(2022) 04 GUJ CK 0031

In the Gujarat High Court

Case No : R/Special Civil Application No. 22072 Of 2017, 4418 Of 2018

Tusharbhai Harjibhai Ghelani APPELLANT

Vs

State Of Gujarat & 1 Other(S) RESPONDENT

Date of Decision : 08-04-2022

Acts Referred:

Gujarat Land Revenue Code, 1879 — Section 65
Gujarat Tenancy And Agricultural Land Act, 1948 — Section 32G(4), 43, 63, 63(AB), 76
Bombay Service Inams (Useful To Community Abolition Act, 1953 — Section 5(2), 5(3)
Gujarat Revenue Tribunal Act, 1957 — Section 9

Citation : (2022) 04 GUJ CK 0031

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Mehul Sharad Shah, Nikunj Kanara

Final Decision : ?Allowed/Dismissed

Judgement

Dr. A. P. Thaker, J

1. By way of filing Special Civil Application No.22072 of 2017, the petitioner has prayed to issue a writ of mandamus or a writ of certiorari or any other appropriate writ, order or direction, quashing and setting aside order dated 23.11.2016 passed by the District Collector, Surat and for further direction to the District Collector, Surat to comply with the order passed by the Gujarat Revenue Tribunal dated 24.06.2015 in Revision Application No.18 of 2015 and thereby to grant N.A. permission to the land bearing Final Plot No.92 admeasuring 3574 sq.mtrs., in T.P. Scheme No.29 situated in the sim of Village-Rundh, Surat.

2. So far as facts giving rise to Special Civil Application No.22072 of 2017 are concerned, the same are as under:-

2.1 That one Dhirajram Trambakram was the owner of the land bearing Survey No.28/4 admeasuring 5500 sq.mtrs. at village Rundh, Taluka Surat. He executed sale deed dated 22.07.1963 in favour of one Mangiben Somabhai and Baniben

Somabhai and revenue entry No.280 was mutated in the revenue record. Thereafter, Mangiben Somabhai and others have executed a registered sale deed dated 20.03.2002 in favour of one Babulal Banwarlal and Mohanlal Kuberbhai. The revenue entry No.1206 came to be mutated on 25.07.2005 and certified on 27.09.2005. Thereafter Babulal Banwarlal and Mohanlal Kuberbhai have executed registered sale deed dated 13.11.2006 in favour of the present petitioner and revenue entry No.1611 came to be mutated in revenue record on 29.01.2009 and certified on 01.06.2009.

2.2 The petitioner states that thereafter said land bearing Survey No.28/4 admeasuring 5500 sq.mtrs. of Village Rundh came to be included in Town Planning Scheme No.29 (Rundh-Vesu-Magdalla) and Final Plot No.92 admeasuring 3574 sq.mtrs. was given to the petitioner. Thereafter, since the land was included in Town Planning Scheme, petitioner applied for NA permission under Section 65 of the Gujarat Land Revenye Code before the Collector. The learned Collector, vide communication dated 14.02.2014 informed the petitioner that he has sought opinion from various authorities and upon receipt of the opinion, the application will be considered.

2.3 Thereafter, vide order dated 23.05.2014, District Collector has rejected the said application dated 13.02.2014 on flimsy grounds. The petitioner states that thereafter petitioner filed detailed application dated 25.06.2014 explaining and clarifying the objections for rejection cited by the Collector in his earlier order dated 23.05.2014. Petitioner explained each and every circumstance and again requested to reopen the application and to grant N.A. permission after considering the opinion already received from various authorities.

2.4 The petitioner states that vide order dated 28.08.2014, Collector again rejected the application on some new grounds. For the first time, reason was given for rejection that the land is new tenure land and even the development permission from Surat Municipal Corporation was not produced. Petitioner states that thereafter petitioner applied for development permission for commercial purpose from Surat Municipal Corporation and technical sanction for development permission came to be granted vide order dated 04.08.2015 for commercial use. It is pertinent to note that, as per the new policy adopted by the Surat Municipal Corporation, unless N.A. permission is produced, final development permission is not issued by the Corporation. Therefore, technical sanction is being granted.

2.5 The petitioner states that since a new reason/ new point has been raised by the District Collector that the land is a new tenure land, though in fact, it is an old tenure land as his predecessors in title have purchased the land by registered sale deed and since 1966 the entries for registered sale deeds came to be mutated and no authority raised any objection qua the tenure of the land, therefore, petitioner preferred Revision Application No.18/2015 before the Gujarat Revenue Tribunal, Ahmedabad against order dated 28.08.2014 passed by the District Collector.

2.6 That learned GRT, after considering the evidence on record and provisions of law in its true perspective and after examining the record of the land in question, set-aside the order passed by the District Collector dated 28.08.2014 and directed the Collector to decide an application for N.A. permission treating the land as an old tenure land and thereby allowed the revision application vide order dated 24.06.2015.

2.7 Thereafter, it appears from record that the District Collector did not agree with the order passed by the Gujarat Revenue Tribunal and therefore requested the Government Pleader of the Tribunal to file review application against the said order. However, it appears from record that vide opinion dated 15.10.2015, the Special Government Pleader, Gujarat Revenue Tribunal informed the Collector that order passed by the Gujarat Revenue Tribunal is just and proper and the Tribunal has jurisdiction to decide the issue of tenure and therefore no reason is made out to file review application and, therefore, entire file was returned to the District Collector, Surat. It is pertinent to note that after the order passed by the Gujarat Revenue Tribunal when petitioner requested the Collector to consider his application for N.A. permission, then vide order dated 26.10.2016, it was replied that the Collector had sent a proposal to the Government Pleader to file review application and, therefore, the application was rejected.

2.8 It is stated that again vide application dated 27.10.2016, petitioner requested the Collector to reopen the case and to consider an application for non-agricultural permission, however, again by letter dated 23.11.2016, it was rejected/filed on the ground that the proposal was sent to the Government to challenge the order passed by the Gujarat Revenue Tribunal dated 24.06.2015 before the Hon'ble High Court. On such ground, the Collector has further granted stay to himself. It is pertinent to note that till date, as per the knowledge of the petitioner, no petition has been filed against the order passed by the Gujarat Revenue Tribunal dated 24.06.2015 and the N.A. application is kept pending.

2.9 It is stated that the petitioner has purchased other parcels of land also from Babulal Banwarlal and others and several proceedings were initiated on the ground that the predecessors in title i.e. Babulal Banwarlal was not an agriculturist and petitioner is apprehending that so far as present land is concerned, there also the issue may be raised that he has purchased the land from non-agriculturist and that the transaction would not be valid. Therefore, in view of the recent amendment in the Tenancy Act i.e. Section 63 (AB) of the Tenancy Act, petitioner applied before the Mamlatdar and ALT (Tenancy) to consider his case under Section 63 (AB) of the Act. The Mamlatdar registered the case as Case No.6/2016 and after examining the record and amended provision, vide order dated 25.07.2017 directed the petitioner to deposit an amount of 10% of the Jantri value of the land i.e. around Rs.1,14,12,500/- and also ordered to file the notice issued u/s 84B (1) and to close the proceedings, if any, initiated u/s 84C. Accordingly, the petitioner has deposited the said amount.

2.10 Thereafter again, vide application dated 03.10.2017, petitioner requested the Collector to reopen the file and grant permission for commercial purpose under Section 65 of the Code. The petitioner pointed out in the application that Gujarat Revenue Tribunal, vide order dated 24.06.2015, directed to reconsider the application and thereafter even to avoid any further issue, petitioner had deposited Rs.1,14,12,500/under Section 63(AB) to regularize the transaction and now there is no breach of Section 63 of the Tenancy Act and in view of the subsequent development, the application may kindly be considered. Petitioner states that however, the Collector informed the petitioner that proposal is already sent to the Government to challenge the order passed by the Gujarat Revenue Tribunal and, therefore, his application will not be decided. Under these circumstances, petitioner has filed Special Civil Application No.22072 of 2017.

3. So far as Special Civil Application No.4418 of 2018 is concerned, it is filed by the State with a prayer to quash and set aside order dated 24.6.2015 passed by the Gujarat Revenue Tribunal in Revision Application No.18 of 2015.

3.1 It is the case of the petitioner-State that the land bearing Survey No. 45/4 of Village:Rundh, Taluka: Surat City(Majura), District: Surat was under the head of the State Government. Entry No.180 dated 10.06.1955 mentioned that it is "Gam Naukar Raiyat Upyogi" land. Thereafter, the Prant Officer regranted the land in question and Entry No.204 dated 08.12.1959 was mutated in the revenue record. The petitioner state that the land bearing Survey No.28/4 (Old Survey No. 45) admeasuring 5500 square meters of Village:Rundh, Taluka: Surat City (Majura), District:Surat came to be included in Town Planning Scheme No. 29. The petitioner states that on 13.02.2014 Respondent No.1 applied for N.A. permission under section 65 of the Gujarat Land Revenue Code, 1879 before the Collector, Surat. The petitioner state that Collector, Surat has called the application of the Respondent no.1. After receiving the detailed opinion, Collector, Surat rejected the application of Respondent No.1 on the ground that the land in question is "Gam Naukar Raiyat Upyogi" land, therefore, it is New Tenure and restricted land. Development permission from Surat Municipal Corporation is not produced. The petitioner states that on 25.06.2014, respondent No.1 filed another application before the Collector, Surat and requested to reopen the application for N.A. permission. On 28.08.2014 the Collector, Surat passed detailed order and rejected the application of the Respondent no.1.

3.2 Being aggrieved by order dated 28.08.2014 passed by the Collector, Surat, respondent no.1 preferred Revision Application before the Gujarat Revenue Tribunal at Ahmedabad. On 14.09.2015 petitioner made proposal for review of order dated 24.06.2015 passed by the Gujarat Revenue Tribunal. Upon said proposal the Special Government Pleader of Gujarat Revenue Tribunal gave an opinion that review is not maintainable. Thereafter, by way of letter dated 08.11.2016, the Collector Surat has sent proposal to the Revenue Department of the State Government for necessary permission to challenge the order dated 24.05.2015 passed by Respondent no.2. The permission was granted from the legal department of the State Government on 18.09.2017. Being aggrieved and dissatisfied with order dated 24.06.2015 passed by the Gujarat Revenue Tribunal, Ahmadabad petitioner-State preferred this petition.

4. Learned advocate Mr.Mehul Sharad Shah for the petitioner of Special Civil Application No.22072 of 2017 has submitted that the District Collector erred in refusing to grant N.A. permission only on a flimsy ground that he would like to challenge the order passed by the learned Gujarat Revenue Tribunal before the Hon'ble High Court. It is pertinent to note that since two years, said order is not challenged before the Hon'ble High Court and the Collector has granted stay to himself and has not considered the application for N.A. He further submitted that the petitioner has purchased the land bearing Survey No.28/4 admeasuring 5500 sq.mtrs., of village Rundh. Thereafter, the land was included in Town Planning Scheme No.29 and Final Plot No.92 admeasuring 3574 sq.mtrs., came to be allotted to the petitioner. Therefore, once the land is included in Town Planning Scheme and came into the residential zone of the Town Planning Scheme, then, it loses the character of agricultural land. He submitted that against original land admeasuring 5500 sq.mtrs., only land admeasuring 3574 sq.mtrs., was allotted. Therefore, it is incumbent upon the District Collector to grant N.A. permission u/s 65 of the Code to the petitioner.

4.1 Mr.Shah further submitted that, earlier when N.A. permission was applied for Final Plot No.92, it was rejected on the flimsy ground and therefore, vide detailed application dated 25.06.2014, petitioner did clarify every objection and issue raised by the Collector and requested to grant N.A. permission. Thereafter, for the first time, Collector replied that land in question is of new tenure land and even Surat Municipal Corporation has not granted any technical sanction. Therefore, petitioner obtained technical sanction from the SMC and also pointed out to the Collector that since 1966 several sale deeds have been executed and revenue entries have been certified but, at no point of time any revenue authority has raised any objection and 7/12 extract also shows that the land is an old tenure land. He further submitted that since the Collector refused to grant N.A. permission on the ground that the land is new tenure land, petitioner preferred Revision Application before the Revenue Tribunal, Ahmedabad, and vide order dated 01.07.2015, the Revenue Tribunal has been pleased to hold that the land is an old tenure land and directed the Collector to grant N.A. permission treating the land as an old tenure land. It is surprising to note that at initial stage the Collector asked the Government Pleader to file a review application, however, he clearly opined that the order passed by the Revenue Tribunal is just and proper. Thereafter surprisingly, the Collector informed the petitioner that he would like to challenge the order passed by the Tribunal before the Hon'ble High Court. However, since 2015 no petition is filed and the issue of N.A. permission has been kept pending. Therefore, according to him, this is nothing but an arbitrary and highhanded action on the part of the Collector which is required to be deprecated in strong words.

4.2 Mr.Shah also submitted that recently, the State of Gujarat, Revenue Department issued Resolution dated 02.09.2016 wherein it was emphasized to make the procedure of grant of N.A. permission easy and transparent. It was resolved that if land is included in Town Planning Scheme, then, no N.A. permission is required, but, only the NOC may be obtained from the District Collector. Therefore, in view of the resolution dated 02.09.2016 also appropriate direction may kindly be issued to the Collector to grant N.A. permission/NOC forthwith. He also submitted that as per the provisions of Section 65 of the Code, it is incumbent upon the District Collector to decide the application for N.A. permission within a period of three months and if the authority fails to inform the petitioners of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted. He submitted that as per the decision of this Hon'ble High Court reported in 2005(1) GLH UJ 5, once an application is made under section 65 and no decision is taken within three months, it is deemed to have been granted. He also submitted that along with N.A. permission application, the petitioners have submitted all the documents as per the checklist annexed with the petition regarding his ownership and title of the land. The names of the petitioners are also reflected in the revenue record, as the petitioners are bona fide purchasers of the land by registered sale deed. He also submitted that the petitioner wants to develop the land and if he is not permitted to develop the land as per his choice by granting N.A. permission, then his fundamental rights guaranteed under the Constitution of India would be violated. Therefore, this Hon'ble High Court may be pleased to exercise its extraordinary jurisdiction declaring that of N.A. permission deemed to have been granted. In view of all these, he has prayed to allow Special Civil Application No.22072 of 2017.

5. Learned AGP, Mr.Nikunj Kanara for the State submitted that the impugned order dated 24.06.2015 is bad in law and the same is required to be quashed and set aside. He also submitted that the Gujarat Revenue Tribunal passed an order without considering the reasons and findings by the Collector, Surat. It is submitted that the Gujarat Revenue Tribunal is not appropriate authority / remedy against the order passed by the Collector, Surat. He further submitted that as per section 5 (3) subsection 2 of the Bombay Service Inams (Useful To Community) Abolition Act, 1953 "The occupancy of the land re-granted under subsection (2) shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and expect on payment of such amount as the State Government may by general or special order determine". In present case, the land in question is "Gam Naukar Raiyat Upyogi" land it shall not be transferable or partible without prior permission of the Collector. He has submitted that the Revenue Department, Gandhinagar gave an opinion dated 02.08.2011 that as per The Bombay Service Inams (Useful To Community) Abolition Act, 1953 such kind of land is new tenure and restricted land and it is not transferable without prior permission from the Collector.

5.1 Learned AGP has also submitted that in view of Section 9 of the Gujarat

Revenue Tribunal Act, 1957, the Gujarat Revenue Tribunal has no jurisdiction to decide the matter and, therefore, the impugned order passed by Gujarat Revenue Tribunal is without jurisdiction and it needs to be set aside.

6. In rejoinder, learned advocate Mr.Shah for the petitioner has vehemently submitted that the Gujarat Revenue Tribunal has jurisdiction under the Gujarat Tenancy and Agricultural Lands Act, 1948 to decide the question relating to tenure of the land. He has submitted that under Section 76 of the Gujarat Tenancy and Agricultural Lands Act power has been vested with Gujarat Revenue Tribunal to revise the order of the Collector on the grounds mentioned in Section 76. He has submitted that, in this case, Gujarat Revenue Tribunal has exercised revisional power under Section 76 of the Gujarat Tenancy and Agricultural Lands Act and, therefore, the objection raised by Collector and the State Government regarding lack of jurisdiction of Gujarat Revenue Tribunal is devoid of merits. He has submitted that order of the Gujarat Revenue Tribunal is sustainable in the eyes of law and Special Civil Application filed by the State needs to be rejected and the Collector is bound to follow the decision of Gujarat Revenue Tribunal and grant NA permission to the private petitioner.

7. Having considered the submissions made on behalf of both the sides coupled with the material placed on record, it emerges that there is no dispute regarding factual aspect as to the purchase of the land by the petitioner and his application for NA permission. There is also no dispute that the Collector had refused such permission on the ground that the land in question was a New Tenure land. It is also an admitted fact that order of the Collector came to be challenged before Gujarat Revenue Tribunal and Gujarat Revenue Tribunal has, after considering revenue records, held that order of the Collector is not proper and there is no breach of Section 43 and/or Section 63 of the Gujarat Tenancy and Agricultural Lands Act.

8. Now, the crucial question is whether the Gujarat Revenue Tribunal has authority to deal with the matter. Learned AGP has relied upon Section 9 of the Gujarat Revenue Tribunal Act, 1957, which provides as under:-

"9. Jurisdiction of Tribunal.-(1) Subject to the provisions of this section, the Tribunal shall have jurisdiction to entertain and decide appeals from and revise decisions and orders of officers, not below the rank of a Collector or Deputy Commissioner, in respect of cases arising under the provisions of the enactments specified in the First Schedule.

(2) Save as expressly provided in any enactment for the time being in force, the State Government may, by notification in the Official Gazette, direct that the Tribunal shall also have jurisdiction to entertain and decide appeals from, and receive decisions and orders of, such persons, officers and authorities in such other cases as the State Government may determine; and for that purpose the State Government may, by notification in the Official Gazette, add to, amend or omit, any of the enteries in the First Schedule, and there upon the Tribunal shall

have jurisdiction in such matter and the jurisdiction of any other persons, officer or authority therein shall cease.

(3) The State Government may, at any time, in like manner, cancel such notification or omit any entry from the First Schedule and resume to itself such jurisdiction :

Provided that nothing herein shall prevent the State Government after such resumption of jurisdiction from conferring any such jurisdiction on any other person, officer or authority.

(4) Notwithstanding anything contained in any other law for the time being in force, when the Tribunal has jurisdiction to entertain and decide appeals from and revise decisions and orders of, any person, officer or authority in any matter aforesaid, no other person, officer or authority shall have jurisdiction to entertain and decide appeals from and revise decisions or orders of such person, officer or authority in that matter."

9. Schedule-A appended to Section 9 specifies various Acts and Sections, which falls in the jurisdiction of Gujarat Revenue Tribunal. Schedule-A reads as under:-

The Gujarat Revenue Tribunal Act, 1957

FIRST SCHEDULE

(See section 9)

Name of Enactment

Appellate or revisional jurisdiction against orders or decisions in cases arising under the following provisions.

1.

The Bombay Land Revenue Code, 1879 (Bom. V of 1879).

Section 37 sub-section (2). Section 39A.

Section 43.

Section 46.

Section 47.

Section 51.

Section 61.

Section 79A, except clause

(b) thereof.

2.

The Bombay Land Revenue Code, 1879 (Bom. V of 1879), as extended to the

Kutch area of the State of Bombay.

Section 37, sub-section (2) Section 39A.

Section 43.

Section 46.

Section 47.

Section 51.

Section 61.

Section 79A, except clause

(b) thereof.

3.

The Bombay Land Revenue Code, 1879 (Bom. V of 1879), as adapted and applied to the Saurashtra area of the State of Bombay.

Section 39A. Section 43.

Section 46.

Section 47.

Section 51.

Section 61.

Section 79A, except clause

(b) thereof.

9.

The Indian Forest Act, 1927 (XVI of 1927)

Section 12.

Section 15.

Section 16.

10.

The Indian Forest Act, 1927 (XVI of 1927), as adapted and applied to the Saurashtra area or the State of Bombay.

Section 11.

Section 12.

Section 15.

Section 16.

10. If the aforesaid Schedule is taken as it is, it can be seen that refusal of grant of NA permission under Section 65 of the Code would not fall within the jurisdiction of Gujarat Revenue Tribunal, but at the same time, since the main ground of impugned order is that land in question is New Tenure land, provisions of Gujarat Tenancy and Agricultural Lands Act, 1948 needs to be referred to. It is an admitted fact that restrictions of transfer of agricultural land is provided under Section 43 and 63 of the Gujarat Tenancy and Agricultural Lands Act, 1948. Therefore, to decide the question as to whether there is breach of Section 43 and/or Section 63 of the Gujarat Tenancy and Agricultural Lands Act, proceedings under the Tenancy Act needs to be followed. At this juncture, it is pertinent to note that as per the Scheme of the Tenancy Act, in Chapter-6, which pertains to procedure and jurisdiction of the Tribunal, Mamlatdar and Collector as well as regarding Appeals and Revisions needs to be referred to. Section 67 relates to procedure and jurisdiction of the Tribunal, Mamlatdar and Collector; whereas Duties and Powers of the Tribunal are referred to in Sections 68 and 69. As per Section 67, the Mamlatdar is held to be a Tribunal within the meaning of that Section and any order passed by the Tribunal is challengeable before the Collector. As per Section 74 thereof, if any order is passed by the Collector in appeal under Section 75, there is a provision of revision in Section 76 thereof. The provisions of Section 76 are material to decide this petition, which reads as under:-

"76.Revision.-(1) Notwithstanding anything contained in the 2 [Bombay Revenue Tribunal Act, 1957] an application for revision may be made to the [Gujarat Revenue Tribunal] constituted under the said Act against any order of the Collector [except an order under section 32P or an order in appeal against an order under sub-section (4) of section 32G] on the following grounds only :–

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

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

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

(2) In deciding applications under this section the 1 [Gujarat Revenue Tribunal] shall follow the procedure which may be prescribed by rules made under this Act after consultation with the 1 [Gujarat Revenue Tribunal].

76A. Revisional powers of Collector.-Where no appeal has been filed within the period provided for it. the Collector may, suomotu or on a reference made in this behalf by the State Government, at any time,–

(a) call for the record of any inquiry or the proceeding of any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal, as the case may be, and

(b) pass such order thereon as he deems fit:

Provided that [no such record shall be called for after the expiry of one year from the date of such order and] no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.]

[76.AA. Revisional power of Government in certain cases.- An application for revision may be made to the State Government against the decision of the Collector in an appeal against an order made under sub-section (4) of section 32G and the State Government may call for the proceedings of the Collector for the purpose of satisfying itself as to the legality or propriety of the decision of the Collector and pass such order as it may think fit.]"

11. According to this Section, an application or revision may lie before Gujarat Revenue Tribunal on the grounds A, B and C. Thus the jurisdiction has been vested in Gujarat Revenue Tribunal to decide any questions pertaining to the tenure of land. Now, admittedly in this case, revision was filed before Gujarat Revenue Tribunal against the impugned order of the Collector holding that the land in question is a New Tenure land. Therefore, the exercise of power by Gujarat Revenue Tribunal is proper in view of Section 76 of the Gujarat Tenancy and Agricultural Lands Act. It is pertinent to note that before Gujarat Revenue Tribunal, no objection was raised by revenue authority that Gujarat Revenue Tribunal has no jurisdiction. Thus, the submission made by learned AGP that Gujarat Revenue Tribunal has passed the order without jurisdiction is not acceptable.

12. Now, considering the factual aspect, which has already been considered by Gujarat Revenue Tribunal, and on perusal of the revenue records, Gujarat Revenue Tribunal has held that there is no restriction of Sections 43 and 63 of the Tenancy Act applicable to the land in question. This observation of Gujarat Revenue Tribunal is in accordance with law and there is no illegality committed by Gujarat Revenue Tribunal in reaching to that conclusion. If we refer to relevant documentary evidence, it clearly transpires that from the very beginning i.e. since 1963 the land has been treated as Old Tenure land and there is no entry made in revenue record showing that the land in question is New Tenure land. Now, lately it has been observed that original land was of "Gam Naukar Raiyat Upyogi" but, had that been New Tenure land, entry would have been entered into revenue records at every point of time but nothing of that sort has happened and after lapse of many years, revenue authority has come forward to contend that the land in question was a New Tenure land.

13. It is also pertinent to note that it is admitted fact that Town Planning Scheme has been implemented and Final Plot has been assigned to the land in question. In that view of the matter also, there is no question of now reverting back to the original nature of the land. Thus, even on factual aspects, the view taken by

learned Collector is not sustainable in the eyes of law and the order of learned Gujarat Revenue Tribunal is factually as well as legally sustainable. In view of above, Special Civil Application No.4418 of 2018 filed by the State Government challenging the order of Gujarat Revenue Tribunal is liable to be dismissed and the order of learned Collector needs to be quashed and set aside and the Collector is required to follow the direction of Gujarat Revenue Tribunal.

14. In view of above, Special Civil Application No.22072 of 2017 is allowed and order dated 23.11.2016 passed by the District Collector, Surat, is quashed and set aside and the District Collector, Surat, is directed to comply with the order passed by the Gujarat Revenue Tribunal dated 24.06.2015 in Revision Application No.18 of 2015 and thereby to consider to grant N.A. permission to the land bearing Final Plot No.92 admeasuring 3574 sq.mtrs., in T.P. Scheme No.29 situated in the sim of Village-Rundh, Surat. In view of above order, Special Civil Application No.4418 of 2018 is dismissed.

No order as to costs.

Direct Service permitted.

