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> 5. * * *
>
> (h) an order under section 17,
>
> (i) an order under section 19,

(j) an order under section 20,

(k) an order under section 23

(l) an order under section 25,

(m) an order under section 29,

6. * * *

[(ma) an order under [sub-section (1B) and (2)]of section 32,]

[(mb) an order under sections 31, 32F, or an order under section 32G]

[(n) an order under sections *32K & 32M]

[(na) a decision under the proviso to subsection (4) of section 32T or an order under section 32U,]

(o) an order under section 33,

[(oo) an order under sub-section (5) of section 34,]

(p) an order under section 37,

(q) an order under section 39,

(r) an order under section 41

[(rr) an order made pursuant to a notification issued under sub-section (3) of

section 43A;]

[(ra) an order under section 43B,]

(s) an order under section 64,

(t) an order under Chapter V-A,

[(u) an order made under sections 84A, 84B or 84C,

[(ua) an order under section 84CC,]

(v) an order under section 85A,

(w) an order under section 88C]

(2) Save as otherwise provided in this Act, the provisions of Chapter XIII of the Bombay Land Revenue Code, 1879, shall apply to appeals to the Collector under this Act, as if the Collector were the immediate superior of the Mamlatdar or the Tribunal. The Collector in appeal shall have power to award costs.

76. Revision.

(1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1957, an application may be made to the Gujarat Revenue Tribunal constituted under the said Act against any order of the Collector except an order under section 32P or an order in appeal against an order under subsection

(4) of section 32G on the following grounds only:-

(a) that the order of the Collector was contrary to law,

(b) that the Collector failed to determine some material issue of law,

(c) that there was substantial defect in following the procedure provided by this Act or that there has been failure to take evidence or error in appreciating important evidence which has resulted in the miscarriage of justice.

(2) In deciding applications under this section, the Gujarat Revenue Tribunal shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Gujarat Revenue Tribunal."

[13] It seems from the provisions of section 74 of the Act that the remedy of appeal is available only against the orders passed under different provisions of the Act mentioned therein by the Mamlatdar and ALT and not for general remedy. What was sought for in the appeal by respondent no.4 to 8 before the Deputy Collector was declaratory relief and for an order to fix purchase price in their another tenancy case. When the Tribunal was approached against the order passed by the Deputy Collector in such appeal, the Tribunal ought to have observed the nature of ultimate relief asked in appeal by respondents no.4 to 8. The Tribunal, however, in disregard of the nature of relief claimed in appeal, proceeded to pass the impugned order.

[14] As per the provisions of sec. 76 of the Act, the Tribunal can examine validity of the order of the Collector only on the grounds mentioned therein with an exception that in respect of the order under section 32P or an order in appeal against the order under sub section (4) of section 32G, challenge shall not be restricted on limited grounds. Though the Tribunal can be said to have jurisdiction to decide lis between the parties, when the order under challenge before it concerns to decide the rights of the parties, however, it has certainly no power like the civil court under the Code of Civil Procedure. Therefore, while deciding the revision application or any application filed therein, the Tribunal has to remain within its bounds while considering the nature of matter brought before it.

[15] The Tribunal is established under the Bombay Tribunal Act, 1957 ("the Tribunal Act"). Its jurisdiction is defined under section 9 in respect of the cases under the

provisions of the enactments specified in the first schedule and for other cases notified by the State Government to be part of the first schedule. The orders or the decisions under the Act do not find place in the first schedule of the Tribunal Act.

[16] However, section 12 of the Tribunal Act provides that nothing contained therein shall affect any powers or functions of the Tribunal conferred on it or which may be conferred on it by any other law for the time being in force to entertain and decide any appeal, application for revision or the other proceedings. Thus, the revision application filed before the Tribunal by respondent No.4 to 8 is not by invoking jurisdiction of the Tribunal under the Tribunal Act but as per the powers conferred on it under section 76 of the Act and in deciding such revision application, the Tribunal shall have to follow the procedure prescribed by it and not as per Section 13 of the Tribunal Act. Section 13 of the Act reads as under:

> "13. The Tribunal to have power of a Civil Court. -
>
> (1) In exercising the jurisdiction conferred upon it by or under this Act, the Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath, affirmation or affidavit, of summoning and enforcing the attendance of witnesses, of completing discovery and the production of documents and material objects, requisitioning any public record or any copy thereof from any Court or office, issuing commissions for the examination of witnesses or documents, and for such other purposes as may be prescribed; and the Tribunal shall be deemed to be a Civil Court for all the purposes of sections 195,480 and 482 of the Code of Criminal Procedure, 1898 (V of 1898), and its proceedings shall be deemed to be judicial proceedings within the meaning of sections 193,219 and 228 of the Indian Penal Code (XLV of 1860).
>
> (2) In the case of any affidavit to be filed, any officer appointed by the Tribunal in this behalf may administer the oath to the deponent."

[17] The Tribunal therefore may follow the procedural powers available to the civil court to exercise its jurisdiction conferred upon it under the Tribunal Act.

[18] In fact, strictly construing provisions of section 13 of the Tribunal Act, it will not have

application to the proceedings of revision application filed under sec. 76 of the Act as not covered under sec. 9 of the Tribunal Act, therefore, the Tribunal is to follow its own procedure as would stand governed by the Bombay Revenue Tribunal Regulations, 1958 ("the Regulations"). Regulation 55 of the regulations provide that the Tribunal shall, in any matter not provided for in the regulations, follow the procedure as far as it is applicable, laid down in the Code of Civil Procedure.

[19] In the Regulations, various steps to be taken for deciding proceeding by the Tribunal are provided and in furtherance of such steps, Regulation 55 further provides that the Tribunal shall follow the procedure laid down in the Code of Civil Procedure in any matter not provided in Regulations. Therefore, either looking from the angle of section13 of the Tribunal Act or the provisions made in the Regulations, the Tribunal shall be required to follow the procedure akin to the procedure laid down in the Code of Civil Procedure to decide the case brought before it.

[20] The Hon'ble Supreme Court, in the case of State of Gujarat versus Gujarat Revenue Tribunal Bar Association and another, 2012 10 SCC 353 while examining validity of rule 3(1)(iii)(g) of the Gujarat Revenue Tribunal Rules, 1982 which were struck down by this Court, examined the provisions of the Tribunal Act and held and observed in para no. 10 to 32 as under:

> 10. Section 3(2) of the Act 1957, provides for the appointment of the President and Members of the Tribunal. Section 9 thereof, provides for the jurisdiction of the Tribunal to entertain and decide appeals from, and revise decisions and orders in respect of cases arising under the provisions of the enactments specified in the First Schedule. Schedule 1 includes the Bombay Land Revenue Code, 1879, the Bombay Land Revenue Code, 1874 as extended to the Kutch area of State of Bombay, the Indian Forest Act, 1927 etc.
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> 11. Section 9(4) of the Act reads as under:
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> "Notwithstanding anything contained in any other law for the time being in force, when the Tribunal has jurisdiction to entertain and decide appeals from and revise decisions and orders of, any person, officer or authority to any matter aforesaid, no other person, officer or authority shall have jurisdiction to entertain and decide appeals from and revise decisions or

orders of such person, officer or authority in that matter."

12. Section 13(1) of the Act reads as under:

"13.Tribunal to have power of a civil court. - In exercising the jurisdiction conferred upon it by or under this Act, the Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath, affirmation or affidavit, of summoning and enforcing the attendance of witnesses, of compelling discovery and the production of documents and material objects, requisitioning any public record or any copy thereof from any Court or office, issuing commissions for the examination of witnesses or documents, and for such other purposes as may be prescribed and the Tribunal shall be deemed to be a Civil Court for all the purposes of sections 195, 480 and 482 of the Code of Criminal Procedure, 1898, and its proceedings shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 229 of the Indian Penal Code."

13. Section 15 empowers the Tribunal to entertain question of interpretation regarding laws of public importance which can only be decided after hearing the State Government on the matter. Section 16 provides that no appeal shall lie to the State Government against the order passed by the Tribunal. Section 17 of the Act confers upon the Tribunal the power to review its own decision, on grounds similar to the ones mentioned in Order 47, Rule 1, CPC. Such review application may be filed before it within a period of 90 days from the date of the said decision of the Tribunal. The Tribunal has further been given the power to condone delay in making applications for review.

14. Section 20 reads as under:

"20(1) The State Government may, by notification in the Official Gazette, make rules consistent with the provisions of this Act for carrying into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for the following matters, namely:-

(a)the qualifications of the President and other members of the Tribunal;

(b) the period of office and the terms and conditions of service of the President and other members of the Tribunal;

(c) the qualifications of the Registrar and Deputy Registrars;

(d) any other powers of a Civil Court which may be vested in the Tribunal."

15. Rule 3 of the Rules 1982 reads as under :

"3.Qualification of President and members of Tribunal- (1) The President shall be a person who has not attained the age of 65 years, and -

(i) Who is or has been a Judge of a High Court, or

(ii)Who is an advocate qualified to be a Judge of a High Court, or

(iii) Who has, for a period of not less than three years, held the office, or as the case may be, exercised the powers of -

(a)The Secretary to the Government of Gujarat;

(b) The Principal Judge of the City Civil Court, Ahmedabad;

(c) A District Judge;

(d) The Chief Judge, Small Cause Court, Ahmedabad;

(e) A member of the Industrial Court constituted under the Bombay Industrial Relations Act, 1946;

(f) A member of the Industrial Tribunal constituted under the Industrial Disputes Act, 1957; or

(g) A member of the Gujarat Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1957."

(2) A member shall be a person who has not attained the age of 65 years and-

(a) Who is holding or has held an office not lower in rank than that of-

(i) A Collector;

(ii) A Deputy Secretary to the Government of Gujarat;

(iii) A District Judge;

(iv) An Assistant Judge, or a Civil Judge (Senior Division) appointed under the Bombay Civil Courts Act, 1869, or a Civil Judge holding an equivalent office under any other law for the time being in force; or

(b) Who is an advocate or attorney of the High Court, or a legal practitioner entitled to practice before courts other than the High Court under any law relating to legal practitioners for the time being in force in this State, has practiced for not less than five years in any Civil Courts or before the Tribunal, and is, in the opinion of the State Government, well versed in revenue and tenancy laws."

16. Although, term 'court' has not been defined under the Act, it is indisputable that courts belong to the judicial hierarchy and constitute the country's judiciary as distinct from the executive or legislative branches of the State. Judicial functions involve the decision of rights and liabilities of the parties. An enquiry and investigation into facts is a material part of judicial function. The legislature, in its wisdom has created tribunals and transferred the work which was regularly done by the civil courts to them, as it was found necessary to do so in order to provide efficacious remedy and also to reduce the burden on the civil courts and further, also to save the aggrieved person from bearing the burden of heavy court fees etc. Thus, the system of tribunals was created as a machinery for the speedy disposal of claims arising under a particular Statute/Act. Most of the Tribunals have been given the power to lay down their own procedure. In some cases, the procedure may be adopted by the Tribunal and the same may require the approval of the competent authority/government.However, in each case, the principles of natural justice are required to be observed. Such tribunals therefore, basically perform quasi-judicial functions. The system of tribunals is hence, unlike that of the regularly constituted courts under the hierarchy of judicial system, which are not authorised to devise their own procedure for dealing with cases. Under certain statutes Tribunals have been authorised to exercise certain powers conferred under some provisions of the Code of Civil Procedure (hereinafter referred to as the 'CPC') or the Code of Criminal Procedure (hereinafter referred to as the 'Cr.P.C.'), but not under the whole Code, be it Civil or Criminal. However, in a regular court, the said Codes, in their entirety, civil as well as criminal, must be strictly adhered to. Therefore, from the above, it is evident that the terms 'court' and 'Tribunal' are not inter-changeable.

17. A Tribunal may not necessarily be a court, in spite of the fact that it may be presided over by a judicial officer, as other qualified persons may also possibly be appointed to perform such duty.One of the tests to determine whether a tribunal is a court or not, is to check whether the High Court has revisional jurisdiction so far as the judgments and orders passed by the Tribunal are concerned. Supervisory or revisional jurisdiction is considered to be a power vesting in any superior court or Tribunal, enabling it to satisfy

itself as regards the correctness of the orders of the inferior Tribunal. This is the basic difference between appellate and supervisory jurisdiction. Appellate jurisdiction confers a right upon the aggrieved person to complain in the prescribed manner, to a higher forum whereas, supervisory/revisional power has a different object and purpose altogether as it confers the right and responsibility upon the higher forum to keep the subordinate Tribunals within the limits of the law. It is for this reason that revisional power can be exercised by the competent authority/court suo motu, in order to see that subordinate Tribunals do not transgress the rules of law and are kept within the framework of powers conferred upon them.Such revisional powers have to be exercised sparingly, only as a discretion in order to prevent gross injustice and the same cannot be claimed, as a matter of right by any party. Even if the person heading the Tribunal is otherwise a "judicial officer", he may merely be persona designata, but not a court, despite the fact that he is expected to act in a quasi-judicial manner.In the generic sense, a court is also a Tribunal, however, courts are only such Tribunals as have been created by the concerned statute and belong to the judicial department of the State as opposed to the executive branch of the said State.The expression 'court' is understood in the context of its normally accepted connotation, as an adjudicating body, which performs judicial functions of rendering definitive judgments having a sense of finality and authoritativeness to bind the parties litigating before it. Secondly, it should be in the course of exercise of the sovereign judicial power transferred to it by the State. Any Tribunal or authority therefore, that possesses these attributes, may be categorized as a court.

18. Tribunals have primarily been constituted to deal with cases under special laws and to hence provide for specialised adjudication alongside the courts. Therefore, a particular Act/set of Rules will determine whether the functions of a particular Tribunal are akin to those of the courts, which provide for the basic administration of justice. Where there is a lis between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority, i.e., a situation where, (a) a statutory authority is empowered under a statute to do any act (b) the order of such authority would adversely affect the subject and (c) although there is no lis or two contending parties, and the

contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is a quasi judicial decision. An authority may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a 'court', but not all. In case certain powers under C.P.C. or Cr.P.C. have been conferred upon an authority, but it has not been entrusted with the judicial powers of the State, it cannot be held to be a court. (See : The Bharat Bank Ltd., v. Employees; Virindar Kumar Satyawadi v. The State of Punjab; Engineering Mazdoor Sabha v. Hind Cycles Ltd.,; Associated Cement Companies Ltd. v. P.N. Sharma; Ramrao and Anr. v. Narayan ; State of Himachal Pradesh and Ors. v. Raja Mahendra Pal; Keshab Narayan Banerjee v. State of Bihar and Ors.,; Indian National Congress (I) v. Institute of Social Welfare ; K. Shamrao and Ors. v. Assistant Charity Commissioner, ; Trans Mediterranean Airways v. Universal Exports, ; and Namit Sharma v. Union of India,).

19. In Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjunwala and Ors., Hidayatullah, J. (as His Lordship then was) made a distinction between a "court" and a "Tribunal" as is explained hereunder:

".....These Tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath,but they are not part of the ordinary Courts of Civil Judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law.They are very similar to Courts, but are not Courts. When the Constitution speaks of ' Courts' in Art. 136, 227 or 228 or in Arts. 233 to 237 or in the Lists, it contemplates Courts of Civil Judicature but not Tribunals other than such Courts. This is the reason for using both the expressions in Arts. 136 and 227.

By "Courts" is meant Courts of Civil Judicature and by "Tribunals", those bodies of menwho are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies.

This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before Tribunals, and the residue goes before the ordinary Courts of Civil Judicature."

20. To explain the distinction between a Court and Tribunal, His Lordship further relied upon the judgment in the case of Shell Co. of Australia v. Federal Commissioner of Taxation, 1931 AC 275, wherein it has been observed as under:

".....In that connection it may be useful to enumerate some negative propositions on this subject: 1. A Tribunal is not necessarily a Court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body....."

21. The present case is also required to be examined in the context of Article 227 of the Constitution of India, with specific reference to the 42nd Constitutional Amendment Act, 1976, where the expression 'court' stood by itself, and not in juxtaposition with the other expression used therein, namely, 'Tribunal'.The power of the High Court of judicial superintendence over the Tribunals, under the amended Article 227 stood obliterated. By way of the amendment in the subarticle, the words, "and Tribunals" stood deleted and the words "subject to its appellate jurisdiction" have been substituted after the words, "all courts". In other words, this amendment purports to take away the High Court's power of superintendence over Tribunals. Moreover, the High Court's power has been restricted to have judicial superintendence only over judgments of inferior courts, i.e. judgments in cases where against the same, appeal or revision lies with the High Court.A question does arise as regards whether the expression 'courts' as it appears in the amended

Article 227, is confined only to the regular civil or criminal courts that have been constituted under the hierarchy of courts and whether all Tribunals have in fact been excluded from the purview of the High Court's superintendence. Undoubtedly, all courts are Tribunals but all Tribunals are not courts.

22. The High Court's power of judicial superintendence, even under the amended provisions of Article 227 is applicable, provided that two conditions are fulfilled; firstly, such Tribunal, body or authority must perform judicial functions of rendering definitive judgments having finality, which bind the parties in respect of their rights, in the exercise of the sovereign judicial power transferred to it by the State, and secondly such Tribunal, body or authority should be the subject to the High Court's appellate or revisional jurisdiction.

23. In S.P. Sampath Kumar v. Union of India, 1987 AIR(SC) 386, this Court held that, in the Central Administrative Tribunal (hereinafter referred to as the 'CAT'), the presence of a judicial member was in fact a requirement of fair procedure of law, and that the administrative Tribunal must be presided over in such a manner, so as to inspire confidence in the minds of the people, to the effect that it is highly competent and an expert body, with judicial approach and objectivity and, thus, this Court held that the persons who preside over the CAT, which is intended to supplant the High Court must have adequate legal training and experience.This Court further observed that it was desirable that a highpowered committee,headed by a sitting Judge of the Supreme Court who has been nominated by the Chief Justice of India to be its Chairman, should select the persons who preside over the CAT, to ensure the selection of proper and competent people to the office of trust and help to build up its reputation and accountability. The Tribunal should consist of one Judicial Member and one Administrative Member on any Bench.

24. In L. Chandra Kumar v. Union of India and Ors., 1997 AIR(SC) 1125, this Court held that the power of judicial review of the High Court under Article 226 of the Constitution of India, being a basic feature of the Constitution

cannot be excluded. In this context, the Court held:

"....It must not be forgotten that what is permissible to be supplanted by another equally effective and efficacious institutional mechanism is the High Courts and not the judicial review itself?."

The Court further observed that the creation of this Tribunal is founded on the premise that, specialised bodies comprising of both, well trained administrative members and those with judicial experience, would by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. The contention that the said Tribunal should consist only of a judicial member was rejected, and it was held that such a direction would attack the primary grounds of the theory, pursuant to which such Tribunals were constituted.

25. In V.K. Majotra and Ors. v. Union of India and Ors., this Court reversed the judgment of the Allahabad High Court wherein, direction had been issued that the Vice-Chairman of the CAT could be only a retired Judge of the High Court, i.e., a Judicial Member and that such a post could not be held by a Member of the Administrative Service, observing that such a direction had put at naught/obliterated from the statute book, certain provisions without striking them down.

26. A Constitution Bench of this Court in Statesman (Private) Ltd. v. H.R. Deb and Ors., examined the provisions of Sections 7(3)(d) and g(1) of the Industrial Disputes Act, 1947, which contain the expression 'judicial office', and held that a person holds 'judicial office' if he is performing judicial functions. The scheme of Chapters V and VI of the Constitution deal with judicial office and judicial service. Judicial service means a separation of the judiciary from the executive in public services. The functions of the labour court are of great public importance and are quasijudicial in nature, therefore, a man having experience of the civil side of the law is more suitable to preside over it, as compared to a person working on the criminal side. Persons employed performing multifarious duties and, in addition, performing some judicial functions, may not truly fulfil the requirement of the

statute. Judicial office thus means, a fixed position for the performance of duties, which are primarily judicial in nature.

27. In Shri Kumar Padma Prasad v. Union of India and Ors., this Court held that the expression, 'judicial office' in the generic sense, may include a wide variety of offices which are connected with the administration of justice in one way or another. The holder of a judicial office under Article 217(2)(a), means a person who exercises only judicial functions, determines cases inter se parties and renders decisions in purely judicial capacity. He must belong to the judicial services which is a class in itself, is free from executive control, and is disciplined to hold the dignity, integrity and independence of the judiciary. The Court held that 'judicial office' means a subsisting office with a substantive position, which has an existence independence from its holder.

28. The instant case is required to be examined in light of the aforesaid settled legal propositions.

29. The present Writ Petition was filed on the premise, that the post of the President of the Gujarat Revenue Tribunal was covered by the expression 'District Judge, as has been defined under Article 236 of the Constitution, the definition being an exclusive one, and thus, in view of the provisions of Article 233 of the Constitution, the appointment of the President of the Tribunal can be made only upon consultation with the High Court. In the alternative it was suggested, that the said Tribunal is a court and that the post of the President is one of judicial service, and in view of the provisions of Article 234 of the Constitution, the appointment of the President can be made only upon consultation with the High Court, as well as the Gujarat Public Services Commission. Even otherwise, having regard to the functions, powers and duties vested in the President, a person with legal qualification and long judicial experience should alone be appointed as President. Reference to the Bombay Legislative Assembly debate dated 18.4.1939, as expressed by the then Revenue Minister, revealed that the intention of the legislature had been that the post be filled by a retired High Court Judge, or a District Judge of not less than ten years standing. Further, the Tribunal

dealing with various cases under the Gujarat Agriculture and Land Ceiling Act, 1961, Gujarat Private Forest Act, Bombay Public Trust Act, Bombay Tenancy and Agricultural Lands Act, Bombay Jagirdari and Other Tenure Abolition Act, and with questions of title under Section 37(2) of the Bombay Land Revenue Code has to deal with large number of civil disputes between the citizens, as well as between the Government and citizens and, it is pertinent to note that at the relevant time of filing of this Writ Petition, 6500 cases were pending before the Tribunal. With these assertions, the prayers made by the writ petitioners were mainly to declare Sections 4 and 20 of the Act, 1958 as ultra vires and unconstitutional on the grounds that they gave absolute unguided power to the State Government in relation to the appointment of the President, and further, to declare Rule 3(1) so far as it authorises the appointment of the Secretary, as ultra vires and void, and also to quash the appointment of the respondent as the President.

30. The State Government contested the case, contending that the provisions of Article 236 of the Constitution have no application. Further, the Act as well as the Rules provide that a person having long standing experience in the area of revenue law, and under Rule 3(2) an advocate who is qualified to be a Judge of the High Court, is eligible for the post of the President of the Tribunal. The Administrative Officer has long and vast experience in revenue matters, being posted as Special Divisional Magistrate, Collector, Deputy Secretary and Secretary dealing with laws pertaining to revenue and was hence, competent enough to deal with any subject assigned under the said Act and the Rules. Thus, the Secretary to the Government of Gujarat was competent/eligible to be selected to the post of the President of the Tribunal.

31. The High Court examined the functions and powers of the Tribunal. Section :

31.1Section 117KK of the Bombay Land Revenue Code provides for reference of certain matters to the Tribunal for its opinion. Section 117L provides that the opinion of the Tribunal, along with settlement report, be laid on the table of the State Legislature and a copy thereof, be sent to every

Member and the said report is liable to be discussed by way of a resolution moved in the State Legislature.

31.2The Tribunal has also been conferred with the power to adjudicate disputes, which may arise from the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. Section 75(1) of the said Act provides that an appeal against the award of the Collector, made under Section 66 may be filed before the Tribunal. Sub-section (2) of Section 75, provides that in deciding appeals preferred under sub-section (1), the Tribunal shall exercise all the powers which a court has and subject to the regulations framed by the Tribunal under the Act, 1957, follow the same procedurewhich a court follows in deciding appeals from the decree or order of an original court under the CPC.

Section 76(1) of the Act provides that notwithstanding anything contained in the Act, 1957, an application for revision may be made to the Tribunal against any order of the Collector, except an order under Section 32P, or an order in appeal against an order under sub-section (4) of Section 32G. Section 80 provides that all inquiries and proceedings before the Tribunalshall be deemed to be judicial proceedingswithin the meaning of Sections 193, 219 and 228 of the IPC. Section 85 deals with bar of jurisdiction. It further provides that no Civil Court shall have the jurisdiction to settle, decide or deal with, any question which is by or under this Act, required to be settled, decided or dealt with, by the Tribunal in appeal or revision. It is also provided in sub-section (2) of Section 85 that no order of the Tribunal shall be questioned in any civil or criminal court.

31.3The Gujarat Agricultural Lands Ceiling Act, 1960, was enacted to fix a ceiling on holdings of agricultural lands, and to provide for the acquisition and disposal of surplus agricultural lands. Chapter VI of the said Act deals with procedure, appeals and revision. Section 36 provides that any person aggrieved by an award made by the Tribunal under Section 24, or by the Collector under Section 28, may appeal to the Tribunal. Sub-section (3) of Section 36 provides that in deciding such appeal the Tribunalshall exercise all the powers which a Court has and follow the same procedure which the

Court follows in deciding appeals from the decree or order of the original court under the CPC. Section 38 provides that notwithstanding anything contained in the Act, 1957, an application for revision may be made to the Tribunal constituted under the said Act, against any order passed by the Collector. Section 47 deals with bar of jurisdiction, as it provides that no civil court shall have the jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tribunal. Section 48 provides that all inquiries and proceedings before the Tribunal shall be deemed to be 'judicial proceedings', within the meaning of Sections 193, 219 and 228 of the IPC.

31.4The Bombay Public Trust Act, l950, has been enacted to regulate, and to make better provision for the administration of public religious and charitable trusts in the State of Bombay, which also extends to the State of Gujarat. In exercise of powers conferred under Section 84 of the said Act, the Government of Bombay has framed the Bombay Public Trusts (Gujarat) Rules, 1961. Section 51 of the Act provides for consent of the Charity Commissioner for the institution of a suit. Subsection (2) of Section 51 says that if the Charity Commissioner refuses his consent for the institution of a suit under sub-section (1) of Section 51, the concerned person may file an appeal to the Tribunal. References made to the Tribunal have been dealt with in Chapter Xl of the Act. Section 71 deals with appeals to the Tribunal, and provides that an appeal to the Tribunal under subsection (2) of Section 51, against the decision of the Charity Commissioner, refusing consent for the institution of a suit, shall be filed within 60 days from the date of such decision, in such form and shall be accompanied by such fee, as may be prescribed, and that the decision of the Tribunal shall be final and conclusive. Section 74 provides that all inquiries and appeals shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the IPC. Section 76 provides that, save, insofar as they may be inconsistent with anything contained in the Act,the provisions of the CPC will apply to all proceedings before the court under this Act. Section 80 deals with bar of jurisdiction of civil courts, as it provides that no civil court can deal with any question which is by, or under the Act, to be decided or dealt with, by any officer or authority under the Act in respect of which, the decision or order of such officer or authority has been made final and conclusive.

31.5Section 13(1) of the Act, 1957, provides that in exercising the jurisdiction conferred upon the Tribunal, the Tribunal shall have all the powers of a civil court as enumerated therein and shall be deemed to be a civil court for the purposes of Sections 195, 480 and 482 of the Cr.P.C., and that its proceedings shall be deemed to be judicial proceedings, within the meaning of Sections 193, 219 and 228 of the IPC.

32. The aforesaid observations made by the High Court, taking into consideration various statutes dealing with not only the revenue matters, but also covering other subjects, make it crystal clear that the Tribunal does not deal only with revenue matters provided under the Schedule I, but has also been conferred appellate/revisional powers under various other statutes. Most of those statutes provide that the Tribunal, while dealing with appeals, references, revisions, would act giving strict adherence to the procedure prescribed in the CPC, for deciding a matter as followed by the Civil Court and certain powers have also been conferred upon it, as provided in the Cr.P.C. and IPC. Thus, we do not have any hesitation in concurring with the finding recorded by the High Court that the Tribunal is akin to a court and performs similar functions.

[21] However, the question still remains to be considered is that even if the Tribunal have powers like the Civil Court to decide the proceedings before it, does it have powers to grant injunction. Mr. Nanavati pointed out that as per regulation 14, the Tribunal has power to grant stay. Regulation 14 of the Regulations reads as under:

"14. Stay of execution of award or order (1) Pending a decision on an appeal or an application for revision, the Tribunal may direct the execution of any award or order against which the appeal or application is made to be stayed on such conditions as may be deemed fit.

31. An order made under sub-regulation (1) may be vacated or modified by the Tribunal provided that prior notice is given to the party in whose favour such order has been made to show cause why it should not be so vacated or modified."

[22] The Tribunal is, thus, not expressly conferred with the powers to grant interim injunction. The only provision brought to the notice of the Court is regulation 14 which provides for grant of stay of execution of the award or order pending the decision on the appeal or an application for review before the Tribunal.

[23] In the case of Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corporation, 2009 8 SCC 646, the Hon'ble Supreme Court while examining the question whether the Debt Recovery Tribunal is civil court, has observe din para 67, 69, 88 and 123 as under:

> "67. The terms "Tribunal", "court" and the "civil court" have been used in the Code differently. All "courts" are "Tribunals" but all "Tribunals" are not "courts". Similarly all "civil courts" are "courts" but all "courts" are not "civil courts." It is not much in dispute that the broad distinction between a "court" and a "Tribunal" is whereas the decision of the "court" is final the decision of the "Tribunal" may not be. The "Tribunal", however, which is authorized to take evidence of witnesses would ordinarily be held to be a "court" within the meaning of Section 3 of the Evidence Act, 1872. It includes not only Judges and Magistrates but also persons, except Arbitrators, legally authorized to take evidence. It is an inclusive definition. There may be other forums which would also come within the purview of the said definition.
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> 69. Civil court is a body established by law for administration of justice. Different kinds of law, however exists, constituting different kinds of courts. Which courts would come within the definition of the civil court have been laid down under the Code of Civil Procedure itself. Civil Courts contemplated under Section 9 of Code of Civil Procedure find mentioned in Section 4 and 5 thereof. Some suits may lie before the Revenue Court, some suits may lie before the Presidency Small Causes Courts. The Code of Civil Procedure itself lays down that the Revenue Courts would not be courts subordinate to the High Court.
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> 88. We have noticed hereinbefore that Civil Courts are created under different Acts. They have their own hierarchy. They necessarily are subordinate to the High Court. The appeals from their judgment will lie

before a superior court. The High Court is entitled to exercise its power of revision as also superintendence over the said courts. For the aforementioned purpose, we must bear in mind the distinction between two types of courts, viz., civil courts and the courts trying disputes of civil nature. Only because a court or a tribunal is entitled to determine an issue involving civil nature, the same by itself would not lead to the conclusion that it is a civil court. For the said purpose, as noticed hereinbefore, a legal fiction is required to be created before it would have all attributes of a civil court.

123. Sub-section (3) raises a legal fiction that the proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for all the purposes of section 196 of the Indian Penal Code, 1860. The very fact that a legal fiction has been created and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for purposes of sec. 195 and Chapter XXVI of the Code of Civil Procedure, 1973, itself suggests that the Parliament did not intend to take away the jurisdiction of the civil court. In any event, the said legal faction has a limited application. Its scope and ambit cannot be extended. In Bharat Bank Ltd. it has clearly been held that although the labour court may have all the trappings of a court, but it is still not a court."

[24] In the case of Rikhabsao Nathusao Jain versus Corporation of the City of Nagpur and others, 2009 1 SCC 240, in the context of the jurisdiction and scope of exercise of powers of injunction by the District Judge under the provisions of City of Nagpur Corporation Act 1948 and in the context of Order 39 of the Code of Civil Procedure, the Hon'ble Court held and observed in para 25 and 28 as under:

"25. The Court indisputably has all incidental powers so as to enable it to proceed in accordance with law. It is, however, difficult to conceive that its jurisdiction is plenary in nature. The jurisdiction of the civil court in terms of sec. 287 of the Act is barred. If the contention that the District Judge has all the powers, whether incidental or supplemental, as has been 17 advanced by Mr. Rao is correct, it is difficult to comprehend as to why the legislature has barred the jurisdiction of the civil court. Keeping in view the nature of jurisdiction conferred upon the District Judge as also in view of the fact that the Civil Court's jurisdiction has been excluded in determining the said

question, we have no other option but to hold that the jurisdiction of the District Judge is limited. If a jurisdiction is confined to grant of mandatory injunction, the court may in a given case also exercise its power to pass prohibitory injunction. We would also assume that if an order of injunction can be passed in favour of the applicant, in a given case, it may be passed in favour of the non-applicant also. But, such a power must be exercised whether in favour of the applicant or non-applicant, having regard to the scope of the limited jurisdiction to be exercised by the District Judge in terms of section. 286(5) of the Act. It is, therefore, difficult to comprehend that it has an implied power to grant mandatory injunction and that too suo motu.

28. It is one thing to say that the learned District Judge could direct respondent No. 1 to point out as to the provisions of the building byelaws which are said to have been violated so as to consider the merit of the application filed by appellant but it would be another thing to say that it had the jurisdiction to direct it to reconsider the matter of granting sanction of building plan without the defect pointed out by it rectified. We may, furthermore assume that even that was within the purview of the jurisdiction of the learned District Judge. For the said purpose, we may notice the nature of implied power, which the civil court is entitled to exercise. An implied power on the part of civil court is conceived of having regard to the interest of the parties, as for example, power to admit appeal includes power to stay [see : ITO v. MK Mohammed Kunhi or power to grant maintenance includes power to grant interim maintenance [See Savitri w/o Govind Singh Rawat v. Govind Singh Rawat, 1985 4 SCC 337], but we should not also be unmindful of the fact that the power to grant injunction is a special power which may be found to be absent in certain jurisdictions, as for example, the provisions of the Consumer Protection Act [See Morgan Stanley Mutual Fund v. Kartick Das]."

[25] Thus, when the Tribunal is not conferred with the express powers to grant injunction, it is difficult to trace the powers to grant injunction in all matters before the Tribunal under section 76 of the Act. Such powers to issue temporary injunction are however specifically conferred to the Mamlatdar by section 70(nb) of the Act. Section 70 provides for duties and functions to be performed by the Mamlatdar for the purposes of the Act. The order passed by the Mamlatdar either under clause (b) or clause (nb) of

section 70 of the Act is appealable before the Collector under section 74 of the Act and the other orders passed by the Mamlatdar in performance of his duties and functions under section 70 of the Act are also appealable before the Collector. Therefore, at the best, it could be said that in connection with the matters for which the Mamlatdar is conferred with express power to issue temporary injunction when are brought before the Tribunal by way of revision application under section 76 after the order of the Collector passed in appeal under section 74, the Tribunal may have jurisdiction to grant temporary injunction.

[26] In the case on hand, appeal preferred before the Deputy Collector by respondent Nos. 4 to 8 was not against the order passed by the Mamlatdar for the matters covered under section 70 of the Act, and therefore, the Tribunal could be said to have no jurisdiction to grant interim injunction in the revision application preferred by respondent Nos. 4 to 8.

[27] Irrespective of the above aspects of jurisdiction, the Court finds that the respondent No.4 to 8 did not deserve grant of any interim relief on account of their conduct. Any party who remains idle for a long time to claim any right in the property may not be entitled to claim equitable relief especially when such party is just onlooker of the happenings of eventsdevelopments during such long time. It may be that such party may allege that he is deprived of his right in property in fraudulent manner and urge that on account of fraud, delay, howsoever long may be, shall not come in his way to seek annulment of invalid and void order. However, such allegation of fraud may not be the only consideration to grant equitable relief of injunction. His conduct in not taking timely remedy cannot be ignored while considering his plea for interim relief. In the case on hand, respondent No.4 to 8 have averred in their application for condonation of delay occurred in filing the appeal before the Deputy Collector that after they received information under the Right to Information Act, 2005, they came to know that the record of the Ganot Case and the order dated 17.5.1962 alleged to have been passed therein were not available and, therefore, the panchanama for taking possession based on above such order and entry for such possession in the revenue record was forged, fraudulent, nullity and void. The petitioners have filed their reply to such application stating that for 50 years, entry is not challenged and conspiracy is planned against the trust to snatch away the trust property. It is also stated that the lands were included in the TP Scheme and the final plots were given under the TP Scheme to the petitioners and the petitioners have been running schools and colleges on the land in question with open ground and the open ground is being used as play ground and for other social

activities with the permission of the Charity Commissioner for raising income for the trust.

[28] Time period of 50 years is more than half century in life expectancy of every human being. Though there are allegations that the record of Ganot case, and the order of Panchkayas for taking possession are non-existent and that the possession was shown to have been taken from Bai Jadi in fraudulent manner, such allegations themselves are not sufficient to ignore conduct of respondent No. 4 to 8 in remaining dormant or indolent for their alleged right. The petitioners have placed on record with their petition the copy of re-distribution and valuation statement issued under the Town Planning Act, 1954 on finalizaiton of the T.P. Scheme. As could be seen from the copy of such statement at Annexure-I, Vanita Vishram Trustee Gokuldas Kahandas Parekh and others are shown to be the owners of the land and the FP No.601 against the OP No. 601 constituted of the survey numbers of the lands in question is shown to have been allotted to them.

[29] The TP Scheme was sanctioned under the Bombay Town Planning Act, 1954 in the year 1977 as found mentioned at the bottom of document at Annexure E. The present Town Planning Act, 1976 came into force thereafter on 30.1.1978. Section 19 of the Bombay Town Planning Act, 1954 reads as under:

> "19.(1) Where there is a disputed claim as to the ownership of any piece of land included in an area in respect of which the local authority has declared under section 2 its intention to make a town planning scheme and any entry in the record of rights or mutation register relevant to such disputed claim is inaccurate or inconclusive, an inquiry may be held on an application being made by the local authority or the Town Planning Officer at any time prior to the date on which the Town Planning Officer draws up the final scheme under sub-section (1) of section 32, by such officer as the State Government may appoint for the purpose of deciding who shall be deemed to be the owner for the purposes of this Act.
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> (2) Such decision shall not be subject to appeal but it shall not operate as a bar to a regular suit.
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> (3) Such decision shall, in the event of a Civil Court passing a decree which is inconsistent therewith, be corrected, modified or rescinded in accordance

with such decree as soon as practicable after such decree has been brought to the notice of the local authority either by the Civil Court or by some person affected by such decree."

[30] As per the above provisions, for the dispute as to the ownership of any piece of land included in the TP Scheme or in respect of any entry in record of rights or mutation register claiming to be inaccurate or inconclusive, the remedy was available to either Bai Jadi or to any other heirs of Bai Jadi including respondent No.4 to 8. It is not the case of respondent No.4 to 8 that any objection or dispute was raised before the Town Planning Scheme was finalized. Though it can be said that the rights of the tenants protected under the Act were not affected, however, the conduct of respondent No.4 to 8 in not lodging any claim before the TP Authority and thereafter sitting idle for their rights for a further period of more than forty years would certainly disentitle them to claim equitable relief. But, the Tribunal observed on merits of the case to find prima facie case for grant of injunction to respondent No.4 to 8. The Tribunal took strain to observe that the ancestors of respondent No.4 to 8 appeared to be in possession as on 1.4.1957 and thereafter, their names continued in revenue record till 1970 and as submitted that no proceedings under sec.31 to terminate the tenancy were taken nor the petitioners made any application under sec.29 of the Act the procedure adopted for taking possession on the basis of the order dated 17.5.1962 appeared to be suspicious. Such observations of the Tribunal on merits would be slashed by the conduct of respondent No.4 to 8 of not making any complaint or grievance for long time of 50 years at the time of considering their application for interim relief. It is required to note that out of 22 heirs of Bai Jadi as per pedigree at page 216 (though Mr. Thakore stated that the total heirs were 13), only 5 heirs respondent No.4 to 8 had chosen to file appeal before the Deputy Collector for the land situated in the posh area of the city of Surat where the price of the land is sky rocketing.

[31] The Court finds that considering the conduct of respondent No.4 to 8 in approaching the Deputy Collector after a period of 50 years seeking declaratory relief and on account of intervening events of sanctioning of TP Scheme in the year 1977 and use of the land by the petitioner for educational purposes and for other social activities permitted on the open land by the Charity Commissioner, the respondent No.4 to 8 did not deserve grant of any interim relief in their favour. The respondent No.4 to 8 who have allowed the petitioner trust to enjoy the land for such a long time cannot be made entitled to interim relief of status quo against the petitioners. Not only this but the stay

against the order made by the Deputy Collector will have nil effect and will be of no fruitful purpose in as much as the order of Deputy Collector under challenge before the Tribunal is of rejection of application for condonation of delay preferred by respondent No.4 to 8 and stay of such order will serve no purpose.

[32] The other points raised as regards exemption available under sec. 88C of the Act to the petitioner trust are not required to be considered. Mr. Nanavati however relied on the decision in the case of Shamshad Ahmad v. Tilakraj Bajaj, 2008 9 SCC 1 as regards powers of the High Court under Article 226/227 of the Constitution of India. In the said decision, Hon'ble Supreme Court has held and observed in para 38 and 42 as under:

> "38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a Court of Appeal or a Court of Error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate Court or inferior Tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior Court or Tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts and inferior Tribunals within the limits of law.
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> 42. In State v. Nayjot Sandhu, (SCC pp. 656-57 para 28), this Court reiterated;
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> "Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court

itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised 'as the cloak of an appeal in disguise'."

[33] The High Court thus while exercising the powers under Article 226/227 of the Constitution of India though not acting as appellate court, however, when it finds that the subordinate court or the tribunal acted beyond the bounds of their authority and in ignorance of the settled principles for considering conduct of the parties seeking equitable relief, it can certainly interfere with the order made by the subordinate Court or Tribunal in exercise of the powers under Article 226/227 of the Constitution of India. In the present case, as stated above, this Court finds that the Tribunal has gone beyond the bounds of its authority in granting impugned order in favour of respondent No.4 to 8 and ignoring conduct of respondent no.4 to 8 in seeking equitable relief, and therefore, interference with the order made by the Tribunal is called for in exercise of the powers under Article 226/227 of the Constitution of India.

[34] In the case of Mandali Ranganna and others versus T. Ramchandra and others, 2008 11 SCC 1, on the aspects of conduct of parties to be considered for grant of equitable relief of injunction, the Hon'ble Supreme Court has held and observed in para 21 and 22 as under:

"21. While considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.

22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is a very valuable one. We are not

however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The Courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the Courts is imperative. Contentions raised by the parties must be determined objectively."

[35] In light of above and for the reasons stated above, the impugned order is quashed and set aside. The petition stands finally disposed of accordingly.

[36] After the pronouncement of the judgment, learned Senior advocate Mr. Nanavati requested to stay the present judgment. Learned Senior advocate Mr. Thakore has objected to such request.

[37] In the facts of the case, the request to stay the present judgment is refused.