(2014) 07 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application Nos. 15487 and 15489 of 2011

Spandan Co. Op. Hou. Soc. Ltd. APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 229, 299
Evidence Act, 1872 — Section 115
Imports and Exports (Control) Act, 1947 — Section 3

Citation : (2014) 07 GUJ CK 0003

Hon'ble Judges : G.B. Shah, J

Bench : Single Bench

Advocate : Mihir Joshi, Sr Advocate, and Keyur Gandhi, Advocate for Nanavati Associates, Advocate for the Appellant; Bharat Vyas, AGP, Mukesh A. Patel, Advocate and Rule Served, Advocate for the Respondent

Judgement

G.B. Shah, J.—By order dated 27/11/2013, both these petitions were directed to be heard together. Accordingly, they were heard together and are being decided by this common judgment.

2. Heard, Mr. Mihir Joshi, learned senior advocate, assisted by Mr. Keyur Gandhi for M/s. Nanavati Associates for the petitioners, Mr. Bharat Vyas, learned Assistant Government Pleader for the respondent Nos. 1 and 2 and Mr. Mukesh A. Patel, learned advocate for the respondent Nos. 3 and 4.

3. Following prayers have been sought for in the present petitions:

Prayers made in Special Civil Application No. 15487 of 2011:

A) That Your Lordships may be pleased to issue a Writ of Mandamus or a Writ, Direction or Order directing Respondent No. 2 to handover physical, vacant and peaceful possession of the land admeasuring 16456 sq. mtrs. of Mouje Ranip being Final Plot no. 51 (earlier Survey No. 301) of the Town Planning Scheme no. 1 of Ranip, Ahmedabad to the Petitioners;

A-1) Your Lordships may be pleased to quash and set aside the decision dated 29.7.2011 (at Ann.: Y) written by the Deputy Director/LM(L) II Railway Board to the General Manager, Western Railway, Mumbai in the interest of justice.

B) Pending the hearing and the final disposal of the present petition, Your Lordships may direct the Respondents, their servants and agents to put Petitioners into physical, vacant and peaceful possession of the aforesaid land in accordance with law;

C) As an ad-interim relief, the respondent be restrained from interfering with the access to use and enjoyment of the aforesaid land by the Petitioners;

D) Such other and further relief that may be deemed just and fair in the interest of justice may kindly be granted.

Prayers made in Special Civil Application No. 15489 of 2011:

A) That Your Lordships may be pleased to issue a Writ of Mandamus or a Writ, Direction or Order directing Respondent No. 2 to handover physical, vacant and peaceful possession of the land admeasuring 10800 sq. mtrs. of Mouje Ranip being Final Plot no. 50 (earlier Survey No. 318) of the Town Planning Scheme no. 1 of Ranip, Ahmedabad to the Petitioners;

A-1) Your Lordships may be pleased to quash and set aside the decision dated 29.7.2011 (at Ann.: Y) written by the Deputy Director/LM(L) II Railway Board to the General Manager, Western Railway, Mumbai in the interest of justice.

B) Pending the hearing and the final disposal of the present petition, Your Lordships may direct the Respondents, their servants and agents to put Petitioners into physical, vacant and peaceful possession of the aforesaid land in accordance with law;

C) As an ad-interim relief, the respondent be restrained from interfering with the access to use and enjoyment of the aforesaid land by the Petitioners;

D) Such other and further relief that may be deemed just and fair in the interest of justice may kindly be granted.

4. It is high time that the Government machinery has acted in a manner that the legitimate rights of a person can easily be available without approaching the Court of law. The cases on hand have such a story. The chequered history of the cases is as under:

4.1 The Indian Railways had acquired the lands of Mouje Ranip bearing survey Nos. 301 and 318 from the then owners of the said lands namely Bhagwandas Sakalchand (the then owner of land bearing survey No. 318) and Virdas (the then owner of land bearing survey No. 301) about 100 years back. However, in the year 1995-96 the railway took a decision that the said lands were not of any use and deemed surplus and accordingly decided to dispose the same after following due procedure as prescribed in the Indian Railway Code for Engineering

Department. In terms of the aforesaid Code, after having ascertained that the lands were not of any use to any other department or railway or the Central Government, the State Government was authorized to first ascertain whether the State Government or any of its departments require these lands. The lands were also offered to AUDA at the best feasible price, however, no response was received even from AUDA. Under the circumstance, the Railways decided to relinquish the said lands as per the aforesaid Code and requested the State Government to undertake the whole process of disposal as per law, Rules and Regulations, governing such matters at the best fetchable price and since no one turned up, it was decided to offer the same to the heirs of the original owners, at the extant market price. Accordingly, the petitioner No. 2 submitted application dated 04/02/2002 to the Chairman, Indian Railways and Secretary, Ministry of Railways, New Delhi for return/re-grant of the said lands. The Divisional Railway Manager (Works), Bhavnagar Para, by letter dated 29/01/2004, informed the respondent No. 2-The District Collector, Ahmedabad that request of the petitioner No. 2 for re-grant of the lands was under process and if the same was approved, the State Government will be informed for taking further action in the matter. The District Collector, Ahmedabad-the respondent No. 2 herein, was also called upon by the railway authorities to ascertain whether the State Government or its departments needed the said lands and accordingly, AUDA and the Revenue Department by letters dated 10/11/2005 and 20/11/2006 respectively, gave their opinion that the State Government did not require the said lands at the extant market price and gave ''No Objection'' as regards re-grant of the said lands to the heirs of the deceased original land owners at the market price, in accordance with the procedure laid down in the aforesaid Code and Land Acquisition Manual. After necessary approvals and in implementation of the decision of the Railway Board, the Divisional Railway Manager (Works), Bhavnagar Para wrote a letter dated 05/01/2007 to the respondent No. 2 informing that the Railways had decided to relinquish its title and to re-grant the lands in question to the heirs of the deceased original land owners and accept the request of present petitioner No. 2 to re-grant the lands in question at the extant market price. The District Level Price Committee estimated the market price at Rs. 4,425/- per sq. mtr., in their meeting dated 08/10/2007. The issue was referred to the State Level Price Committee, which, in its meeting dated 18/12/2008, suggested the market price of the lands in question as Rs. 6,375/- per sq. mtr.

4.2 It is further the case of the petitioners herein that the Revenue Department of the State by its letter dated 05/02/2009 informed the respondent No. 2 herein that, i) the State does not require the lands in question; ii) the lands in question have been released in favour of the State Government for disposal in accordance with the Rules and Regulations and procedures in that regard; iii) it is decided to re-grant the lands to the original land owners at the current market price of Rs. 6,375/- per sq. mtr. and; iv) after collecting the market price, possession of the lands be handed over to the petitioner No. 2 and necessary mutation entries may be made in the revenue record. The total price for re-grant of the land admeasuring 16456 sq. mtrs. of Mouje Ranip, bearing Final Plot No. 51 of Town Planning Scheme No. 1 of Ranip, Ahmedabad was thus fixed at Rs. 10,49,07,000/- and the total price for re-grant of the land admeasuring 10800 sq. mtrs. of Mouje Ranip, bearing Final Plot No. 50 of Town Planning Scheme No. 1 of Ranip, Ahmedabad was thus fixed at Rs. 6,88,50,000/- Accordingly, the respondent No. 2 herein, vide letter dated 22/04/2009 demanded recovery of amounts so determined as above for the same, which was deposited on 19/05/2009 and on 13/08/2009 respectively with the State Treasury. After that, on 07/09/2009, the respondent No. 2 passed an order that the amount so recovered by way of sale price of the lands in question, be transferred to the Railway authorities and possession of the lands be handed over to the petitioner No. 2 and the mutation entries be also made showing the re-grantee in revenue records. Accordingly, proceedings u/s 135 for mutating the lands in the name of the petitioner No. 2 were initiated and notice u/s 135-D was issued to the Railways and the lands were, accordingly, mutated in the name of the petitioner No. 2 on 12/10/2009. Thereafter, application for grant of Non-agricultural (N.A.) use permission was made to the District Collector and upon payment of conversion charges and special charges, the District Collector passed order dated 04/01/2010 granting N.A. Permission to make use of the land of Final Plot Nos. 51 and 50 respectively of Mouje Ranip. After that, the land bearing Final Plot No. 51 was purchased by the then purchaser societies namely Suyagna Co-op. Housing Society Ltd. and Sampanna-2 Co-op. Housing Society Ltd. and necessary mutation entries were also carried out. Later on, name of Suyagna Co-op. Housing Society Ltd. was got changed to Spandan Co-op. Housing Society Ltd. Similarly, name of Sampann-2 Co-op. Housing Society Ltd. was got changed to Sumiran Co-op. Housing Society Ltd. and then said Sumiran Co-op. Housing Society Ltd. merged with Spandan Co-op. Housing Society Ltd. It is the case of the petitioners that petitioner No. 2 being the heir of original land loser, offered to purchase the lands and on payment of market value determined by the Government, became entitled to lands at Final Plot Nos. 50 and 51 and therefore, the procedure was initiated by the petitioner No. 2 for re-grant of both the Final Plots. As per the common order dated 07/09/2009 both the lands were decided to be re-granted to petitioner No. 2 and out of both the lands, the petitioner-societies purchased the Final Plot Nos. 51 and 50 respectively and adjacent lands of Final Plot Nos. 51 and 50 were purchased by another society namely ''Sampanna Co-op. Housing Society Ltd.'' and ''Spandan Co-op. Housing Society Ltd.'' respectively. The Railways, by communication dated 13/05/2010 to the District Collector, Ahmedabad directed to demand and recover Rs. 52,12,710/- being ''Contingency Charges'' at the rate of 3%, as leviable under the Railway Code and in pursuance thereof, the District Collector, vide communication dated 03/06/2010 raised common demand in the matter of re-grant of lands of Final Plot Nos. 50 and 51 and accordingly, the societies concerned paid the said amount i.e. ''Contingency Charges'', calculated at the rate of 3%, on 17/06/2010. It is further the case of the petitioners that the Ahmedabad

Municipal Corporation has sanctioned the plans of residential buildings proposed to be developed on the land/s in question and Commencement Certificates to that effect have also been issued. It is the case of the petitioners that the petitioner-societies, thus, is the lawful owner of the lands in question and Final Plot Nos. 51 and 50 also stand in the name of the petitioner-societies. The petitioner-societies, the purchasers of Final Plot Nos. 51 and 50, called upon the petitioner No. 2 to hand over the possession forthwith, however, he failed to do so. The petitioner-societies have enrolled 31 and 24 members respectively and received funds from them. It is the case of the petitioner No. 2 that after several requests, finally by letter dated 28/09/2011, the District Collector failed and neglected to hand over the possession of the lands in question, which put the petitioner-societies in a serious problem and exposed it to litigations and accordingly, present petitions have been filed.

5. The learned senior advocate for the petitioners submitted that vide impugned letter dated 29/07/2011, the respondent has sought to convey that Railways never took a decision to relinquish the said lands. He contended that once the decision has been taken to relinquish the said lands in favour of the original owners and the original owners having acted upon it, the Railways are now estopped from claiming a change of heart as vide letter dated 07/03/2007, the Railways conveyed its decision to relinquish the said land and requested the State Government to undertake the process of disposal of the land in question and accordingly, the District Collector undertook the process of ascertaining the market price, which was estimated to Rs. 4,425/- per sq. mtr., which was later on fixed to Rs. 6,375/- per sq. mtr. by the State Level Price Committee; the Revenue Department vide letter dated 05/02/2009 informed the District Collector to re-grant the said lands to its original owners and handing over the possession on payment of the aforesaid final price and accordingly, the amount was collected and the District Collector, vide order dated 07/09/2009 ordered to transfer the aforesaid amount, hand over the possession to the petitioners and after issuance of Notice u/s 135-D, to mutate the name of the petitioner No. 2 in the revenue records on 31/12/2009. Thereafter, the lands in question were converted into Non-agricultural lands vide order dated 04/01/2010; the said lands then was sold to the petitioner-societies; the contingency charge was also paid as demanded by the Railways; the Ahmedabad Municipal Corporation thereafter sanctioned the plans for residential buildings to be developed by the petitioner societies and accordingly, there is a bar of estoppel on the respondents. The learned senior advocate for the petitioner further submitted that the aforesaid letter has never been communicated by the Railways to the State Government or to the petitioners and that, right from 2002 onwards, the Railways represented that the said lands are surplus and have been relinquished in favour of the original owners as per the Railway Code.

5.1 In support of the his submissions, the learned senior advocate for the petitioners has relied upon following decisions:

5.1.1 B.L. Sreedhar and Others Vs. K.M. Munireddy (Dead) and Others, of the same is extracted as under:

30. If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby, induces others to do that which they otherwise might have abstained from, he cannot question the legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

5.1.2 H.B. Basavaraj (Dead) by LRs. and Another Vs. Canara Bank and Others, , relevant para 30 of the same is extracted as under:

30. In general words, estoppel is a principle applicable when one person induces another or intentionally causes the other person to believe something to be true and to act upon such belief as to change his/her position. In such a case, the former shall be estopped from going back on the word given. The principle of estoppel is, however, only applicable in cases where the other party has changed his position relying upon the representation thereby made.

5.2 The learned senior advocate for the petitioners submitted that under the provisions of the Bombay Land Revenue Code (BLRC), the District Collector has power to deal with the Government land to grant occupancy right and to put the buyer into possession. He further submitted that the respondent No. 2-the District Collector, by a specific order dated 07/09/2009 read with the Railway Code has been empowered to exercise this statutory power and in exercise of this power, the respondent No. 2 has re-granted to the predecessor-in-title of the petitioner-society in whose name the land has already been mutated and the petitioner No. 2 has purchased the land acting on the faith of the promises contained in the order/communication mentioned herein above, at a huge cost.

5.3 The learned senior advocate for the petitioners further relied upon a decision in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., of the same are extracted as under:

10. The defence of executive necessity was not relied upon in the present case in the affidavit filed on behalf of the Union of India. It was also not pleaded that the representation in the Scheme was subject to an implied term that the Union of India will not be bound to grant the import certificate for the full value of the goods exported if they deem it inexpedient to grant the certificate. We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set-up, no person may be deprived of his right or liberty except in due course of and by authority of law: if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law-common or statute-the Courts will be competent to, and indeed would be bound to, protect the rights of

the aggrieved citizen.

11. xxx

12. It cannot he assumed merely because the Imports Trade Policy is general in terms and deals with the grant of licences for import of goods and related matters, it is statutory in character. The Imports and Exports (Control) Act, 1947, authorises the Central Government to make provisions prohibiting, restricting or otherwise controlling impost, export, carriage etc. of the goods and by the Imports (Control) Order, 1955, dated December 7, 1955, and by the provisions which were sought to be repealed restrictions already imposed. The order was clearly legislative in character. The Import Trade Policy was evolved to facilitate the mechanism of the Act and the orders issued thereunder. Even granting that the Import Trade Policy notifications were issued in exercise of the power u/s 3 of the imports and Exports (Control) Act, 1947, the order as already observed authorised the making of executive or administrative instructions as well as legislative directions. It is not the form of the order, the method of its publication or the source of its authority, but its substance, which determines its true character. A large majority of the paragraphs of the Import and Export Schemes are in the form of instructions to departmental officers and advice to persons engaged in the export and import business with their foreign Counterparts. It may be possible to pick out paragraphs from the Scheme which appear in isolation to be addressed generally and have direct impact upon the rights and liberties of the citizens. But a large number of paragraphs of the Scheme refer to matters of procedure of departmental officers and heterogeneous material: it sets out forms of applications, the designations of licensing authorities, amounts of application and licensing fees, last dates for applications, intermixed with definitions of ''Established Importers'', ''Actual users'', ''New comers'' and others and details of different schemes such as Quota Registration Schemes, Export Promotion Schemes etc. There is no pattern of order or logical sequence in the policy statement: it is a jumble of executive instructions and matters which impose several restrictions upon the rights of citizens. Some of the provisions which impose restrictions upon citizens in the exercise of their right to carry on trade without statutory limits may be open to serious objections, but we do not find it necessary to embark upon an enquiry whether the provisions which authorises the issue of import entitlement certificate for the full f.o.b. value of the goods exported is legislative in character. Granting that it is executive in character, this Court has held that the Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities.

13. xxx

14. In these cases it was clearly ruled that where a person has acted upon representations made in an Export Promotion Scheme that import licences upto the value of the goods exported will be issued, and had exported goods, his claim for import licence for the maximum value permissible by the Scheme could not

be arbitrarily rejected. Reduction in the amount of import certificate may be justified on the ground of misconduct of the exporter in relation to the goods exported, or on special considerations such as difficult foreign exchange position or other matters which have a bearing on the general interests of the State. In the present case, the Scheme provides for grant of import entitlement of the value, and not upto the value, of the goods exported. The Textile Commissioner was, therefore, in the ordinary course required to grant import certificate for the full value of the goods exported he could only reduce that amount after enquiry contemplated by Clause 10 of the Scheme.

15. xxx

16. xxx

17. By the Export Promotion Scheme for woollen textiles as extended to exports to Afghanistan, the exporters were invited to get themselves registered with the Textile Commissioner for exporting woollen goods, and it was represented that the exporters will be entitles to import raw materials of the total amount equal to 100 per cent of the f.o.b. value of the exports. Machinery for scrutiny of the applications and the issue of import entitlement was provided by Section 9 of the Scheme, and the Textile Commissioner was invested with the authority to determine whether in any given case the declared value of the goods exported was higher than the real value of the goods and to assess the correct value of the goods exported and to issue import certificates on the basis of such assessed value Undoubtedly the Textile Commissioner had authority, if it was found that a fraudulent attempt was made to secure an import certificate in excess of the true value of the goods exported to reduce the import certificate. But the authority vested in the Textile Commissioner by the rules even though executive in character was from its nature an authority to deal with the matter in manner consonant with the basic concept of justice and fairplay, if he made an order which was not consonant with the basic concepts of justice and fairplay his proceeding was open to scrutiny and rectification by the Courts. The Textile Commissioner acted upon a report of the Committee appointed by him and before that Committee the respondents had no opportunity to present their case. He collected evidence ex parte and did not disclose it to the respondents and without giving an opportunity to them to represent their case reduced the import certificate. In dealing with a representation made by the respondent, the Government of India also declined either to make available the evidence on which the Textile Commissioner had acted or to give a hearing to the respondents. The Textile Commissioner and the Union of India did not purport to act in exercise of the power under Clause 10 of the Scheme: they have sought to support the order on the plea that the subjective satisfaction, of the Textile Commissioner is determinative of the extent of the import certificate which may be granted to the respondents.

18. It was somewhat faintly urged that if the Government is held bound by every representation made by it regarding its intension when the exporters have acted

in the manner they were invited to act, the Government would be held bound by a contractual obligation even though no formal contract in the manner required by Art. 299 of the Constitution was executed, and the exporter would be entitled to claim damages contrary to that provision for breach of the contract even though no formal written contract had been executed in the manner provided by that Article. But the respondents are not seeking to enforce any contractual right they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the Scheme and we are of the view that even if the Scheme is executive in character, the respondents who were aggrieved because of the failure to carry out the terms of the Scheme were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out.

19. xxx

20. This case, is in our judgment, a clear authority that even though the case does not fall within the terms of S. 115 of the Evidence Act, it is still open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution.

5.4 The learned senior advocate for the petitioners further relied upon a decision in Shree Sidhbali Steels Ltd. and Others Vs. State of U.P. and Others, , are extracted as under:

32. The doctrine of promissory estoppel is by now well recognized and well defined by a catena of decisions of this Court. Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-and-fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. For application of the doctrine of promissory estoppel the promisee must establish that he suffered in detriment or altered his position by reliance on the promise.

33. Normally, the doctrine of promissory estoppel is being applied against the Government and defence based on executive necessity would not be accepted by the Court. However, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold

the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. Where public interest warrants, the principles of promissory estoppel cannot be invoked. The Government can change the policy in public interest. However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law.

5.5 The learned senior advocate for the petitioners further relied upon a decision in State of Karnataka and others Vs. M/s. Southern India Plywood Co., Peramanoor, , are extracted as under:

20. Even otherwise and sans the public element so obvious in these appointments, the appointment and its concomitants viewed as purely contractual matters after the appointment is made, also attract Article 14 and exclude arbitrariness permitting judicial review of the impugned State action. This aspect is dealt with hereafter.

21. xxx

22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party, Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes failing within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also fails within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

5.6 Eventually, the learned senior advocate for the petitioners submitted that when only after the decision of the Railways to relinquish the lands in question in favour of the original owners and that too after following all the procedures that have been stipulated in law, the said transaction has been entered into, the concerned authorities must have acted accordingly, and handed over the possession of the lands in question to the petitioner No. 2 and thereby, to the petitioner-societies as there is a clear bar of estoppel on the respondent authorities and he submitted that the present petition may be allowed and prayers sought for may be granted.

6. Per contra, Mr. Mukesh A. Patel, learned advocate for the respondent Nos. 3 and 4 submitted that the lands in question are of the ownership and in possession of the Railways. He further submitted that vide letter No. 2006/ LML/13/52 dated 19/07/2011, the Railway Board has conveyed its decision that the lands in question are not to be transferred but to be used for its own development works and in such circumstances, the petitioners are not entitled for the relief, as sought for. The learned advocate for the respondent Nos. 3 and 4 submitted that when the Railway Board has already taken a decision not to relinquish the lands in question, which was conveyed vide letter dated 29/07/2011 and which is not challenged or disputed at any point of time, there is no question of granting such a prayer in favour of the petitioners. The learned advocate for the respondent Nos. 3 and 4 further submitted that letter dated 29/01/2004, issued by DRM (W) BVP to District Collector makes it clear that till the time of completion of disposal process, the possession of railway land will be lying with the Railways, however, there is nothing on record to show that disposal process has been completed and approval has been given by the railway authority in favour of the petitioners and in absence of the same, the State Governance cannot proceed for sale of the lands in question and finalize the same and even pass any kind of orders under the name of revenue proceedings.

6.1 The learned advocate for the respondent Nos. 3 and 4 further submitted that vide letter dated 07/03/2007, the railway has not released the land in favour of the State Government as per Railway Rules. In fact, the proposal for purchase of the said land to the State Government was declined and in that case, there was no question of releasing the land in favour of the State Government and no order to that effect has been passed. Moreover, no details of alleged order dated 20/11/2006 and the letter dated 07/03/2007 or Yadi dated 20/11/2006 are produced by the petitioners. He further submitted that no alleged Notice u/s 135-D was received by the railway administration. He then submitted that from letter dated 21/02/2007, written by the District Collector, Ahmedabad it is clear that no clear-cut authorization, confirmation/approval of competent authority of railway administration for relinquishment of land was available with the District Collector, Ahmedabad and so called conversion of land for Non-agricultural use by letter dated 04/01/2010 was without consent and information to the railway administration. Besides, the learned advocate for the respondent Nos. 3 and 4 submitted that as the ownership of the lands in question is not duly and legally vested in favour of the original owner and the lands in question have remained with the railway administration, there was no question of execution of alleged Sale Deed dated 23/03/2010. He submitted that upon perusal of chronological events, it becomes clear that it was not the genuine claim of the original owner but under the name of the original owner, third party was seeking relinquishment of the land, which was otherwise not permissible. He further submitted that if the petitioners have deposited the amounts with the respondent No. 2-District Collector, Ahmedabad on the basis of alleged orders and the procedure was carried out by the State Government in irregular manner, the petitioners may ask the State Government to return/refund the same and any commitment made by the State Government is not binding to the Railways and hence, there is no question of handing over possession of the lands in question to the petitioner-societies. He vehemently submitted that question of estoppel comes when the respondents have acted upon. In the case on hand, that is not the case and hence, there is no question of bar of estoppel at all. Last but not the least, he also submitted that present petitions being bereft of merits, require to be dismissed.

7. I have also heard Mr. Bharat Vyas, learned Assistant Government Pleader for the respondent No. 1 and 2. The learned Assistant Government Pleader submitted that pursuant to the decision taken by the Railways to relinquish the lands in question, the State Government was offered the said lands and since the State Government did not require the said lands, vide communication dated 05/01/2007, the respondent No. 2-District Collector, Ahmedabad was informed by the Railways that the lands in question were proposed to be relinquished to the original owner at current market price and accordingly requested the respondent No. 2 to furnish the current market rates of the lands in question. It is further submitted that vide 07/03/2007 of the Railways to the Revenue Secretary, Government of Gujarat, the State Government was requested to undertake the whole process of disposal of the lands in question as per law, rules and regulations governing such matters, at the best fetchable price. Accordingly, as per the price finally fixed by the State Level Price Committee, the State Government vide letter dated 05/02/2009, addressed to the District Collector, Ahmedabad, the respondent No. 2 herein, requested to collect the consideration amount and further to pass over the said consideration amount to the Railways and asked to do the needful for mutation of the lands in question in the revenue records and for handing over the possession of the lands in question to the petitioner-societies accordingly. Accordingly, the respondent No. 2-the District Collector, Ahmedabad acted upon and collected the consideration amount from the petitioner-societies and necessary mutation of entries in the name of the petitioner No. 2 was also carried out. The petitioner-societies also deposited the Contingency Charge as was mentioned in the letter dated 13/05/2010 of Railways to the respondent No. 2-the District Collector, Ahmedabad. He further submitted that accordingly, by letters dated 12/07/2010, 20/09/2011 and 21/01/2012, the Railways were requested to handover the possession of the lands in question to the petitioner-societies and to give details as to whom and under which head the consideration amounts paid by the petitioner/s were to be deposited. In short, he submitted that as per the decision of the Railways, to

relinquish the lands in question, the State Government has acted upon.

8. I have heard the learned advocates for the parties and also considered the papers available on record. Following issues have come forth for consideration of the Court:

i) Whether the Railways had decided to relinquish the lands in question to the original owners of the lands?

ii) Whether the process of disposing of the lands in question in favour of the original owners of the land was completed or not?

iii) Whether the Railways are barred by principle of estoppel and the petitioners are entitled for the lands in question as part of the decision of the Railways to relinquish the lands in question to them?.

8.1 For proper adjudication of the aforesaid issues, chronology of events is required to be looked into. By letter dated 04/02/2002, the petitioner No. 2-the original owner of the lands in question wrote to the Railways requesting them to relinquish lands in question in his favour, a copy of the said letter is produced at Annexure ''C'' to the petition, page Nos. 40 and 41. The Divisional Office of the Railways wrote a letter dated 29/01/2004, addressed to the District Collector, Ahmedabad informing that aforesaid application of the petitioner No. 2 was under process and if same will be approved, the State Government will be intimated for further necessary actions. Further vide letter dated 10/11/2005, the Ahmedabad Urban Development Authority (AUDA) has written to the State Government in Revenue Department that they did not require the lands in question. Then by Yadi dated 20/11/2006, the State Government in Revenue Department has issued the No Objection as to grant of the lands in question to the original owners. Thereafter, the Division Office of the Railways wrote a letter dated 05/01/2007 to the respondent No. 2 herein-the District Collector, Ahmedabad, which is relevant for the purpose, and reads as under:

In reference to above, it is to inform that Railway land bearing F.P. 50 and F.P. 51 in Ranip area is proposed to be relinquished to Shri Suresh Nandubhai Patel of Ahmedabad (Original owner of the land) at current Market Rates.

Deputy Secretary, Revenue Department, Govt. of Gujarat, Gandhinagar has issued No Objection Certificate for the purpose vide letter No. JAM/1203/78/GH dated 20.11.2006. To prepare estimate of above land Railways require current Market Rates of the land.

You are requested to furnish current Market Rates per Square Metre of Railway land situated in F.P. 50 and F.P. 51 in Ranip area.

Please furnish the same at the earliest.

(emphasis supplied)

8.2 Thereafter, to ascertain the current market rates, the respondent No. 2 with the help of District Level Price Committee, estimated the price of Rs. 4,425/- per sq. mtr. in meeting dated 08/10/2007. The said issue was then referred to the State Level Price Committee, which finally in its meeting dated 18/12/2008, decided the market price of the lands in question to Rs. 6,375/- per sq. mtr. Further by letter dated 05/02/2009, State Government in Revenue Department informed the respondent No. 2-District Collector, Ahmedabad that the State did not require the lands in question; the lands have been released in favour of the State Government for disposal in accordance with rule and regulations and procedures in that regard; it was decided to re-grant the lands to the original land owners at the current market price of Rs. 6,375/- per sq. mtr. and after collecting the market price, possession of the lands be handed over to the petitioner No. 2 and necessary mutation entry may be made in the revenue records. It is pertinent to note that the copy of the said letter was also forwarded to the Divisional Office of the Railways. Accordingly, the respondent No. 2-the District Collector, Ahmedabad, vide letter dated 22/04/2009, addressed to the petitioner No. 2-Sureshbhai Nandubhai Patel, requested to deposit the consideration price within a period of 30 days, which was deposited by the petitioner No. 2 vide Challan dated 19/05/2009.

8.3 On aforesaid amount being deposited, the respondent No. 2-the District Collector passed an order dated 07/09/2009 directing the City Mamlatdar to the effect that the consideration amount be transferred to the Railways and that the possession of the lands be handed over the petitioner No. 2 and necessary mutation entry also be made in favour of the petitioner No. 2. At this juncture, it is to be noted that copies of this order were also forwarded to the Chief Engineer, (Western Railways), Headquarter Officer, Church Gate, Mumbai-20 and the Divisional Railway Manager (Western Railway), Bhavnagar Division, Bhavnagar. Thereafter, the proceedings u/s 135 for mutating the lands in question in the name of the petitioner No. 2 and Notice u/s 135-D were issued to the Railways and as it appears from the copy of the document produced at Annexure ''N'' to the petitions, said Notice u/s 135-D was duly served upon the Railways. Accordingly, the lands in question were mutated in the name of the petitioner No. 2, which fact can be ascertained from the 7 and 12 extracts, showing position as on 31/12/2009, produced at Annexure ''O'' to the petitions. That thereafter, the petitioner No. 2 applied to the respondent No. 2-the District Collector, Ahmedabad for conversion of the lands in question for Non-agricultural (N.A.) use and the respondent No. 2, by order dated 04/01/2010 converted the lands in question in to N.A. and necessary charges for the same were paid by the petitioner No. 2. That subsequently, the petitioner-societies purchased the lands in question and their names were also mutated in the revenue records. Further, the Divisional Office of the Railways, by letter dated 13/05/2010, addressed to the District Collector, Ahmedabad, requested to collect the contingency charge @ 3% as leviable under the Railway Code from the petitioner No. 2 and accordingly, the petitioner-society, at the behest of petitioner No. 2 along with other societies being owner of the adjacent lands deposited the said amount on 17/06/2010.

The said fact can be ascertained from the copy of document produced at page No. 237 to the petition (Special Civil Application No. 15487 of 2011). Thereafter, the Ahmedabad Municipal Corporation had sanctioned the plans of residential buildings to be developed in the lands in question and Commencement Letters to that effect have also been issued, copies of which are produced at Annexure ''W'' colly., at page Nos. 238 to 241 to the petition (Special Civil Application No. 15487 of 2011).

8.4 If the aforesaid chronology of events is taken into consideration in toto, it is clear that the whole cycle of disposal process has been completed and that too within the knowledge of the respondent Nos. 3 and 4. The Railways took a decision to relinquish the lands in question to the original owner; they acted upon the application of the petitioner No. 2 and the respondent No. 2-the District Collector, Ahmedabad was asked to undertake the disposal process and ascertain the best fetchable price; the respondent No. 2 acted accordingly in consultation with the Railways; the petitioner No. 2 paid the necessary current market price as decided by the concerned authority; moreover, necessary contingency charges @ 3%, as asked by the Railways were also paid by the petitioners; the names of the petitioner No. 2 was mutated in the revenue record; the petitioner No. 2 got converted the said lands in question for Non-agricultural use; then the petitioner No. 2 sold the said lands to the petitioner-societies and their names were also mutated in the revenue records and thus, it clearly appears that at the instance of the Railways and the State Government authorities concerned, the petitioner/s acted upon in good faith and hence, in the considered opinion of this Court, all the aforesaid three issues fetch affirmative answers.

8.5 This Court is at a loss to understand as to what further process the petitioners are required to undergo so that they can avail their legitimate right and get the physical possession of the lands in question, which are otherwise mutated in their names in the revenue records and that too within the knowledge of the Railways.

9. In the above backdrop, this Court is of the opinion that, as aforesaid, since the whole process of disposal of lands in question is completed, the petitioners should get the physical possession of the same as the Railways are barred by the principle of estoppel, as the petitioners'' actions were consequent to the conduct of the concerned respondent authorities and accordingly, present petitions deserve to be allowed and are accordingly allowed. The concerned respondent authorities are directed to handover the physical, vacant and peaceful possession of the land admeasuring 16456 sq. mtrs. and 10800 sq. mtrs. at Final Plot Nos. 51 and 50 respectively of mouje Ranip, within a period of one month from today. Rule is made absolute to the aforesaid extent.

9.1 In the facts and circumstances of the case, this Court is of further opinion that the actions of the Government authorities, more particularly the respondent Nos. 3 and 4, are required to be deprecated and are accordingly deprecated and the Court will be failing in its duty if some exemplary cost is not imposed upon the concerned authorities. Accordingly, the concerned respondent authorities i.e. the respondent Nos. 3 and 4 are directed to pay a sum of Rs. 75,000/- (Rupees Seventy five thousand only) towards the costs of the litigation to the petitioners, deposit of which shall be the condition precedent for filing any further proceedings in the matter, by the respondent Nos. 3 and 4.

Further order:

1. After pronouncement, the learned advocate for the respondent Nos. 3 and 4 requested to stay the operation of the present judgment for four weeks as they are desirous of challenging the same before the higher forum. He further requested not to impose the costs, as respondent Nos. 3 and 4 being the Government authorities or in the alternate, reduce the amount of costs imposed upon the respondent Nos. 3 and 4. The learned advocate for the petitioners opposed the said requests.

2. In the facts and circumstances of the cases on hand, the request to stay the judgment, is rejected. However, so far as the request qua costs is concerned, the same is partly granted and the costs is reduced to Rs. 25,000/- (Rupees Twenty five thousand only).

