

(2017) 03 GUJ CK 0024
In the Gujarat High Court
Case No : 11565 of 2015

SURENDRANAGAR - DUDHREJ MUNICIPALITY

APPELLANT

Vs

STATE OF GUJARAT & ORS.

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

[3998](#) Constitution of India, [3998-226](#) Article 226 -
Power of High Courts to Issue certain writs

[3210](#) Bombay Land Revenue Code, 1879, [3210-37](#) Section
37(2) - All public roads, etc., and all lands which are not the property of others
belong to the Government.

[4786](#) Gujarat Land Revenue Rules, 1972, [4786](#) — Rule
29 Rule 29 -

[3327](#) Bombay Revenue Tribunal Act, 1957, [3327-17](#) Section
17 -

District Municipal Act, 1901, Section 50(1)

Citation : (2017) 03 GUJ CK 0024

Hon'ble Judges : Abhilasha Kumari

Bench : Single Bench

Advocate : PS CHAMPANERI, ?TIRTHRAJ PANDYA, ?DEVANG VYAS

Final Decision : Dismissed

Judgement

1. Rule. Mr.Tirthraj Pandya, learned Assistant Government Pleader, waives service of notice of Rule for respondents Nos.1 and 3. Mr.Devang Vyas, learned advocate, waives service of notice of Rule for respondent No.2. Respondent No.4 has chosen not to appear despite of service of notice on 05.08.2015. From the pleadings, it appears that the said respondent is neither an

affected nor interested party to the litigation.

Hence, no fruitful purpose would be served to issue notice of Rule to respondent No.4. On the facts and in the circumstances of the case, the petition has been heard finally, with the consent of learned counsel for the respective parties.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner Surendranagar - Dudhrej Municipality ("the Municipality" for short), has challenged the order dated 30.01.2014, passed by the Gujarat Revenue Tribunal ("the GRT" for short), allowing the review application preferred by respondent No.2 and the order dated 16.06.2015, of the GRT, rejecting the revision application of the Municipality and thereby confirming the orders passed by the Collector, Surendranagar, dated 18.05.1998 and the City Survey Superintendent dated 06.09.1996.

3. The chronological narration of the facts of the case, as can be garnered from the material on record, dates back to the pre-independence era, more particularly to 24.12.1945, on which date the Political Agent, Eastern Kathiawar Agency, addressed a letter to the Dewan of the erstwhile princely State of Wadhwan. The subject matter of the said communication, which is the bone of contention in the present petition, is the plot of Government waste land measuring "6435 square

yards and 3 square feet" (as described in the letter), now City Survey No.5241, comprising Ward No.1, admeasuring 4753.58 square meters, situated in Wadhwan. The Political Agent wrote to the Dewan that Sheth Ratilal Vardhman Shah, the predecessor-in-interest of respondent No.2, had sought permission to purchase the land in question, which was in the immediate vicinity of his private residence and the Station Committee had recommended that the lease be granted if the plot could not be utilized as a recreation ground for the State N.T.M. High School due to various reasons, for which purpose it was originally intended to be used. The Dewan replied to the Political Agent vide a letter dated 02.01.1946, stating that the "Wadhwan Darbar" (erstwhile ruler) had no objection to the lease of the plot in question to Sheth Ratilal Vardhman Shah. Accordingly, a Lease Deed was executed in respect of the land in question in the month of January 1947, upon the payment of an amount of Rs.5,492/- by the predecessor of respondent No.2. The possession of the land was duly handed over to him. It is the assertion of respondent No.2 that the possession of the land has remained with the said respondent ever since and a compound wall has also been built around it. Respondent No.2, therefore, maintains that the land in question is a private property as the `Sanad" by which it was granted, still

stands unchallenged.

4. In this background, the case of the petitioner Municipality is that upon the constitution and establishment of the Municipality, the then Government of Saurashtra, in exercise of power under sub-section (1) of Section 50 of the District Municipal Act, 1901 (Act No.3 of 1901) ("the Act"), issued a Notification dated 8-15.03.1951, vesting certain properties of the State of Saurashtra in the petitioner Municipality. The properties vested in the Municipality by this Notification are described in Schedule I of the Notification and include all public properties. The land in question is not mentioned in the said Notification. On 02.07.1955, the Government of Saurashtra issued another Notification, in exercise of power under sub-section (2) of Section 50 of the Act, transferring to the Municipality all vacant plots situated within the limits of the Municipality which belonged to the Government, except the plots described in the Schedule. The land in question was the second item in the Schedule, described as the "Plot behind the N.T.M. High School portion between High School and Sheth Ratilal Vardhman's Bungalow" and was specifically excluded from vesting in the Municipality by the Schedule. It, therefore, did not vest in the Municipality by this Notification. On 27.12.1955, the Government of

Saurashtra issued a third Notification, whereby the first two items in the Schedule of the second Notification dated 02.07.1955, stood deleted. This Notification had the effect of excluding the land in question from the exemption of vesting in the Municipality. This is the basis of the claim of the petitioner Municipality over the land. It appears that the City Survey record was not compiled and codified and it was only in the year 1966 that the land in question came to be surveyed. On 04.03.1970, an entry was posted in the record by the City Survey Superintendent, to the effect that the land in question was of the ownership of the petitioner Municipality. It is the case of the petitioner that the Notification dated 27.12.1955 was never challenged by respondent No.2, whereas it is the case of respondent No.2 that no notice was served upon the predecessor of respondent No.2 before posting the entry in the record, as mandated by sub-section (2) of Section 37 of the Bombay Land Revenue Code, 1879, now the Gujarat Land Revenue Code, 1879 ("the Code" for short).

5. It appears that one Ratubha Waghela filed a Civil Suit for declaration and permanent injunction against the Municipality and respondent No.2, in respect of the land in question. Respondent No.2 claims knowledge regarding the events relating to the land in

question through the said Civil Suit and asserts that the possession of the land always remained with the predecessor of respondent No.2. On gaining knowledge regarding the ownership entry posted in the record through the suit, the predecessor of respondent No.2 challenged it by filing an appeal before the Deputy Collector. The appeal was allowed and the order dated 04.03.1970, was set aside. The case was remanded to the City Survey Superintendent for fresh determination, by the order dated 31.07.1995 of the Deputy Collector.

6. The City Survey Superintendent, by his order dated 06.09.1996, held that the land in question was sold to the predecessor of respondent No.2 by a `Sanad" in Form-A, on a permanent basis and the said land is occupied by him. The Collector, in exercise of suo motu powers under Section 211 of the Code, took the above order of the City Survey Superintendent in revision and issued a show cause notice dated 14.05.1997. After following due procedure, the Collector, by his order dated 18.05.1998, confirmed the order of the City Survey Superintendent and withdrew the notice.

7. Aggrieved by this turn of events, the petitioner Municipality filed an appeal before the GRT, which was allowed by a judgment dated 11.07.2008. The orders of the Deputy Collector and City Survey Superintendent were set aside

and the property in question was declared to be of the ownership of the Government of Saurashtra, vesting in the petitioner Municipality. Respondent No.2 did not immediately challenge this order of the GRD but did so on 05.09.2013, by filing application for review of the said order. The application was allowed by the impugned order dated 30.01.2014 and the original appeal of the petitioner, being Appeal No.AA/41/1998, was restored to file for fresh decision. After issuing notices to the parties, hearing them and examining the material on record, the GRT rejected the appeal of the petitioner Municipality by the impugned judgment and order dated 16.06.2015. Aggrieved by the above two orders of the GRT, the Municipality is before this Court.

8. In the backdrop of the above factual scenario, the submissions advanced by learned counsel for the respective parties may be briefly summarised.

9. Mr.P.S.Champaneri, learned counsel for the petitioner Municipality has submitted that the predecessor of respondent No.2 did not raise any objection to, or challenge, the Notification dated 27.12.1955, vesting the land in question in the Municipality. Similarly, respondent No.2 did not challenge the order dated 04.03.1970, passed by the City Survey Superintendent, posting the entry in the record and the said

order became final. It was only during the pendency of the Civil Suit filed by one of the Municipal Councillors that respondent No.2 challenged the order dated 04.03.1970 for the first time, on 03.12.1994.

10. It is submitted that the Deputy Collector, by his order dated 31.07.1995, by remanding the matter to the City Survey Superintendent has virtually declared that the Notification dated 27.12.1955 of the State of Saurashtra is invalid, which he could not have done. The City Survey Superintendent has also ignored the said Notification and wrongly held in favour of respondent No.2. It is contended that the Deputy Collector ought not to have withdrawn the notice of the suo motu revision. The petitioner Municipality, therefore, approached the GRT which, after examining the record, held by the judgment dated 11.07.2008, that the land in question vested in the Municipality. It is submitted that while passing this judgment the GRT has given cogent reasons, therefore, the GRT ought not to have allowed the application for review of the judgment which was filed belatedly by respondent No.2.

11. Learned counsel for the Municipality contends that the power of review could not have been exercised after a lapse of five years. The Tribunal has allowed the review application for reasons that are not in consonance with the

provisions of Section 17 of the Bombay Revenue Tribunal Act, 1957 ("the Tribunal Act"), hence, the power of review has been incorrectly exercised. The grounds for review, as mentioned in Section 17, are not made out and the GRT could not have entertained the review application on the consent of parties which does not confer jurisdiction when the requirements of Section 17 of the Tribunal Act are not met. The GRT is required to record its satisfaction, which has not been done.

12. It is further contended that the nature of the procedural defect in its earlier judgment has not been disclosed by the GRT, which has virtually reheard the matter. Therefore, on the face of it, the impugned order in review suffers from an erroneous exercise of power.

13. In support of this submission, learned counsel for the Municipality has placed reliance upon a judgment of the Supreme Court in the case of *Kamlesh Verma v. Mayawati and Ors.* - 2013(3) GLH 143 : (2013)8 SCC 320.

14. It is further contended on behalf of the Municipality that the earlier order of the GRT has been set aside by rehearing the matter and reappreciating the evidence, which is not permissible in law. The GRT has ignored the aspect that the Notification vesting the land in the Municipality was never challenged by respondent No.2. So long as the said

Notification remains, the findings of the GRT in its impugned judgment cannot be sustained. The Notification was issued by a valid exercise of power and has remained unchallenged by respondent No.2, who remained silent even after the entry was posted in the record.

15. It is further urged on behalf of the Municipality that there was a family settlement by respondent No.2 on 04.06.1981, which does not mention the land in question, which shows that it has vested in the Municipality. Therefore, the filing of the appeal against the entry after a lapse of 40 years is not maintainable.

16. The petition has been strongly opposed by Mr.Devang Vyas, learned counsel for respondent No.2. He has submitted that the present is a peculiar case where the property in question has been sold by a perpetual lease after charging the market price, which was paid by the predecessor of respondent No.2. The ownership of the property was, therefore, transferred to respondent No.2. Learned counsel further submits that the petitioner has not disclosed the correct factual scenario to the Court and it is the respondent No.2 who has appended copies of the correspondence between the Political Agent and the Dewan of the erstwhile princely State of Wadhwan with the affidavit-in-reply. From the said correspondence and the Lease Deed, it is clear that the property in question was sold to

the predecessor of respondent No.2 upon the payment of the market price and he became the owner thereof. The lease is a perpetual one and was executed in valid exercise of power and has never been revoked. It is contended that the Municipality can have no claim over private property.

17. Learned counsel for respondent No.2 further submits that the property in question was transferred to respondent No.2 much before the Notifications referred to in the petition were issued by the State of Saurashtra. Notification dated 08.03.1951 mentions only public properties as vesting in the Municipality. Further, in the Notification dated 02.07.1955, a specific exception has been made regarding the property in question as it belonged to respondent No.2.

It is only in the third Notification dated 27.12.1955, that this exception has been removed. No notice was issued to respondent No.2 before this Notification was issued, otherwise the said respondent could have submitted documents showing that the property belongs to him. Even when the entry was mutated on 04.03.1970, no notice was issued and respondent No.2 remained unaware of it until it came to light in the Civil Suit filed by a third party. The relevant record of those days has been transferred to Jaipur and it took some time to obtain documents and approach the GRT in review.

18. Learned counsel for respondent No.2 would further urge that the entry in the revenue record has been posted by the City Survey Superintendent without following the mandatory requirements of sub-section (2) of Section 37 of the Code, as no inquiry took place and no notice was issued. The property never belonged to the State of Saurashtra but was transferred by respondent No.2 by a valid lease much before the notification of vesting was issued, therefore, the entry in question has been incorrectly posted in the record. The procedure envisaged in Rule 29 of the Gujarat Land Revenue Rules, 1972, was never followed, therefore, it cannot be said that respondent No.2 has filed the appeal belatedly. The appeal has been filed immediately upon gaining knowledge that the private property of respondent No.2 is sought to be usurped by the Municipality.

19. It is next contended that the revenue authorities, after examining the record, have recorded findings of fact in favour of respondent No.2. The GRT, while delivering its judgment dated 11.07.2008, did not have the correct picture as the relevant documents were not before it. The power of review, therefore, has been exercised on legal and valid grounds as mentioned in Section 17 of the Tribunal Act as evidence has emerged to show that the property is of the ownership of respondent No.2, which

goes to the root of the matter.

20. It is further submitted on behalf of respondent No.2 that the `Sanad" has not been challenged by the petitioner before any competent Court of law. If the Municipality is desirous of ascertaining the rights and title of the property in question, it can file a civil suit as revenue entries do not confer ownership but are only made for fiscal purposes.

21. It is contended that the family partition mentioned by learned counsel for the Municipality is not at all relevant and can never confer ownership rights upon the Municipality.

22. That, the Municipality never challenged the order in review at the relevant point of time but has now chosen to do so before this Court, after the appeal was rejected. It is submitted that the revenue authorities have consistently recorded concurrent findings of fact in favour of respondent No.2. The Tribunal has committed no error in passing the impugned judgments on the facts and in the circumstances of the case, upon coming to light of relevant documents proving the leasehold rights of respondent No.2.

23. In support of the above submissions, learned counsel for respondent No.2 has placed reliance upon the judgment of this Court in Special Civil Application No.12002 of 2001 dated 30.03.2016, in the case of Deceased Ratanlal Maganlal

Doodhwala v. Mamlatdar and ALT on the point of concurrent findings arrived at by the revenue authorities and confirmed by the GRT. The relevant paragraphs are reproduced below:

"21. In the view of this Court, the findings arrived at by respondents Nos.1 and 2, as confirmed by the Tribunal, are just and proper on the facts and circumstances of the case and the evidence on record. Moreover, they are supported by the legal position that has followed the deletion of Section 121 of the Town Planning Act. No interference is, therefore, warranted from this Court.

22. There are concurrent findings of two revenue authorities and the Tribunal against the petitioners and in favour of respondents Nos.3 to 5. The impugned orders suffer from no legal infirmity, irregularity or perversity. None of the authorities passing these orders have exceeded their

jurisdiction in any manner. Full opportunity of hearing has been granted to the petitioners. This Court, therefore, does not consider the challenge advanced by the petitioners to the impugned orders, to be a fruitful one."

24. To further elaborate this point, reliance has

also been placed upon the judgment dated

21.11.2016, rendered by this Court in Special

Civil Applications Nos.10489/1999, 10497/1999

and 10499/1999 in the case of Devrajibhai

Valjibhai Gada v. State of Gujarat, wherein it

is held as below:

"11. In the instant case, vide the impugned order the Collector has set aside the entries made in the revenue record, which were prima facie found to be in violation of the Section 63 of the Tenancy Act and therefore, directed the Mamlatdar and ALT to initiate proceedings under Section 84C of the said Act. The Collector himself has not exercised the powers under Section 84C of the said Act as sought to be submitted by Mr.Mehta. In the inquiry before the Mamlatdar under Section 84C, the petitioners would have the opportunity of hearing and to produce the material. It is

needless to say that the revenue entries are made only for the fiscal purpose and they themselves do not create any right, title or interest in favour of any party.

12. In that view of the matter, and there being concurrent findings of facts

records by the respondent authorities, the Court is not inclined to interfere with the same. The petition, therefore, is dismissed."

25. On the point that the Sanad of the land in question has been issued in valid exercise of power and was never challenged, learned counsel for respondent No.2 has relied upon the case of Govind Murji Patel (Kerai) v. State of Gujarat - 2007(1) GLR 671, wherein this Court has held as below:

"6. It is not in dispute that sanad of the land in question was already issued, when the revisional powers were exercised by the authority for the first time in the year 1994. It appears that the sanad came to be issued pursuant to the orders dated 28.2.1985, more particularly in view of the conditions incorporated. It is well settled that if the sanad has been issued in

pursuance to the order passed by the revenue authority for allotment of the land the powers under the Land Revenue Code of revisional jurisdiction cannot be exercised, since the execution of the sanad is an agreement between the purchaser of the land/allottee of the land and the State Government. The reference may be made to the decision of this Court in case of "Patel Raghav Natha v. G.F. Mankodi, Commissioner, Rajkot Division and Others", reported in 1965 GLR, 34 and more particularly the concluding observations made at para 13 as under:

"13. ...Therefore, to my mind, the term included in this agreement can only mean that over and above the conditions which were specifically mentioned in the agreement, other conditions contained in any of the provisions of the Code, which can apply to such a grant, shall also apply. In my view, therefore, Section 211 cannot apply to the agreement, even if it is tried to be so made applicable by this particular condition. If in law there is no jurisdiction under Section 211 to revise an agreement no amount of terms included in a document between the parties can vest in the authority that jurisdiction. Under these circumstances, I find it difficult to accept the submissions made on behalf of the Municipality whereby they have urged that the inclusion of this condition would entitle the Government to revise the agreement itself under its powers, under Section 211. As a

result of this train of discussion and reasoning, it must be held that the Commissioner's order is without authority and that there was no jurisdiction vested in him to pass an order which goes to nullify the agreement. In my view, the sanad or the agreement passed in this case as a result of the Collector's order still stands and is binding on both the sides till it is set aside

in due course of law. As I have already observed that observed and as was observed in the various decisions discussed above, the right procedure for the Government is to go in a civil suit to set aside that agreement. Till then it stands good and binding."

7. Therefore, if the matter is considered in light of the above legal position, the exercise of the revisional power by the first authority and its confirmation thereof by the higher authorities can be said as without there being any jurisdiction to exercise the appellate power/revisional power and the proper course for the aggrieved party was to prefer the civil suit."

26. Similar reliance has been placed upon a judgment

dated 26.08.2016 rendered in Special Civil

Application No.10564 of 1996 in the case of

Dilipkumar B. Pandey v. State of Gujarat &

Ors.

27. On the settled legal position that revenue

entries are mutated for fiscal purposes and do

not confer title upon the land, learned counsel

for respondent No.2 has relied upon a judgment

of this Court in the case of Rakesh Shivbhadwan

Agrawala v. Talati -cum-Mantri - 2002(2) GLH

322, wherein it is held as below:

"5. This court is not expressing any opinion on the findings of the lower authorities. However, it is well settled that the revenue entries are having the value for fiscal purposes and therefore they are having presumptive value in nature and by mutation entry or cancellation thereof the title of the land is not in any manner affected. If any party is aggrieved by the mutation or cancellation thereof, for the purpose of establishing the title the proper remedy would be competent civil court. In the present case the lower authorities have concurrently found and therefore this court finds no case to interfere in exercise of powers under Art of the Constitution, and if the petitioner is so advised, he may prefer a civil suit for establishing the title in accordance with law. It is needless to clarify that the observations made by the revenue

authorities in the impugned order shall not prejudice the case of either party in appropriate proceedings before appropriate authority."

28. Mr.Tirthraj Pandya, learned Assistant Government

Pleader, appearing for respondent No.2 has supported the findings of the revenue authorities and the impugned judgments of the GRT.

29. In the backdrop of the above factual scenario, this Court has heard learned counsel for the respective parties at length, perused the material on record and accorded thoughtful consideration to the rival submissions.

30. After hearing the parties, one aspect strikes the Court at the outset, which is that in the petition, the petitioner Municipality has not mentioned at all, the fact that the land in question has been granted to respondent No.2 on perpetual lease by the erstwhile ruler of the former princely State of Wadhwan, by executing a Lease Deed.

31. The entire series of correspondence between the Dewan of Wadhwan and the British Political Agent regarding the lease as well as the Lease Deed itself, has never been disclosed by the petitioner in the petition. It is only in the affidavit-in-reply that these documents have surfaced and the entire factual position has become clear. This aspect gains significance because it is on the basis of these very documents that the GRT has exercised the power of review. The petitioner has, therefore, placed only selected facts, as convenient to it, before the Court but not the complete facts. This can

be said to be another form of suppression of material facts.

32. It is a fact, not disputed by the petitioner Municipality, that the land in question was leased in perpetuity to the predecessor of respondent No.2 upon payment of the then prevailing market price, by a Lease Deed executed in January 1947. The Lease Deed was executed after correspondence dated 24.02.1945 was addressed by the Political Agent to the Dewan of Wadhwan State, asking for permission to execute the Lease Deed in favour of respondent No.2, as the land in question could not be used for recreation purposes for N.T.M. High School. The Dewan replied in the affirmative, by a letter dated 02.01.1946 and the Lease Deed was executed. The property in question, therefore, became the private leasehold property of respondent No.2 on payment of Rs.5,492/-, as mentioned in the Lease Deed.

33. The principal Notification dated 08-15/03/1951 of the Government of Saurashtra regarding the vesting of properties in the petitioner Municipality includes only public properties mentioned in Schedule I. Not a single private property is mentioned therein. The intention of the Government of Saurashtra is clear from this Notification, that it intended only public properties to vest in the Municipality. The second Notification dated 02.07.1955 also

further this intention and specifically
excludes the land in question from vesting in
the Municipality. It states as below:

"NOW, therefore, in pursuance of sub-section (2) of Section 50 of the said Act, the Government is pleased to transfer to the said Municipality all vacant plots situated within the limits of the said Municipality and belonging to the Government except plots described in the Schedule hereto appended for local public purposes."

34. The above extract clearly refers to vacant plots
situated within the limits of the said
Municipality and belonging to the Government and
makes an exception for plots described in the
Schedule. The land in question figures at
Sr.No.2 in the Schedule and is specifically
excluded.

35. It is in the third Notification dated
27.12.1955, that the exemption given in the
Notification dated 02.07.1955 was removed, which
had the effect of vesting the land in question
in the Municipality. It is the specific case of
respondent No.2 that the said respondent was not
issued notice or heard before this Notification
was issued, vesting his private leasehold
property in the petitioner Municipality. The
Municipality heavily relies on this Notification
whereas respondent No.2 relies upon the Lease
Deed executed in its favour, which has not even
been referred to by the petitioner Municipality
in the petition.

36. It is not disputed that no mutation entry came
to be posted in the revenue record regarding the

Notification dated 27.12.1955 until 04.03.1970, when the City Survey Inquiry Officer held that the land in question was of the ownership of the Municipality. It is the specific case of respondent No.2 that no notice was ever served to the said respondent while determining such ownership, as required under Section 37(2) of the Code. This aspect has not been disputed either by learned counsel for the petitioner Municipality or the learned Assistant Government Pleader. Neither have produced any material on record to show that notice was issued to respondent No.2. In light of this position, the case of respondent No.2, that it was only during the proceedings of the Civil Suit filed by a third party that these issues came to knowledge, is quite plausible.

37. Reference may now be made to Section 37 of the Code which is relevant in this regard and reads as follows:

"37. All public roads, etc., and all lands which are not the property of others, belong to the [Government]--

(1) All public roads, lanes and paths, the bridges, ditches, dikes, and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water-mark, and of rivers, streams, nallas, lakes, and tanks, and all canals, and water-courses, and all standing and flowing water and all lands wherever situated, which are not the property of individuals, or of aggregates of persons legally capable of holding property, and except in so far as any rights of such as may be otherwise persons may be established, in or over the same, and except provided in any law for the time being in force are and are hereby declared to be, with all rights, in or over the same, or appertaining thereto, the property of [the [Government]], and it shall be lawful for the Collector subject to the orders of the [State Government], to dispose of them in such manner as he may deem fit, or as may be

authorised by general rules sanctioned by [the Government concerned] subject always to the rights of way, and all other rights of the public or of individuals legally subsisting.

Explanation.-In this section "high-water- mark:" means the highest point reached by ordinary spring-tides at any seasons of the year.

(2) Where any property or any right in or over any properties is claimed by or on behalf of [the [Government] or by any person as against [the [Government], it shall be lawful for the Collector or a survey officer, after formal inquiry of which due notice has been given, to pass an order deciding the claim.

(3) Any suit instituted in any Civil Court after the expiration of one year from the date of order passed under sub-section (1) or sub-section (2), or, if one or more appeals have been made against such order within the period of limitation then from the date of any order passed by the final appellate authority, as determined according to section 204, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is

inconsistent with such order, provided that in the case of an order under sub-section (2) the plaintiff has had due notice of such order.

(4) Any person shall be deemed to have had due notice of an inquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the [State [Government]]" (emphasis supplied)

38. Sub-section (2) of Section 37 lays down the requirement of giving notice of the inquiry to the person who claims the land and only thereafter to pass an order. In the present case, there is nothing on record suggesting, even remotely, that this mandatory requirement was fulfilled. This aspect assumes significance, because the property in question has been leased in perpetuity to respondent No.2, much before any of the Notifications of the Government of Saurashtra, including the Notification dated 27.12.1955, were even issued. The Lease Deed conferred private leasehold rights upon

respondent No.2, therefore, it was imperative to follow the procedure under Section 37(2) of the Code before mutating the entry in the record. When no such procedure has been followed at the stage of passing the order dated 04.03.1970, it cannot be said to be improbable that respondent No.2 remained unaware of the proceedings and the resultant mutation entry, until this state of affairs came to light in the Civil Suit filed in respect of the land in question, by a third party. It is asserted by respondent No.2 that the possession of the property remained with the said respondent throughout, therefore there was no reason to approach the authorities. Under the circumstances and in view of the above-mentioned undisputed facts, the aspect of delay on the part of respondent No.2 in challenging the entry, as submitted by learned counsel for the Municipality, cannot hold good. Nothing to the contrary has been produced by the Municipality.

39. The City Survey Superintendent, by his order dated 06.09.1996, found that the land in question has been given on lease by a 'Sanad' to the predecessor of respondent No.2 in the year 1947 and the said respondent is an occupant of the land, which endorsement was made in the City Survey record. The Deputy Collector, by his order dated 18.05.1998, after examining the facts of the case and the material on record withdrew the Show Cause Notice dated 14.05.1997

issued by him in exercise of suo-motu powers and confirmed the above findings of the City Survey Superintendent.

40. In the proceedings of the appeal preferred by the petitioner before the GRT, the relevant documents, such as the correspondence between the Political Agent and the Dewan of Wadhwan State as well as the Lease Deed executed in favour of respondent No.2, were not produced. This position is an admitted one. Much reliance has been placed by learned counsel for the Municipality on the judgment dated 11.07.2008 of the GRT, that is now no longer in existence, wherein it has been found that by the Notification dated 27.12.1955, the exception was removed and the land in question vested in the Municipality.

41. We may now examine the other contention of the petitioner Municipality, that the GRT has not properly exercised the power of review, has not disclosed what the procedural error was in its earlier judgment and has not acted in consonance with Section 17 of the Tribunal Act.

42. The provisions of Section 17 of the Tribunal Act are reproduced below:

"17. Review of orders of Tribunal --

(1) The Tribunal may, either on its own motion or on the application of any party interested, and where the State Government is heard, under Section 15 on the application by that Government, review its own decision or order in any case, and pass in reference thereto such order as it thinks just and proper:

Provided that, no such application made by any party shall be entertained,

unless the Tribunal is satisfied that there has been the discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of such party or could not be produced by him at the time when its decision was made, or

that there has been some mistake or error apparent on the face of the record, or for any other sufficient reason:

Provided further that, no such decision or order shall be varied or revised, unless notice has been given to the parties interested to appear and be heard in support of such order.

(2) An application for review under sub- section (1) by any party or, as the case may be, by the State Government shall be made within 90 days from the date of decision or order of the Tribunal:

Provided that, in computing the period of limitation, the provisions of the Indian Limitation Act, 1908 (IX OF 1908), applicable to applications for review of a judgment or order of a Civil Court shall, so far as may be, apply to applications for review under this section."

43. The proviso to Section 17(1) states that one of

the grounds of review is the discovery of new

and important mater or evidence which after the

exercise of due diligence was not within the

knowledge of such party or could not be produced

by him at the time when the decision was taken.

In the present case, the evidence in the form of

documents regarding the correspondence between

the Political Agent and the Dewan of Wadhwan

State as well as the Lease Deed could not be

produced by respondent No.2 when the earlier

judgment was delivered. When the documents could

be procured by respondent No.2, the application

for review was moved.

44. By the impugned order dated 30.01.2014, the GRT,

after issuing notice to the parties and hearing

them, found that certain relevant documents were

not brought to its notice as per the record, therefore, it found a fit case for the exercise of jurisdiction under Section 17 of the Tribunal Act. It has been contended on behalf of the Municipality that the GRT has not recorded its 'satisfaction' that there has been a discovery of new and important evidence. This contention of the Municipality appears to be too literal in nature. The very order of the GRT has been passed on the basis of its satisfaction that certain relevant evidence was not on record when its earlier order was passed. In any event, even after the passing of the order dated 30.01.2014 by the GRT, restoring the appeal to file in exercise of review jurisdiction, the petitioner Municipality did not chose to challenge the judgment but participated in the appeal proceedings. It is only when the Municipality was unsuccessful in the appeal that it is questioning the exercise of the power of review by the GRT before this Court, after acquiescing to the said judgment.

45. In *Kamlesh Verma v. Mayawati and Ors.* (supra), relied upon by learned counsel for the petitioner Municipality, the Supreme Court has reiterated the settled legal principles pertaining to the exercise of review jurisdiction. One of the principles is the discovery of new and important matter or evidence. This is precisely the ground on which

the GRT has exercised the power of review. It is not disputed that the documents regarding the correspondence between the Political Agent and the Dewan of Wadhwan State as well as the Lease Deed in favour of respondent No.2, were not on record when the earlier judgment of the GRT dated 11.07.2008 was rendered. The ground of discovery of new and important matter and evidence was, therefore, a valid and relevant ground for the Tribunal to exercise its jurisdiction as per the proviso to Section 17(1) of the Tribunal Act. The objection of delay was not taken by the Municipality when this order was passed and the said order was never challenged, therefore, it can hardly lie in the mouth of the Municipality to raise this issue at this stage.

46. Insofar as the impugned order dated 16.06.2015 of the GRT is concerned, it has been passed after hearing the rival submissions and considering the material on record, including the documents brought on record by respondent No.2 which were not available at the relevant point of time. The GRT has meticulously discussed the said documents and arrived at a conclusion that the property in question has been granted by way of a 'Sanad' (reference to the Lease Deed) in favour of respondent No.2, which finding has been concurrently recorded by three authorities as well. It has further found

that the predecessor of respondent No.2 was not issued notice or heard during the inquiry that took place before making the entry in the City Survey record in favour of the Municipality. It has further been found by the GRT that cogent grounds for condonation of delay were raised by respondent No.2 in the appeal before the Deputy Collector which found favour with the authority. There is also a finding that the revenue authorities have found respondent No.2 to be in possession of the property ever since 1947 and the said property is of private ownership, as are the properties surrounding it. The GRT has found that the authorities below have correctly assessed and appreciated the evidence and found that the land in question has been leased in perpetuity to the predecessor of respondent No.2 and the said respondent is in possession thereof.

47. All the above findings of the GRT are in consonance with the concurrent findings of fact and evidence on record to the effect that the property in question has been granted in lease to respondent No.2, way back in the year 1947 and the said judgment is in possession thereof. These findings of fact are based on material on record. The municipality has not produced any material to the contrary but has tried to avoid mentioning the relevant facts in the petition. In the impugned judgment of the GRT, reliance

has been placed on the material on record.

Nowhere has the GRT commented on the validity of the Notification dated 27.12.1955, as is sought to be argued on behalf of the Municipality.

48. Besides the above, there has never been any challenge to the `Sanad", in the form of the Lease Deed, by the Municipality. As per the settled position of law elaborated in the case of Govind Murji Patel (Kerai) v. State of Gujarat (supra), a `Sanad" issued in valid exercise of power is binding on the parties unless and until it is set aside in due course of law. The `Sanad" or Lease Deed dated January 1947 in favour of respondent No.2 is still in existence and was in existence even before the three Notifications of the State of Saurashtra dated 15.03.1951, 02.07.1955 and 27.12.1955, were issued. The Lease Deed has never been questioned in any legal proceedings by the Municipality and the perpetual leasehold rights granted by it to respondent No.2 on the payment of the market price prevailing at the relevant point of time, are still in existence. Nothing to dispute this position has been produced on record by the Municipality.

49. The cumulative effect of the above discussion is that this Court does not find any illegality, irregularity or perversity in the impugned orders dated 30.01.2014 and 16.06.2015, passed by the GRT, so as to warrant interference. The

said orders are a result of a proper and valid exercise of jurisdiction and are based on cogent reasons. They deserve to be upheld and are, accordingly upheld.

50. As a result, the petition fails and is rejected. Rule is discharged.

Learned advocate for the petitioner submits that the judgment be stayed for four weeks. For reasons recorded in the judgment, the request is declined.