

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 992 of 2023****In****R/SPECIAL CIVIL APPLICATION NO. 14546 of 2003****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2021****In****R/LETTERS PATENT APPEAL NO. 992 of 2023****With****CIVIL APPLICATION (FOR ADDITIONAL EVIDENCE) NO. 2
of 2021****In****R/LETTERS PATENT APPEAL NO. 992 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL** Sd/-**and****HONOURABLE MR. JUSTICE N.V.ANJARIA** Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

STATE OF GUJARAT
Versus
MASTER SILK MILLS PVT LTD

Appearance:

MR K.M. ANTANI, ASSISTANT GOVERNMENT PLEADER for the Appellant(s) No. 1,2

MR PERCY KAVINA, SENIOR ADVOCATE WITH

MR VIRAL K SALOT(3500) for the Respondent(s) No. 1

MR ROHAN LAVKUMAR, ADVOCATE WITH

MR AADITYA DAVE, ADVOCATE FOR NANAVATI

ASSOCIATES(1375) for the Respondent(s) No. 1

NOTICE SERVED for the Respondent(s) No. 2

=====

**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR. JUSTICE N.V.ANJARIA

Date : 24/07/2023

ORAL JUDGMENT

**(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL)**

1. This intra-court appeal is directed against the judgment and order dated 3.7.2017 passed by the learned Single Judge in Special Civil Application No. 14546 of 2003, arising out of the proceedings initiated by the Collector, Bhavnagar under Section 79A of the Gujarat Land Revenue Code (hereinafter referred to as 'the Revenue Code, 1879') culminated in passing of the order dated 27.8.2003.

2. The facts in brief placed before us are that the land-in-question was given on lease to one Shri Sheth

Hargovinddas Jivandas, purchaser in title of the petitioner company / respondent herein, for the purpose of establishing an artificial silk cloth factory by the erstwhile ruler of the State of Bhavnagar in the year 1940 by Hazoor Order No. 177 dated 28.2.1940. By another Hazoor Order No. 450 passed by the erstwhile ruler of the State of Bhavnagar, the land-in-question was given on lease to M/s. Ramniklal Gordhandas & Co., who was the administrator of Master Silk Mills, for the purpose of establishing an artificial cloth factory. On the basis of the Kabulatnama dated 19.9.1941, the petitioner company was inducted in the land-in-question and started artificial cloth factory in the year 1940.

3. It is the case of the petitioner company that the right of the State to deal with the land-in-question within the local limits of a Municipality had been conferred upon the Municipality concern. There is a reference of the letter of the Government dated 10.8.1965, conditions of which have been extracted by the learned Single Judge in the order impugned, which demonstrate that the right to sell

the land and to give it on rent, lease was conferred on the Municipality, subject to certain conditions mentioned therein. It is noted that the Resolution No.37 dated 19.1.1940, whereby the rights of the State of Bhavnagar to effect sale deed of the land in the municipal area of Bhavnagar bestowed by the Bhavnagar State was given to the Bhavnagar Municipality, confers only the right or authorisation to sell the State Land as a representative of the government and there is no vesting of the title in the Municipality. The land-in-question was included in the industrial zone of the development plan of Bhavnagar Urban Development Authority vide notification dated 8.7.1994.

4. A lease deed dated 25.11.1965 was executed which came to be modified vide lease deed dated 15.10.1990 and the petitioner company was permitted to use the land admeasuring 19225.44 sq. mtrs. out of total area of Survey No. 333/2, both for commercial and industrial purposes, as also for other small scale industries. As the business of textile mill was not earning profits, the

petitioner company decided to shift to another business of diamond cutting and for the use of the land-in-question for the purpose of new business, requisite permission for development of the land was obtained from the Municipal Corporation viz. Bhavnagar Municipal Corporation. The last permission in this regard was granted to the petitioner company on 13.11.2000.

5. A show cause notice dated 13.11.2000 was issued by the Collector calling upon the petitioner Company as well as the Municipal Corporation, Bhavnagar to show cause as to why the proceedings for breach of conditions of the original lease deed with respect to the land-in-question be not initiated. A detailed reply to the said show cause notice was given by the petitioner company as also Bhavnagar Municipal Corporation, separately, making a statement therein that all such lands, which were given on lease to some other parties, the question of interpretation of Resolution No. 37, dated 19.1.1940, came up for consideration before the coordinate bench, wherein the Collector, Bhavnagar was also a party and

those matters had travelled upto the Apex Court and the decisions of the coordinate benches were affirmed.

6. The show cause notice and the order dated 27.8.2003 passed by the Collector is, thus, contrary to the decision of the Apex Court. The Collector has, thus, erred in passing the order dated 27.8.2003 to delete the entry regarding the land-in-question in the revenue records and directing for divesting of the petitioner Company from the land in question.

7. While considering the relief prayed for by the petitioner company for quashing of the order dated 27.8.2003 passed by the Collector, Bhavnagar, it is noted by the learned Single Judge that the learned Additional Advocate General appearing for the State therein had emphasised that the change of use of land would attract the powers of the Collector under the Revenue Code, 1879. The insistence was on the terms and conditions of the extensions granted under the lease deed in the year 1965, to submit that it did not contemplate establishment

of a Diamond trade centre, the shopping complex which would come up in the place of the open land and the present structure of the Mill will be handed over to individuals and that aspect was impermissible under the terms and conditions of the lease deed. It was argued that the petitioner company had an alternative remedy of approaching revisional authority under Section 211 of the Revenue Code, 1879. The order passed by the Collector is in accordance with law and having been passed in due compliance of the principles of natural justice, no interference was required. The decisions relied upon by the counsel for the petitioner company therein will not cover the controversy in the instant case.

8. On the other hand, the insistence of the counsel for the petitioner company was on the decision of the Coordinate bench of this Court to submit that the issue has been settled upto the Apex Court as it was held therein that Bhavnagar Municipal Corporation had authority of law to deal with the land within its municipal area of territorial jurisdiction, the action of the Collector

was illegal. It was further argued that alternative remedy is not an absolute bar to deny discretionary jurisdiction of this Court. On the submissions of the learned counsel for the parties, the writ court formulated four questions for consideration which read as under:

- (1) Whether this writ petition is maintainable in wake of the availability of the alternative remedy, which is not resorted to by the petitioner?
- (2) After once the matter is admitted, whether it is permissible for the Court to entertain such a plea of availability of the alternative remedy to learn relief to the petitioner?
- (3) Whether the exercise of the powers on the part of the Collector under the Gujarat Land Revenue Code is in contravention of the law laid down by the Apex Court in case of 'BHAVNAGAR MUNICIPALITY VS. UNION OF INDIA AND ANOTHER' (Supra).
- (4) Whether the municipality is permitted to sanction

the plan of conversion of lease hold property from Mill to the shopping centre?

9. On the first issue of maintainability of the writ petition, taking note of various decisions of the Apex Court and this Court, it was concluded that the provisions of a statute will not be a bar to curtail the powers of the High Court under Article 226 of the Constitution of India. It was noted that in the facts and circumstances of the case, the Court was required to consider the issue involved and the decisions rendered by this Court and the Apex Court before addressing on the question of alternative remedy. It was considered that the Apex Court in ***Bhavnagar Municipality vs. Union of India, AIR 1990 SC 717*** has decided the issue pertaining to the interpretation of Resolution No. 37 dated 19.1.1948 passed by the then State of Bhavnagar to the Municipality of the old Bhavnagar State, whereby the right to give the lands within the limits of municipalities, on rent, lease and to take rent for them, was conferred upon the Municipality. It was clarified by the Apex Court, as noted

by the learned Single Judge that the resolution dated 19.1.1948 confers only the right or authorisation to sell the State land as a representative of the government and there is no vesting of the title in the Municipality. It was noted by the learned Single Judge that the lease deed dated 25.11.1965 was executed between the petitioner company and Bhavnagar Municipality constituted under the the Gujarat Municipalities Act, 1963. The lessee was granted land admeasuring about 11 bigha, 5 guntha (18308 sq. mts.) out of Survey No. 333/2 on lease for a period of 99 years in the year 1940 and additional land of 2 bigha and 4 guntha was also leased vide Hazoor Order No. 177 dated 28.2.1940 and Hazoor Order No. 450 dated 7.9.1940, for a period of 99 years. Bhavnagar Municipality being the statutory successor of the erstwhile Bhavnagar State in respect of the said land and being in the capacity of a lessor, had executed the lease deed dated 5.11.1965. The amendment in the lease deed dated 25.11.1965 has been made on 15.10.1990 and the use of the land specified therein is commercial as well as

industrial, including other small industries.

10. Taking note of the above facts, recording the submissions of the learned counsel for the petitioner company based on the previous decision in Bhavnagar Municipal (supra), the learned Single Judge has noted that it was held by the Apex Court that the Collector had no power to issue show cause notice under Section 79A of the Revenue Code, 1879 on the ground that the Municipality was not competent to take decision in respect of transfer of the subject matter as the title had vested in the State Government, inasmuch as, Bhavnagar Municipality had authority to collect rent and to transfer by lease. It was noted that the coordinate bench of this Court in Special Civil Application No. 15075 of 2003 had disapproved the action initiated on the part of the authority in re-visiting the issue settled by the Apex Court. It was held that subsequent amendment in the lease deed permitting the use of land for both, commercial and industrial purposes like diamond industry and such other small industries, by adding words to the

original lease deed, was well within the jurisdiction of Bhavnagar Municipality. It was noted that neither there has been any challenge to the lease deed of the year 1965 or 1990, nor there is any dispute with regard to the authority of the Municipality to execute such lease deed. In absence of any challenge to the lease executed by the competent authority, the initiation of proceedings by the Collector for summary eviction of the petitioner company referring it to be an unauthorised occupant in the proceedings under Section 79A of the Revenue Code, 1879 was wholly without jurisdiction. It was further noted that the correct interpretation of Resolution No. 37 dated 19.1.1948 published in the Bhavnagar Darbar Gazette is that the land vested in the State and the ownership of the land would be that of the State, but the grant of lease hold right and such other permission is vested in the Municipality. The petitioner company has a subsisting lease upto the year 2037 and in absence of any challenge to the lease deeds of 1965 and 1990, the eviction of the petitioner company from the land-in-question by invoking

summary provisions under Section 79A of the Revenue Code, 1879 was not permitted.

11. Taking note of the above findings written by the learned Single Judge, we are required to further note the arguments of Shri K. M. Antani, learned Assistant Government Pleader for the appellant State. It was vehemently urged by the learned Assistant Government Pleader that to examine the validity of the action of the Collector under Section 79A of the Revenue Code, 1879, the Court is required to consider the terms and conditions of the Hazoor Orders of the year 1948, which were not brought before the writ court. It was argued that various documents which were not forming part of the original writ petition, having bearing on the adjudication of the issue raised, have been filed by way of an application for bringing additional evidence on record which is to be allowed. It was then submitted that for change in the terms and conditions of the original lease deed, as per the instructions issued by the State Government vide order dated 10.8.1965, prior sanction of the State was required,

which had not been sought by Bhavnagar Municipality while executing the lease deed dated 15.10.1990. The intention of the petitioner company to construct the Shopping Mall for diamond trading business which amounts to use of land for commercial purpose, declared by public advertisement dated 5.8.2000, had led to initiation of the proceedings under Section 79A of the Revenue Code, 1879. Being *prima facie* satisfied about the breach of terms and conditions of the lease deed, the Collector had issued a show cause notice dated 13.11.2000 to the petitioner company. The proceedings were conducted after giving due opportunity of hearing and since the change of use of the land, subject matter of lease, was not permissible, the Collector cannot be said to have erred in proceeding to pass the order dated 27.8.2003, directing for deletion of the entry qua the petitioner company and the Municipal Corporation and further vesting the land with the State Government. The submission is that without looking to the terms and conditions of the Hazoor orders of the year 1948, which

determine the conditions of the lease, the learned Single Judge could not have decided the controversy, merely based on the decision of the Apex Court in the case of *Bhavnagar Municipality (supra)* and the subsequent decision of the Coordinate bench of this Court. Shri Percy Kavina, learned Senior Advocate for the petitioner Company in rebuttal has relied on the reasoning written by the learned Single Judge as noted above to support his submission on the validity of the order passed by the Collector.

12. Having heard learned counsels for the parties and perused the records, we may first go through the provisions of Section 79A of the Revenue Code, 1879. For ready reference, Section 79A of the Revenue Code, 1879 is reproduced herein under:

“79-A. Summary eviction of person unauthorisedly occupying land. - Any person unauthorisedly occupying, or wrongfully in possession of, any land -

(a) to the use or occupation of which by

reason of any of the provisions of this Act he is not entitled or has ceased to be entitled, or

- (b) which is not transferable without previous sanction under section 73-A or section 73-AA or section 73-AB by virtue of any condition lawfully annexed to the tenure under the provisions of section 62, 67 or 68.

Provided that this section shall not apply in the case where the tribal transferor does not make an application under clause (a) of subsection (3) of section 73-AA within the time specified in that clause for restoration of possession.”

13. A careful reading of the said provision indicates that the proceedings under Section 79A of the Revenue Code, 1879 can be initiated for eviction of an unauthorised occupant or a person who is in wrongful possession of the any land. The eviction of such a person can be made by initiating proceeding under Section 79A of the Revenue Code, 1879, which are summary in nature, in case the conditions of the said provision are attracted, which can

be found in clauses (a) and (b) of the said section. There are two conditions, in which the Collector would have jurisdiction to evict any person summarily by invoking the provision of Section 79A, viz. (i) the first is that in case the person who is in use or occupant of any land is not entitled to or ceased to be entitled to, by reason of any provision of the Revenue Code, 1879. it is not the case of the appellant that the condition in clause (a) of Section 79A is attracted in the instant case, conferring jurisdiction upon the Collector to initiate proceedings under the said provision; (ii) the second condition as in clause (b) of Section 79A refers to the transfer of any land in violation of certain provisions of the Revenue Code, 1879, mentioned therein. The said condition cannot be said to be attracted, in view of the facts and circumstances of the instant case brought before us.

14. It is clear that the power conferred upon the Collector for summary eviction of any person, terming him as unauthorised occupant or illegal use or occupation of any alleged, is guided by the provisions of Section 79A

of the Revenue Code, 1879.

15. In the instant case, there is no dispute about the fact that the petitioner Company had been inducted in the land / property in question as a lessee. The lease is still subsisting and has not been cancelled or declared invalid by any Court of law. Any issue pertaining to violation of terms and conditions of the lease deed, in view of the arguments made by the learned Assistant Government Pleader, would require a factual inquiry which is impermissible within the scope of Article 226 of the Constitution of India. The fact remains that the petitioner Company can only be evicted by drawing a proper proceeding, wherein determination by appreciation of evidence on the question of fact and law can be made on the dispute of violation of terms and conditions of the lease deed. In any case, the petitioner Company cannot be said to be an unauthorised occupant or a person who is in wrongful possession of the land in question.

16. For the aforesaid, in our considered opinion, the

Collector had no jurisdiction to proceed under Section 79A of the Revenue Code, 1879. The usurption of power on the part of the Collector to seek eviction of the petitioner Company in a summary manner, is hit by the vice of jurisdiction. For the above reasons, in addition to the findings returned by the learned Single Judge on the issue pertaining to determination of power of Bhavnagar Municipal Corporation to execute the lease deed dated 15.10.1990, permitting the petitioner Company to use the land-in-question for industrial as well as commercial purposes, we do not find any merit in the appeal. The instant appeal is dismissed being devoid of merit. Civil applications do not survive and accordingly the civil applications are disposed of.

Sd/-

(SUNITA AGARWAL, CJ)

Sd/-

(N.V.ANJARIA, J)

Bharat