

(2011) 09 GUJ CK 0033
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1742 of 2009 in Special Civil Application No. 2248 of 1992

B.J. Gadhvi

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Citation : (2011) 09 GUJ CK 0033

Hon'ble Judges : S.J. Mukhopadhaya, C.J;K.M. Thaker, J

Bench : Division Bench

Advocate : S.N. Shelat and Shital R. Patel, for the Appellant; M.L. Shah, AGP, for the Respondent

Judgement

K.M. Thaker, J.—In present Appeal under Clause 15 of the Letters Patent the Appellant-original Petitioner has assailed the judgment and order dated 24.8.2009 rejecting present Appellant's appeal.

2. The factual background of present appeal is that:

2.1. The Appellant-petitioner, an Ex-serviceman, was released from Army Services w.e.f. 1.2.1973. He immediately joined Police Service.

2.2. Somewhere in 1980, while the Appellant-petitioner was posted as District Superintendent of Police at Valsad, he applied for grant, on lease, of land bearing Survey Nos. 550 and 552 situate at village Magod, Taluka Valsad for plantation of coconut trees. It comes out from the record that the lands in question were assigned to Village Panchayat and were gauchar land (pasture land).

2.3. It also emerges from the record that on 29.11.1980, the Gram Panchayat passed resolution in respect of the said lands, i.e. lands bearing Survey Nos. 550 and 552, resolving that it had no objection if the said lands were granted by the Government to present Appellant-petitioner. The Appellant-petitioner has also claimed that in response to queries by the Collector, the District Agriculture

Officer, the Revenue Department and the District Soldier Board had also opined that the lands can be considered for cultivation of coconut trees.

2.4. Thereafter, the Government, vide its letter dated 18.11.1981 informed the Collector that his office was competent to grant the land and he may take necessary action.

2.5. In pursuance of the said communication, the Collector, Valsad passed an order dated 5.12.1981 reclaiming the gauchar land, i.e. the land out of the lands bearing Survey No. 550 admeasuring about 3-H, 53-A and 9-Sq.Mts. (equivalent to 8-Acres & 29-Gunthas) and further granted the said land to the Appellant-petitioner on lease for the purpose of plantation of coconut trees, for period of 5 years on payment of token rent of Re.1/-per year.

2.6. Thereafter, on 7.12.1981, i.e. within two days, after the land was granted on lease to the Appellant-petitioner, he filed another application before the Collector, Valsad and requested that so as to make his agricultural operations economically viable, he may be allotted further land of Survey No. 552 (as requested by him earlier) and also requested for extension of the lease period from 5 years to 20 years.

2.7. The Collector, Valsad, by order dated 27.1.1982, i.e. within period of about 50 days, granted additional land admeasuring 8-Acres & 4-Gunthas in favour of the Appellant-petitioner and also made the term of lease of both the lands for 20 years (extending, within about 50 days) 5 years" period to 20 years for previously granted lease.

2.8. Hence, the net result of the above mentioned two orders is that, the Collector granted, in all,16-Acres and 33-Gunthas of land in favour of the Appellant-petitioner for cultivation of coconut trees on lease for a period of 20 years on payment of token rent of Rs. 1/-per year. Since small portion of the land out of the land leased to the Appellant-petitioner was required for the purpose of houses of weaker section, the Collector, by order dated 10.6.1982 reclaimed and allotted 14-Gunthas of Survey No. 550 to 18 members of the weaker section of the society.

2.9. After about 19 months since the said order dated 27.1.1982, in August 1983, the Appellant-petitioner once again approached the Collector with a request that since he had already planted large number of coconut trees and invested amount in agri-equipments, the land granted on lease to him, may be allotted on "ownership basis" rather than on "lease basis".

2.10. Upon considering the said request, the Collector passed order dated 11.5.1987 converting grant of land on lease basis into allotment on permanent basis on payment of only Rs. 825/-.

2.11. Thereafter, on 16.10.1990, the competent authority in the Revenue Department issued a show-cause notice to the Appellant-petitioner calling upon the Appellant to show cause and explain as to why all the three orders passed by

the Collector, Valsad be not recalled. The notice was issued, inter alia, on the grounds that before deleting the land from the head of gaucher lands, proper opportunity to submit objections, if any, was not given to the people of village and it was also not considered as to whether sufficient land for grazing would be available to the people of the village or not and that though the Government had declared a policy for cultivation of coconut trees on 20.3.1965 and the order was ab-initio void.

2.12. The Appellant-petitioner opposed the notice vide his reply and also made oral submissions through his counsel.

2.13. The Secretary (Appeals) after hearing the counsel of the Petitioner, by order dated 7.12.1991 cancelled the grant of land made by the Collector, Valsad through above mentioned three orders. The Secretary (Appeals) in its order observed, inter alia, that, the Collector, Valsad before granting gauchar land in favour of the Appellant-petitioner, did not consider relevant aspects viz. (i) live stock and extent of gaucher land available in the village, (ii) interested persons were required to be called for for making applications, (iii) since the Petitioner did not hold agricultural lands at Magod village, the Government's policy did not permit grant of land to him, and (iv) the Petitioner, an ex-service man, was not entitled for any priority in matter of grant of land and his income also did not qualify him for the same. On considering the said and other aspects, the Secretary (Appeals) set aside the orders passed by the Collector, Valsad.

2.14. Being dissatisfied and aggrieved with the order dated 7.12.1991 passed by the Secretary (Appeals), the Petitioner preferred the writ petition being SCA No. 2248 of 1992 in the month of January-1992. The learned Single Judge, upon considering all the documentary evidence placed before him and upon taking into account the submissions made on behalf of both the parties, by order dated 24.8.2009 rejected the writ petition. Hence, present Appeal.

3. Mr. Shelat, learned Senior Counsel, with Mr. Shital Patel, learned advocate, has appeared for the Appellant-petitioner and Mrs. Shah, learned AGP, has appeared for the Respondent - State Government. Heard the learned advocates appearing for the contesting parties.

3.1 Mr. Shelat, learned Senior Advocate for the Appellant, has submitted that the impugned order by the Additional Secretary (Appeals), Revenue Department dated 9.12.1991 is contrary to the policy and proceeds on incorrect reading of the policy. Although Mr. Shelat, learned Senior Counsel, initially did submit that the learned Single Judge erred in not accepting the present Appellant's submission that since the impugned action was taken after delay [i.e. after period of about 3 years], it was not sustainable in view of the position of law settled by catena of judgments, and that in the policy applicable at the relevant time, any criteria on the ground of income of the ex-serviceman was not prescribed and that the Appellant had made investments from time to time in agri-equipments and plantation etc. and that the learned Single Judge erred in

not accepting the present Appellant's submission that the lands were granted after following the procedure and in accordance with the policy declared in the cited resolutions. Mr. Shelat actually emphasized and concentrated on the Collector's letter dated 29.11.1983 and the affidavit filed on the record of present appeal by the Respondent-State wherein it is stated that the Collector had clarified that the land was granted to the Appellant as ordinary citizen and not as ex-serviceman and on the notings on the file and submitted that the judgment and order of the learned Single Judge confirming the decision of the Additional Secretary (Appeals) does not take into account the clarification made by the Collector in his reply-letter and the notings on the file [the same were not available on record before the learned Single Judge] and the order of the Secretary also did not take into account the said details and that therefore, the matter deserves to be reconsidered and may be remitted for fresh decision.

3.2. Ms. Shah, learned AGP, has opposed the said submissions and relied on the reply affidavit dated 18.12.2006. Ms. Shah, learned AGP, has opposed the submission of Mr. Shelat, learned Senior Counsel, and submitted that the grant of land to the Appellant was unauthorized and contrary to the relevant and applicable policy. She supported the judgment and conclusions by the learned Single Judge and submitted that the order passed by the Principal Secretary (Appeals), Revenue Department on 7.12.1991 is justified and based on facts and evidence and that the learned Single Judge is right in confirming the same. She also submitted that the Appellant had applied for grant of land on the ground that he was retired ex-serviceman from Army and his application made on the said premise was considered and granted by taking into account the said position of the Appellant. She also submitted that on the basis of the reply given by the Collector, the Appellant is now changing his stand and claiming that the land was not granted to him as ex-serviceman, but was granted as an ordinary citizen. She submitted that such change of stand by the Appellant is not justified and may not be entertained. She further submitted that the Appellant's contention on the ground of alleged delay is unjustified and has been rightly rejected by the learned Single Judge. She submitted that the affidavit dated 2.11.2010 filed by the Under Secretary, Revenue Department, is being wrongly construed by the Appellant. The learned AGP submitted that while making orders of granting land to the Appellant, the applicable Government guidelines for grant of land for plantation of coconut trees was not followed. She submitted that by the orders in question Gauchar land has been granted, whereas the policy contemplated grant of Government waste land only and not Gauchar land. She submitted that even on the ground of the criterion of income, the order passed by the Principal Secretary and the decision of the learned Single Judge do not suffer from any error as claimed by the Appellant. Ms. Shah, learned AGP, relied on the conclusions recorded by the Principal Secretary in his order to submit that the grant of land to the Appellant on permanent basis at the price of Rs. 825/-only is unauthorized and contrary to the policy as well as applicable guidelines and that therefore, has been rightly set aside. The learned Single Judge has confirmed the

said decision, which does not warrant any interference.

4. We have heard the learned Counsel for the contesting parties and have also perused the record.

5. The learned Single Judge has summarized the contentions of the Appellant-petitioner raised during the hearing of the writ petition in para-5 of the judgment impugned by the Appellant. The facts which emerged from the record available at the relevant time before the learned Single Judge are narrated by the learned Single Judge in paragraphs No. 2.1 to 2.10. Having considered the facts and circumstances of the case and upon taking into account the material available on record and after appreciating the rival submissions of the contesting parties, the learned Single Judge came to the conclusion that the exercise of grant of land to the Appellant though divided in three different orders/stages [viz. orders dated 5.12.1981, 27.1.1982 and 11.5.1987], is one continuous and single exercise which concluded with the order dated 11.5.1987. The learned Single Judge has also come to the conclusion that the Appellant had applied for grant of land as an ex-serviceman and on such premise the application was considered and granted. From the record, learned Single Judge noticed that the Appellant was granted Gauchar land and before reclaiming the Gauchar land, the guidelines and policy were not taken into account and followed. The learned Single Judge came to the conclusion that the entire exercise of initially granting about 8-Acres of land for 5 years at token rent of Re.1/-per year and then expanding the said grant by allotting further about 8-Acres of land and simultaneously expanding the period of grant from 5 years to 20 years and then converting the said grant/lease from lease of 20 years to permanent grant for merely Rs. 825/-for almost more than 16-Acres of land amounts to fraud. The learned Single Judge has also concluded that in view of the income of the Appellant was much more than the prescribed limit and the preferential allotment in favour of the Appellant-petitioner was not in accordance with the Government Resolutions/Policy and the guidelines and that therefore also, the entire exercise was illegal and unauthorized and has been rightly set aside by the Principal Secretary (Appeals), Revenue Department. In view of such conclusions, the learned Single Judge rejected the contentions raised by the Appellant-petitioner including, the ground of delay in initiating the impugned action.

5.1. It emerges from the record and from the observations and conclusions by the learned Single Judge that the Appellant had applied for grant of land on the ground that he was ex-serviceman.

5.2. The application was taken into consideration and having regard to the resolution passed by the Panchayat declaring its No Objection, land admeasuring about 8-Acres and 29-Gunthas was granted, by order dated 5.12.1981, on lease for the purpose of plantation of coconut trees for period of 5 years. Then within about 50 days after another order dated 27.1.1982 further grant of another parcel of land admeasuring about 8-Acres was granted and the lease period for entire large chunk of gauchar land admeasuring about 16-Acres was extended

for period of 20 years. Subsequently, the grant of the said lands on lease was converted into permanent allotment.

5.3. Some facts, which emerge from the record of the petition are that:

(a) The Appellant-petitioner had made application for grant of land as an ex-service man.

(b) The land for which application was made and came to be granted-allotted to the Appellant were gauchar land (pasture land).

(c) After having been released from Army, the Appellant-petitioner had immediately taken up service with police department and was in service in police department at the relevant time.

(d) That during the hearing of petition, the Respondent - State

Government had produced on record of petition a pay-slip of Petitioner which reflected Petitioner's salary was Rs. 2,170/-per month.

(e) However, in his application, the Appellant had stated that his salary was Rs. 12,000/-per annum.

(f) The Petitioner was not resident of district Valsad, he was posted there as District Superintendent of Police.

(g) The Petitioner-appellant was not an agriculturist and did not have any agricultural land in the district.

(h) It was not even the case of the Appellant also that he was an agriculturist and owned, in Valsad district or other district, agricultural land.

(i) The Respondents also contended that the Appellant had applied for lands as an ex-serviceman and the lands were granted on the strength of the resolutions dated 20.3.1965 and 5.5.1967.

5.4. In background of the above noted facts and the submissions, the order came to be passed by the learned Single Judge wherein the learned Single Judge inter alia concluded that the Collector had granted Gauchar land without examining the policy and without considering that the Appellant was not agriculturist and/or that the State's tenancy laws did not permit and rigidly prohibited any person from owning agricultural land outside 8 kMs. radius of his other agricultural holding and that therefore, the learned Single Judge confirmed the order of Principal Secretary (Appeals). It is apparent and obvious that the learned Single Judge reached and recorded the conclusions on the basis of and in light of the material available on record.

6. However, now, during the hearing of present appeal and while making his submissions, it is contended by learned Senior Counsel of the Appellant-petitioner that from the documents and affidavits filed during the hearing of present appeal it comes out that according to the Collector he had granted the

lands to the Appellant-petitioner as an ordinary citizen and not as an ex-service man and that therefore, the matter deserves a re-look as the impugned decision proceeds on the premise that the lands were granted to the Appellant-petitioner as an ex-service man.

6.1. In this context, it is appropriate to note at this stage that certain documents came to be placed on record by the Appellant during the hearing of present appeal under affidavit dated 13.8.2010. The documents placed on record by the Appellant includes Collector's letter dated 29.11.1983 wherein the Collector has, inter alia, stated that, "The Government has allotted the land on lease to the applicant Shri Gadhvi by treating him as general applicant and not in his capacity of ex-serviceman under the provisions of Govt. Resolution dated 20/3/1965."

6.2. Having regard to the Appellant's said affidavit dated 13.8.2010 and the documents placed on record of the appeal along with the said affidavit, the Division Bench {Coram: Hon'ble the Chief Justice and Hon'ble Mr. Justice A.S.Dave} passed an order dated 21.9.2010 wherein it is recorded, inter alia, that:

The learned Counsel appearing on behalf of the Appellant has enclosed certain documents to suggest that 16 Acres of land in Magdod village of Valsad District was not allotted to him on the ground as an Ex-army man. It was allotted by the Collector pursuant to the Government Resolution dated 20.3.1965 for plantation of coconut trees. The Appellant came to know of the aforesaid fact under the Right to Information Act, as at page 454 and the Collector, Valsad also brought the aforesaid fact to the notice of the concerned Secretary by letter dated 29.11.1983. The aforesaid records could not be produced before the learned Single Judge and if such records are taken into consideration, it will be evident that on wrong presumption that the land was allotted to the Appellant as an Ex army personnel, the allotment was cancelled. (Emphasis supplied)

6.3. On the strength of said documents, the learned Senior Counsel for the Appellant would contend that the decision of the learned Single Judge proceeds on the premise that the grant of the said lands to the Appellant was on the basis of ex-serviceman, however, in view of the facts revealed from the documents placed on record of the appeal, the premise of the decision of the learned Single Judge is shaken and lost.

7. The documents which came to be placed on record of the appeal with affidavit dated 13.8.2010 were not available on the record of the writ petition before the learned Single Judge. In the said order dated 21.9.2010 the Division Bench has observed that such facts (i.e. the facts placed on record of appeal by way of the documents annexed to the affidavit dated 13.8.2011) would demonstrate that the allotment was set aside on wrong presumption.

7.1. What is also relevant and what acquires importance is the fact that the proceedings before the learned Single Judge [and also before the competent authority] were contested by the Appellant-petitioner on the ground that he had

applied for the land for the purpose of plantation and cultivation of coconut trees, as an ex-serviceman, however, now, in light of the Collector's letter dated 29.11.1983 the Appellant claims that such benefit or preference or priority was not granted.

7.2. When, in light of the aforesaid contention of the Appellant, the record is examined, it comes out that:

(a) In para-2 of the memo of petition, the Petitioner himself has stated that, "petitioner being an ex-serviceman applied for grant of land to Collector, Valsad....

(b) In the preamble of the 1st order dated 5.12.1981 [i.e. the order by which the land admeasuring about 8-Acres and 29-Gunthas from Survey No. 550 came to be granted to the Appellant] records that the Appellant had applied for grant of land on lease basis for the purpose of plantation of coconut trees, in his capacity as an officer, who rendered service in the Army, the said preamble reads thus:

ORDER

Shri B.J.Gadhvi, District Superintendent of Police, Bulsar has, by his application dated 20-3-1981 applied for grant of land admeasuring Acres 8-29 gunthas out of survey No. 550 and Acre 8-04 gunthas out of Survey No. 552 of village Magod, Taluka Bulsar, totally admeasuring A.16-33 Gs. In his capacity as an officer who has rendered service in the army.

(c) The Petitioner, before the learned Single Judge, heavily relied on an order dated 23.6.1983 passed in SCA No. 2468 of 1982 wherein the Court had recorded, in view of the stand taken by the Respondents in the said petition [which included present Appellant-petitioner, who was Respondent No. 3 in the said petition] that the Respondent No. 3 [i.e. the present Appellant-petitioner] is an ex-serviceman. The said observations in the order dated 23.6.1983 also demonstrate that the Appellant-petitioner herein had claimed that the land was granted to him as an ex-serviceman.

(d) In the petition before the learned Single Judge, the Appellant had filed further affidavit wherein he averred in para-1 that "I say that before the land was granted to me in my capacity as an ex-serviceman, the Dy. Collector, Valsad had addressed a letter dated 18.2.1980.....". Thus, at the stage of the said affidavit also, the Petitioner claimed and asserted that the grant of land was requested for and it was granted to him, as an ex-serviceman.

(e) Even in the letter dated 29.11.1983 of the Collector, on which the Appellant has heavily relied, the Collector also recorded and observed (as per free translation placed on record at page-495/R) that:

vide his letter dated 29/1/1980, Shri B.J.Gadhvi, Dist. Superintendent of Police at Valsad had requested to allot him the land admeasuring 8-29 Acre of Survey No. 550 & the land admeasuring 8-04 Acre of Survey No. 552 (In all, total land admeasuring Acre 16-33 Guntha) situated in Mouje Magod, Tal. Valsad for the

purpose of doing cultivation work, in his capacity of ex serviceman.

(f) The reliance placed on two judgments demonstrate that at the stage of oral submission also, the stress was on the protection or benefit which, according to the Appellant, would and ought be available to him as an ex-serviceman.

(g) In his affidavit dated 2.1.2006 (page-73 para-5), affidavit filed in December-2006 (page-100 para-7) and in further affidavit in December-2006 (page-110 para -1 and 2) also the Appellant had repeatedly stated that land was granted to him as an ex-service man.

7.3. All the above referred averments and documents and submissions which were available on record of the petition before the learned Single Judge clearly demonstrate that all-along the Appellant-petitioner had himself claimed and asserted that the land was allotted to him as an ex-serviceman.

8. Thus, it would be appropriate to also note what was the say and stand of the Respondent - State with reference to Appellant's above noted original stand. In its reply affidavit dated 18.12.2006 before the learned Single Judge, the Respondent - State came out with the stand that:

3. I crave leave of the Hon"ble Court to submit that on proper reading of the order dated 5-12-1981 granting the land in question to the petition, it is very clear that the land was granted as per G.R. Dtd. 20-3 65 & 5-5-67 and that the land granted to Petitioner is a Gaucher (Grazing) land, which is meant for the grazing of cattle of the village. That the land admeasuring H. 3-53-09 Sqr. Mrt. of Survey No. 550 of Village Magodh, Tal. Valsad which was assigned for Gaucher was deassigned and taken under the Government head and thereafter, the same was granted on lease for five years changing the token rent of Re.1/-per year for the purpose of coconut plantation to the Petitioner....

6. I say that on proper reading of the aforesaid order dt. 5-12-81, 27-1 82 & 11-5-87 passed by the Collector, it is very clear that even though he had referred to in the government Resolution dated 20-3-1965 and 5 5-1967, while granting the land to the Petitioner for the purpose of plantation. The provision contained therein have not been scrupulously followed by him.

7. I say that the purpose of issuing the said Government Resolution dtd 20-3-65 was for granting government waste lands for coconut & arecanut plantation and therefore what can be granted for the plantation of coconut is only Government waste land as mentioned therein the said government resolution. No Gauchar land (Grazing) could be granted for the said purpose of coconut plantation. In the provisions contained in the para 5 of the said Government Resolution, it is very specifically mentioned how the priority is to be given for granting of such waste lands for the said purpose. The Petitioner is not falling in any of the priorities mentioned therein. The proper reading of these two government Resolution make it very clear that there is no any special provision contained in granting of such land to Ex-serviceman. Therefore, he is not entitled to any special treatment for

granting of such land. In para 6 of the said Government Resolution dtd. 20-3-65, it is also very specifically provided how the lease can be allowed to be converted into the permanent grant on payment of prescribed occupancy price. I crave leave of the Hon. Court that on proper reading of the order of 11-5-87, that the Collector has issued the said order for permanent grant without either referring the matter to Govt. or seeking the Govt.'s approval. This power is not vested with the Collector.

8. I say that the Government of Gujarat through Revenue Department issued the Resolution being JMN-3981-50828-A on 24-4-1981, consolidating of its earlier Government Resolution in respect of grant of Government waste lands..... So far as priority is concerned, the Ex-Serviceman are standing at priority list at Sr. No. 1. The income limit prescribed is Rs. 500/-per month at the relevant period of time. As per the provisions contained therein sub para 1(4) in para 3A. Such ex serviceman has to file undertaking to the effect that he would like to maintain himself by the agricultural income and he would not join any other service or do any business and if his income exceeds Rs. 500/ from the said sources, the land granted to him would be vested in the Government without giving any compensation or making payment of any expenditure incurred by him for the development of such land. In the instant case, it is very clear that the Petitioner, was serving as D.S.P., Valsad and his income was also above Rs. 500/-, he was not depending on agricultural income, therefore, the Petitioner was not entitled to get agriculture land as Ex-serviceman under the provision of the Government Resolution dated 24-4-1981.

9. I say that as per provision of the G.R. 20-3-65 and 5-5-67 the Petitioner could not have been allotted land either on lease or permanent basis. I further say the order of Collector of 5-12-81, 27-1-82 and 11-5-87 have not scrupulously followed the provision of the said Government Resolution as narrated below.

1. Only Government waste land could be considered for grant of lease as per the G.R.

2. The Petitioner did not fall in the eligibility criterion.

3. The power to grant the land on permanent basis was not vested with Collector.

8.1. However, now on the strength of the documents placed on record along with his affidavit dated 13.8.2010, the Appellant claims that the land was not allotted to him as an ex-service man, but as an ordinary citizen and that the said aspect comes out from the Collector's letter dated 29.11.1983.

8.2. According to the Respondent, this marks a substantial change and a "U-turn" in the stand of the Appellant, who all along i.e. right from the stage of Notice until the stage of arguments before the learned Single Judge (and then till the said affidavit dated 13.8.2010) contended that the land was allotted to him as an ex-serviceman and he was entitled for such preferential treatment in view of the various resolutions and policies made by the Respondent - State

Government.

8.3. In this context, now, what is vital and needs to be taken into account are, (a) the relevant contents of - details in the Collector's said reply dated 29.11.1983; and (b) the submissions and averments made by the Under Secretary in his said affidavit dated 2.11.2010.

8.4. So far as the Collector's letter dated 29.11.1983 is concerned, it is stated therein that:

The Government has allotted the land on lease to the applicant Shri Gadhvi by treating him as general applicant and not in his capacity of ex-serviceman under the provisions of Govt. Resolution dated 20/3/1965.

The Collector has further stated in the said letter that:

Thus, the land situated in Mouje Magod, Tal. Valsad has been allotted to Shri B.J.Gadhvi, Dist. Suptd. of Police, Valsad. The Land bearing Survey No. 550 & 552 was Govt. Pasture land which was allotted to Gram Panchayat Magod. But, this land was like waste land and was not used as pasture land. Therefore, the Gram Panchayat had also clarified in their resolution that they do not need another land against this land....

...As per actual facts, this land is uneven, full of ditches and hills, non-usable waste land and therefore, the priority list is not prepared.

8.5. In this context, it is relevant to take note of the following observations made in the affidavit dated 2.11.2010 i.e.:

6. I say and submit that by the office note dated 22.11.1983 from the office of the Honourable Chief Minister, Gujarat State, a report was called for, from the office of the Collector, Valsad. The Collector, Valsad by his report dated 29.11.1983 addressed to the Dy. Secretary, Revenue Department, Sachivalaya, Gandhinagar submitted that the Appellant has not been allotted the land as ex-army man but he was allotted the land as general applicant. It is also stated in the said report that the said land has been leased to the Appellant as per the Government Resolution dated 20.3.1965.

(Emphasis supplied)

8.6. With reference to the said response of the Collector, the learned AGP submitted, relying on the aforesaid affidavit, that it was to justify his order, that the Collector, had made such report in his communication that the land had not been leased to the Appellant as an ex-service man, but was granted as a common citizen. It is relevant to note that immediately after the said submission in para-6 of the said affidavit, the Under Secretary also stated in para 7 and 9 of the same affidavit that:

7. I say and submit that looking to the original file, from its notings, it is clear that a report was called on the basis of office note from the office of the

Honourable Chief Minister from the Collector, Valsad. It is respectfully submitted that State Government or even the office of the Honourable Chief Minister had neither approved nor rejected the proposal or a report of the Collector, Valsad. It is respectfully submitted that though even initial demand by the Appellant of the land was ex army man and the grant of land to the Appellant was also in pursuance to his application, the then Collector, Valsad, to justify his orders of granting lease of land reported that the land has not been leased to the Appellant as an ex-army man but as a common citizen.

9. I say and submit that though the said circular was circulated amongst all the Collector of the State, Collector, Valsad by an order dated 11.5.1987 granted the land on various conditions 16 acres of land, though the period of lease of 20 years for the very same land was already subsisting. In short, the day on which i.e. 11.5.1987, the Collector, Valsad granted the land while subsisting lease, he has no jurisdiction whatsoever either to lease the land or to grant the land in view of circular dated 25.7.1984. Therefore, the order of grant dated 11.5.1987 is without jurisdiction and it is non-est. Because the day on which, the Collector, granted the land there was no previous sanction of the State Government as provided in circular dated 25.7.1984. Even order of grant dated 11.5.1987 was never brought to the notice of the State Government or even the Honourable Chief Minister of the State. Therefore, the cause now pleaded by the Appellant that the 16 acres of land was not allotted to him on the ground of ex-army man but it was allotted by the Collector pursuant to the Government Resolution dated 20.3.1965 for plantation of coconut trees and the said fact was brought to the notice of concerned secretary by letter dated 29.11.1983, is not correct to the extent that, at that time, there was only lease of the land granted by the Collector, for which at the relevant time, Collector, Valsad was empowered to do so. However, after 25.7.1984 neither the Collector, nor Prant Officers were empowered either to lease or grant land without previous sanction of the State Government....

Therefore, even if it is not granted on the basis of ex-army man then also the Appellant is not entitled to the said land pursuant to the order dated 11.5.1987 even as a common citizen because it was granted by the Collector, Valsad who had no jurisdiction to grant it.

The averments and submissions, in para-8 of the said affidavit are also relevant. They read thus:

8. I say and submit that by circular dated 25.7.1984, the proposal for either lease or grant of the land for the purpose of coconut plantation or for tree plantation, it was required to be submitted to the State Government. In short, the Collectors/Prant Officers were divested of the powers to either to lease or grant such lands without previous sanction of the State Government.

8.7. In light of the conclusion reached and recorded by the learned Single Judge on the basis of the material on record, the stand now sought to be urged on the

basis of Collector's letter would, even if the aforesaid aspects are not taken into account, give rise to a further issue viz. whether in the first instance the Collector could have granted "gauchar land" (pasture land) to the Appellant for the purpose of plantation and cultivation of coconut trees, knowing well that the land in question was Gauchar land; and as to whether the Collector had the authority, at the time when the order dated 11.5.1987 was passed, to convert the lease period of 20 years into grant/allotment of land on permanent basis and that too at the rate of only Rs. 825/-.

8.8. So as to seek the answers to the aforesaid issues, one would turn to or would revert to the resolutions in light of which the allotment of land is said to have been made and to the orders passed by the Collector. The learned Single Judge also reached the conclusion on the strength of the resolutions.

8.9. It is not in dispute that the allotment of land has been made on the strength of the Government Resolutions dated 20.3.1965 and 5.5.1967. Even the preamble of the order dated 5.12.1981 makes reference of, the said resolutions. The said order reads thus:

Read:

(1) Application dated 20-3-1981 of Shri B.J.Gadhvi, District

Superintendent of Police, Bulsar.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) Resolution No. LND/3964/51825-A dated 20-3-1965 of the Revenue Department of the Government and Resolution No. Land/3964/25825-A dated 5-5-1967 of the Revenue Department.

(5) xxx xxx xxx

CONDITIONS:

(1) The land will be required to be used for the same purpose for which it has been allotted. Prior permission of the Collector will be required to be obtained before putting the same to any other use.

(2) The land will be required to be held on new, impartible and restricted tenure condition.

(3) xxx xxx xxx

(11) xxx xxx xxx

(12) All the conditions mentioned in Government Resolution of the Revenue Department No. Land/2964/25825/A dated 5-5-1967 and No. LND/3964/51835/A dated 20-3-1965; and the lease holder will be required to comply with all these conditions.

(13) xxx xxx xxx.

8.10. The preamble and the first paragraph of the said Resolution dated 20.3.1965 throw much needed light as to the scope and purpose of the Resolution and the policy of the Government. The preamble and first paragraph of the Resolution read thus:

G.R. No. LND 3964/51835 A, dated 20th March 1965

Lands: Grant of Government waste for coconut and Arecanut Plantation

The question of granting leasing Government waste land for coconut and Arecanut plantation was under the consideration of Government for some time past. Government has now decided as under:

(1) Government waste land not fit for cultivation as well as which has been reclaimed or which can be reclaimed may be granted for coconut and arecanut plantation.

(Emphasis supplied)

8.11. It can be seen from a glance at the said resolution that it is made in respect of "Government waste land" and not "gauchar land (pasture land)". The resolutions do not refer to and/or do not take into their sweep the "Gauchar land".

8.12. Before proceeding further, it is necessary to note that both, the Appellant as well as the Respondent - State, have made reference of various circulars/resolutions/orders e.g. the Resolutions dated 20.3.1965 (page-213), dated 5.5.1967 (page-215), dated 4.8.1971 (page-354), dated 11.11.1966 and dated 6.12.1980 (page-385), dated 19.5.1975 (page-389), dated 27.11.1969 (page-388), dated 24.4.1981 (page-243/R), dated 25.7.1984 (page-451), dated 28.2.1990 (page-382/R) and dated 27.3.2001 (page-380). All of them deal with and are issued for the purpose of allotment of, "Government waste land" and not "gauchar land".

8.13 Before the learned Single Judge, the Appellant had also relied on the Resolution dated 24.9.1981. Although the said resolution prescribes preference or priority for ex-serviceman, the said resolution also pertains to and deals with "waste land" and also contains conditions related to income of the Ex-army personnel who seeks grant of land. The said resolutions also would not take the Appellant's case further in view of the fact that, (a) The resolutions deal with and pertain to "Government waste land" and not the gauchar land; and (b) at the relevant time, the Appellant was in service as District Superintendent of Police and was drawing salary of about Rs. 2,170/-; and (c) at that time, he was not resident of the village, but was resident of Taluka Muli, District Surendranagar; and (d) did not have any agricultural land, and was not an agriculturist.

8.14. Learned Single Judge has also taken into account another aspect viz. that

even otherwise the lease period under the two orders dated 5.12.1981 and 27.1.1982 would have come to an end in 2002. Thus, the said orders have, even otherwise got exhausted.

8.15. This would leave behind the order dated 11.5.1987. In that context, it is relevant to note that the competent authority issued the show cause notice, with regard to the Collector's orders, in October-1990. Thus, if the date and period of notice is considered in juxtaposition, then, it comes out that the time-gap is of about 3 years and 5 months. In view of this fact, the Appellant had challenged the order dated 7.12.1991 and the said notice on the ground of delay. The learned Single Judge has rejected the contention on the ground that fraud vitiates any order and that therefore, such order can be set aside at any time.

8.16. Now, if the aspect of the conversion of lease into permanent allotment is examined, it is true that the provision under the said resolution dated 20.3.1965 does provide for such conversion, however, the said resolution also pertains to and deals with only "Government waste land". The Respondent would, therefore, contend that the clause which provides for such conversion cannot be used and exploited or taken shelter of, for granting Gauchar land and then converting lease of Gauchar land into permanent allotment and that the conversion was granted by the Collector under his order dated 11.5.1987, though the Government had, vide Circular dated 25.7.1984 (page-451) made it clear that the allotment-grant of Government waste land on permanent basis cannot be made without prior sanction and permission of Government. The learned Single Judge has also noticed and held that the resolutions/circular were not followed or were followed in breach only.

9. The learned Single Judge has observed that the policy or guideline for allotment have not been followed since on the strength of the said Resolutions, Gauchar land could not have been granted to the Appellant. In this context, in para-7 of its reply affidavit, the Respondent - State is also relevant. It is stated therein that:

I say that the purpose of issuing the said Government Resolution dtd 20-3-65 was for granting government waste lands for coconut & arecanut plantation and therefore what can be granted for the plantation of coconut is only Government waste land as mentioned therein the said government resolution. No Gauchar land (Grazing) could be granted for the said purpose of coconut plantation. In the provisions contained in the para 5 of the said Government Resolution, it is very specifically mentioned how the priority is to be given for granting of such waste lands for the said purpose...

9.1. Having regard to the said aspects and particulars of the Resolutions, the learned Single Judge has held that the grant of lands in question, which are Gauchar land, was and is unauthorized, and the said resolutions could not have been taken recourse of and/or could not have been relied on and used for allotting or granting Gauchar land to the Appellant either as ex-serviceman or as

ordinary citizen.

9.2. Having regard to the aforesaid aspects and details, the learned Single Judge found and held that the grant is unauthorized and the Gauchar land and that too the lands which were assigned to Panchayat could not have been granted by the Collector with invocation of and/or by relying on the two resolutions.

9.3. It is pertinent to note that the aforesaid conclusions were arrived at in light of the details and material obtaining on the record before the learned Single Judge.

9.4. However, in present case, the introduction of the Appellant's affidavit dated 13.8.2010 and the submission of the annexed documents - particularly the Collector's letter dated 29.11.1983, on the record of present appeal, has brought in picture certain additional dimensions and facts which were not available before the learned Single Judge until the time of the decision (impugned in this appeal).

9.5. It is in such background that the Appellant, as aforesaid, relied on the documents placed on record with the affidavit dated 13.8.2010 and submitted that even according to the Collector any preference was not extended to him on the ground of ex-service man. The Appellant seeks to also rely on the affidavit dated 2.11.2010 made by the Under Secretary.

9.6. The said details and the aspects flowing from the said two affidavits and the documents demonstrate that the Appellant now seeks to assail the impugned decision on the ground that the land was not granted to him as an ex-serviceman and that therefore, the defects which were identified from the Collector's order would now not survive hence, the matter may be examined afresh.

10. Now coming back to the documents placed on record of the appeal (under the affidavit dated 13.8.2010) and the contention based on the said material, it emerges from the record that in response to certain queries the Collector, Valsad had forwarded a reply dated 29.11.1983.

10.1. In the said reply dated 29.11.1983, the Collector not only mentioned that the lands were granted to the Appellant as an ordinary citizen and not as an ex-service man, but he also mentioned therein that:

Thus, the land situated in Mouje Magod, Tal. Valsad has been allotted to Shri B.J.Gadhvi, Dist. Suptd. of Police, Valsad. The Land bearing Survey No. 550 & 552 was Govt. Pasture land which was allotted to Gram Panchayat Magod. But, this land was like waste land and was not used as pasture land. Therefore, the Gram Panchayat had also clarified in their resolution that they do not need another land against this land.

...As per actual facts, this land is uneven, full of ditches and hills, non-usable waste land and therefore, the priority list is not prepared.

(Emphasis supplied)

10.2. Thus, what is mentioned by the Collector is another or second additional factual aspect viz. that, in effect, the land in question was not being used as Gauchar land. The said detail and the aspect borne out from said fact were not available on the record of the learned Single Judge.

10.3. It may be recalled that the main aspects taken into account in setting aside the Collector's order and in revoking the grant are that (i) any priority could not and ought not have been extended on the ground that the applicant is ex-army man, and (ii) Gauchar land could not have been granted either on lease and/or on permanent basis.

10.4. However, the Collector's communication of November-1983 and the above mentioned material which have been placed on record of present appeal, creates an impression that any preference as ex-serviceman was not granted to the Appellant and the lands in question were non-usable waste land and were not used as Gauchar land.

10.5. The said details give another dimension to the matter by drawing attention to the aspects which, though contemporaneous, were not placed on record until 13.8.2010. From the contents of the documents, it appears that there is yet another perspective attached to the grant or the allotment of lands to the Appellant and that perspective also ought to be examined.

10.6. On this count, it is necessary to recall that the Division Bench has received the said documents on record and has also taken note of the said documents in the order dated 21.9.2010.

10.7. When the remarks and response by the Collector in his communication dated 29.11.1983 are taken into account, it appears that at the relevant time, the land in question though Gauchar land (pasture land), were probably not being used as Gauchar land.

10.8. The said detail or response, which is purely factual aspect was not on record before the learned Single Judge. The said response adds another dimension in the matter.

11. However, it also emphasis the need for verification of what is stated by the Collector in his letter dated 29.11.1983 (e.g. veracity of the details mentioned by the Collector vis-a-vis the details in revenue record and whether any further and subsequent correspondence on the said count had ensued or not etc.) since the Panchayat's - or for that matter even State's - denial or even confirmation is not available on record. It may also be necessary to address the issue as to whether the alleged non-use of land as gauchar land, would have any relevance and bearing in light of the scope and effect of the resolutions which permit grant of only Government waste land and do not contemplate grant or allotment of gauchar land. The said and other aspects may have to be addressed for deciding the controversy.

11.1. The response of the Panchayat on this count is not on record. Besides the

revenue-land record, it is the Panchayat, who can confirm or deny the factual aspect, i.e. as to whether, at the relevant time, the land in question was used as Gauchar land or not. The exact clarification as regards the position in the revenue record, immediately prior to the Appellant's request for grant, though relevant for deciding the controversy is also not available on record.

11.2. The said two aspects namely, (a) that the land was not being used as Gauchar land; and (b) the land was not granted as an ex-service man to the Appellant, would require response from the Panchayat and from the Competent Authority.

11.3. Besides this, it would also require further and detailed verification (of the aspects stated in the Collector's letter dated 27.11.1983), more so, when the Respondent - State in its affidavit has also stated that the Collector's said reply dated 29.11.1983 is made to justify its earlier orders. The said affidavit, however, unfortunately does not deal with the aforesaid factual aspect mentioned in the Collector's reply. Even otherwise, the factual aspects would require response from Panchayat.

12. For the aforesaid reasons, we are of the opinion that instead of examining the said factual aspects at this stage, i.e. in appeal, it would be appropriate to remit the matter to the learned Single Judge for examining the aforesaid and other connected issues, because it would not only be appropriate, but also necessary, that the matter may be considered, in light of the said additional details (i.e. the details and material which came to be placed on record of appeal) by the learned Single Judge so that in case of need for further details, it can be called for and both sides may get opportunity to deal with the factual side of the issue.

12.1. We are also of the view that in the facts of this case, it would be appropriate, since factual aspects are required to be examined, that they may be examined and dealt with before the learned Single Judge instead of before the Division Bench (i.e. at appeal stage) so that the opportunity of either side may not be lost. The learned Single Judge can, upon examining relevant material, and if need be, after calling for further details or explanation from the Panchayat and the State, take appropriate fresh decision and pass appropriate order.

Hence, following order is passed.

In view of the foregoing discussion and on taking into account the appellant's affidavit dated 13.8.2010, the earlier order dated 21.9.2010 by the Division Bench, the Collector's letter dated 29.11.1983 and the Respondent's affidavit dated 2.11.2010, the matter is remitted to the learned Single Judge. Thus, the judgment and order dated 24.8.2009 would not survive. The learned Single Judge may, if need be, call for such other and further details as maybe necessary and upon considering such material - replies as maybe placed on record by both sides, pass appropriate orders as maybe justified and appropriate in the facts of the case. The appeal stands disposed off accordingly.