Supreme Court of India
Dipak Babaria & Anr vs State Of Gujarat & Ors on 23 January, 1947
Author: H Gokhale
Bench: H.L. Gokhale, J. Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL N. 836 OF 2014
(@ out of SPECIAL LEAVE PETITION (CIVIL) NO.36738/2012)

Dipak Babaria & Anr. … Appellants

Versus

State of Gujarat & Ors. … Respondents

J U D G E M E N T H.L. Gokhale J.

Leave Granted.

2. This appeal by Special Leave seeks to challenge the judgment and order dated 30.8.2012 rendered by a Division Bench of the Gujarat High Court dismissing Writ Petition (PIL) No.44 of 2012 filed by the appellants herein. The Writ Petition had various prayers, but essentially it sought to challenge the permission granted by the Collector, Bhuj, to sell certain parcels of agricultural land situated in district Kutch, which were said to have been purchased earlier by the respondent No.4 herein, one Indigold Refinery Limited of Mumbai, for industrial purpose in favour of respondent No.5 i.e. one Alumina Refinery Limited, Navi Mumbai, as being impermissible under the provisions of the Gujarat (earlier 'Bombay' prior to the amendment in its application in the State of Gujarat) Tenancy and Agricultural Lands (Vidarbha Region and Kutch Areas) Act, 1958 (Tenancy Act, 1958 for short). It was submitted that under Section 89A of this Act, agricultural land can be permitted to be sold by an agriculturist to another person for industrial purpose provided the proposed user is bona- fide. In the event, the land is not so utilised by such a person for such purpose, within the period as stipulated under the act, the Collector of the concerned district has to make an enquiry under sub-Section 5 thereof, give an opportunity to the purchaser with a view to ascertain the factual situation, and thereafter pass an order that the land shall vest in the State Government on payment of an appropriate compensation to the purchaser which the Collector may determine. It was contended that there was no provision for any further transfer of agricultural land from one industrial purchaser to any third party, once again, for industrial purpose when the first purchaser of agricultural land had defaulted in setting up the industry. Apart from being in breach of the law, the transaction was stated to be against public interest, and a mala-fide one resulting into a serious loss to the public exchequer. The Writ Petition criticised the role of the Collector and the Revenue Minister of the State Government, and sought an inquiry against them in the present case, and also a direction to the state authorities to resume the concerned land.

3. The impugned judgment and order rejected the said writ petition on two grounds, firstly that there was delay in initiating the said Public Interest Litigation (PIL), and that the writ petitioner had suppressed the material facts before the Court concerning the investment claimed to have been made by the respondent No.5.

4. The writ petition, and now this appeal raise the issues with respect to the underlying policy and purpose behind the relevant provisions of the Tenancy Act, 1958. In that connection, it also raises the issue with respect to the duties of the revenue officers on the spot, such as the Collector, the importance of the role of senior administrative officers of the State Government, and whether a Minister of the Government can direct the administrative officers and the Collector to act contrary to the provisions and policy of the statute. The Secretary of the Department of Revenue of the Government of Gujarat, and the Collector of District Kutch at Bhuj are joined as respondent Nos. 2 and 3 to this appeal. The facts leading to this appeal are as follows:-

5. It is pointed out by the appellants that the respondent No.4 Indigold Refinery Ltd. (Indigold for short) which is a company having its office in Mumbai, purchased eight parcels of land owned by one Virji Jivraj Patel and Jayaben Virji Patel residing at Bankers Colony, Bhuj, admeasuring in all 39 acres and 25 gunthas (i.e. roughly 40 acres) by eight sale deeds all dated 30.1.2003, for a consideration of about Rs.70 lakhs. These eight sale deeds are supposed to have been signed for respondent No.4 Indigold by one Hanumantrao Vishnu Kharat, its Chairman-cum-Managing Director. The lands are situated in villages Kukma and Moti Reldi in the district of Kutch. The sale deeds indicated that the purchaser had purchased these lands for industrial purpose, and that the purchaser will obtain the permission from the Deputy Collector, Bhuj for purchasing the said land within one month from the date of those sale deeds. The respondent No.4 is said to have applied for the necessary permission under Section 89A of the Tenancy Act, 1958 on 31.1.2003, and the Collector of Bhuj is stated to have given the requisite certificate of purchase of the lands under sub-section (3) (c) (i) of the said section. It appears that thereafter no steps were taken by respondent No.4 to put up any industry on the said land.

6. Five years later, the respondent No.4 is stated to have applied on 6.12.2008 to the Deputy Collector at Bhuj for permission to sell these lands. The Collector of Bhuj sought the guidance from the Revenue Department, and in view of the direction of the Revenue Department, the Deputy Collector granted the permission on 15.1.2010, to sell the lands to respondent No. 5 treating it as a special case, and not to be treated as a precedent. Thereafter, the respondent No.4 conveyed the concerned lands to respondent No.5 by sale deed dated 19.1.2010. Respondent No.5 also obtained permission from the Industries Commissioner on 8.3.2010 for putting up the industry. Subsequently, the Collector issued the certificate as required under Section 89A (3) (c) (i) of the Tenancy Act, 1958, on 21.5.2010, that respondent No.5 had purchased the land for a bona-fide purpose. The permission for a non-agricultural user was given to the respondent No.5 on 5.1.2011. The Gujarat Mineral Development Corporation (GMDC) – which got itself impleaded in this appeal as respondent No.6 has entered into a Memorandum of Understanding (MOU for short) on 30.11.2011 with M/s Earth Refinery Pvt. Ltd. which is the holding company of respondent No.5 to purchase 26% of equity in a joint venture company to be set up by them, and which will own the industry.

7. It appears that a Gujarati Daily "Sandesh" in an article dated 20.8.2011 reported that there was a huge loss to the State exchequer in the sale of these lands to a private company almost to the tune of Rs.250 crores. The newspaper reported that although the respondent No.4 had purchased the concerned lands at village Kukma and Moti Reildi on 30.1.2003, no industrial activity was started till 2008 as required by the law, and after a long period of five years the land was to be sold to Alumina Refinery Limited (Alumina for short). One Mr. Nitin Patel is the Managing Director of this Alumina, and Mr. Nilesh Patel who is his brother is its Director (Legal and Human Resources). The newspaper stated that Alumina had written a letter to the Chief Minister Mr. Narendra Modi, on 18.6.2009 that the Government should grant the necessary permission. It is further stated that on the said proposal being placed before them, the officers of the Revenue Department had placed negative remarks, and yet a permission was granted to sell 2 lakh sq. yds. of land at a throw away price when the rate of land was Rs.3500 – 4000 per sq. yd.. It was alleged that there was a direct involvement of the Chief Minister in this scam, and with a view to avoid Lokayukata enquiry, although a commission was appointed under Hon'ble Mr. Justice M.B. Shah, a former Judge of Supreme Court of India to enquire into a number of other controversial projects, this scam was excluded therefrom.

8. There was also a news item in another Daily "Kachchh Mitra" on 1.2.2011 that the Alumina Refinery Limited was given permission by breaching rules and regulations. The farmers of the nearby villages were worried, and some 200 farmers had protested against the proposal as it would affect their agricultural activities due to pollution. It was stated that they had sowed plants of tissue-culture Israeli dry-dates. They had planted lacs of Kesar Mango trees. They were also cultivating crops of Papaiya, Aranda, Wheat, Cotton, groundnuts etc. If the refinery work starts in this area, it will affect the agricultural work badly. There was also a fear that the blackish and toxic air of the factory will spoil the plants.

9. All this led the appellants to file the earlier mentioned writ petition, for the reliefs as prayed. The petition enclosed the above referred news reports, as also the information obtained through enquiry under the Right to Information Act, 2005 by one Shri Shashikant Mohanlal Thakker of Madhapur Village of Taluka Bhuj. This information contained the documents incorporating the file notings of the revenue department and the orders granting permission. The aforesaid writ petition was filed on 28.2.2012. An affidavit in reply to the writ petition was filed by above referred Nitin Patel on behalf of respondent No.5, and the appellants filed a rejoinder. Respondent No.5 filed a sur-rejoinder thereto. The respondent No.1 State of Gujarat filed an affidavit in reply on 16.8.2012, and the petitioner filed a rejoinder to the Government's affidavit on 10.11.2012. After the writ petition was filed on 28.2.2012 an order of status-quo was granted on 1.3.2012, and it continued till the dismissal of the petition on 30.8.2012 when the order of stay was vacated. However, when the present SLP was filed, an order of status-quo was granted by this Court on 4.1.2013, and it has continued till date.

Relevant provisions of the Statute:-

10. In as much as we are concerned with the provisions contained in Section 89 and Section 89A of the Tenancy Act, 1958, it is necessary to reproduce the two sections in their entirety. These two

sections appear in Chapter VIII of the Tenancy Act, 1958. The sections read as follows:-

"CHAPTER VIII RESTRICTIONS ON TRANSFERS OF AGRICULTURAL LANDS AND ACQUISITION OF HOLDINGS AND LANDS 89 Transfers to non-agriculturists barred.-

Transfers to non-agricul-turists barred

(1) Save as provided in this Act,

a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift exchange or lease of any land or interest therein, or

b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of a person who is not an agriculturist or who being an agriculturist cultivates personally land not less than three family holdings whether as owner or partly as tenant or who is not an agricultural labourer:

Provided that the Collector or an officer authorised by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, in such circumstances as may be prescribed:

[Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturists for agricultural purpose, if the annual income of such person from other source exceeds five thousand rupees.] (2) Nothing in this section shall be deemed to prohibit the sale, gift, exchange or lease of a dwelling house or the site thereof or any land appurtenant to it in favour of an agricultural labourer or an artisan.

(3) Nothing in this section shall apply to a mortgage of any land or interest therein effected in favour of a co-operative society as security for the land advanced by such society.

(4) Nothing in section 90 shall apply to any sale made under sub-section (I).

89A. Sale of land for bonafide industrial purpose permitted in certain cases:-

(1) Nothing in section 89 shall prohibit the sale or the agreement for the sale of land for which no permission is required under sub-section (1) of section 65B of the Bombay Land Revenue Code, 1879 (Bom. V of 1879) in favour of any person for use of such land by such person for a bonafides industrial purpose:

Provided that—

a) the land is not situated within the urban agglomeration as defined in clause (n) of section 2 of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976),

b) where the area of the land proposed to be sold exceeds ten hectares, the person to whom the land is proposed to be sold in pursuance of this sub-section shall obtain previous permission of the Industries Commissioner, Gujarat State, or such other officer, as the State Government may, by an order in writing, authorise in this behalf.

c) the area of the land proposed to be sold shall not exceed four times the area on which construction for a bonafide industrial purpose is proposed to be made by the purchaser:

Provided that any additional land which may be required for pollution control measures or required under any relevant law for the time being in force and certified as such by the relevant authority under that law shall not be taken into account for the purpose of computing four times the area.

d) where the land proposed to be sold is owned by a person belonging to the Scheduled Tribe, the sale shall be subject to the provisions of section 73AA of the Bombay Land Revenue Code, 1879 (Bom. V of 1879).

2) Nothing in the Section 90 shall apply to any sale made in pursuance of subsection (1).

3) (a) Where the land is sold to a person in pursuance of sub- section (1) (hereinafter referred to as "the purchaser"), he shall within thirty days from the date of purchase of the land for bonafides industrial purpose, send a notice of such purchase in such form alongwith such other particulars as may be prescribed, to the Collector and endorse a copy thereof to the Mamlatdar.

(b) Where the purchaser fails to send the notice and other particulars to the Collector under clause (a) within the period specified therein, he shall be liable to pay, in addition to the non-agricultural assessment leviable under this Act, such fine not exceeding two thousand rupees as the Collector may subject to rules made under this Act, direct.

(c) Where, on receipt of the notice of the date or purchase for the use of land for a bonafides industrial purpose and other particulars sent by the purchaser under clause (a), the Collector, after making such inquiry as he deems fit—

(i) is satisfied that the purchaser of such land has validly purchased the land for a bonafide industrial purpose in conformity with the provisions of sub-section (1), he shall issue a certificate to that effect to the purchaser in such form and with in such time as may be prescribed.

(ii) is not so satisfied, he shall, after giving the purchaser an opportunity of being heard, refuse to issue such certificate and on such refusal, the sale of land to the purchaser shall be deemed to be in contravention of section 89.

(d) (i) The purchaser aggrieved by the refusal to issue a certificate by the Collector under sub-clause (ii) of clause (c) may file an appeal to the State Government or such officer, as it may, by an order in writing, authorise in this behalf.

(ii) The State Government or the authorised officer shall, after giving the appellant an opportunity of being heard, pass such order on the appeal as it or he deems fit.

4) The purchaser to whom a certificate is issued under sub- clause (i) of clause (c) of sub-section (3), shall commence industrial activity on such land within three years from the date of such certificate and commence production of goods or providing of services within five years from such date:

Provided that the period of three years or, as the case may be, five years may, on an application made by the purchaser in that behalf, be extended from time to time, by the State Government or such officer, as it may, by an order in writing authorise in this behalf, in such circumstances as may be prescribed.

(5) Where the Collector, after making such inquiry as he deems fit and giving the purchaser an opportunity of being heard, comes to a conclusion that the purchaser has failed to commence industrial activity or production of goods or providing of services within the period specified is clause

(b) of sub-section (4), or the period extended under the proviso to that clause, the land shall vest in the State Government free from all encumbrances on payment to the purchaser of such compensation as the Collector may determine, having regard to the price paid by the purchaser and such land shall be disposed of by the State Government, having regard to the use of land." The pleadings of the parties before the High Court:-

11. The appellants had contended in paragraph 6 of their Writ Petition that the permission given to Indigold to sell the land was contrary to the provisions and restrictions imposed under the law, and contrary to the original permission granted to them by the Deputy Collector, Bhuj, on 1.5.2003. The market value of the land in question goes into crores of rupees, and such an act will result in huge loss to the public exchequer. They had contended that the decision was malafide. The decision was alleged to have been taken for a collateral purpose, which was apparently neither legal nor in the interest of the administration and public interest. Inasmuch as it was concerning disposal of public property, the only mode to be adopted was a fair and transparent procedure which would include holding a public auction inviting bids, and thereby providing equal opportunity to all interested or capable industries, in order to promote healthy competition and to fetch the right market price. The decision has been taken at the instance of the Hon'ble Revenue Minister. It was also submitted that, there were possibilities that the directors / promoters and the management of Indigold and Alumina

are the same, and if that is so, it would be a design to defraud the Government. Alumina had contended that it had signed an MOU with the State Government during the Vibrant Gujarat Investors' Summit, 2009. The appellants had submitted that the same cannot be a ground to grant the permission to sell, contrary to the mandatory provisions of law. Section 89A makes a contingent provision in case the land is not used for industrial activity within the time provided, and such mandatory provisions of the Act cannot be bypassed merely upon the endorsement made by the Hon'ble Revenue Minister. The action on the part of the State is absolutely arbitrary. The State or a public authority which holds the property for the public, and which has the authority to grant the largesse, has to act as a trustee of the people, and therefore to act fairly and reasonably. The holders of pubic office are ultimately accountable to the public in whom the sovereignty vests. The action of the Government is arbitrary, and therefore violative of Article 14 of the Constitution of India.

12. Respondent No.5 was the first to file a reply to this petition in the High Court which was affirmed by Mr. Nitin Patel on 11.7.2009. In this reply he principally submitted that it was not correct to say that the land was being given away at a throwaway price, causing great loss to the public exchequer to the tune of Rs.250 crores, as alleged. The State Authorities and the Revenue Minister have not acted in violation of any mandatory provisions of law. The affidavit further narrated the various events in the matter leading to the sale deed dated 19.1.2010 by Indigold in favour of Alumina, and the permission of the Industries Commissioner dated 8.3.2010. It was also pointed out that permission had been granted by the Collector, Bhuj on 5.1.2011. Thereafter, it was contended that the land has been purchased by the respondent No.5 way back in January 2010, and the petition, making frivolous and baseless allegations, has been filed two years after the said transaction.

13. Then, it was pointed out that the respondent No.5 was incorporated under the Companies Act in the year 2008, and that the company is promoted by Earth Refining Company Pvt. Limited. Respondent No.5 wanted to manufacture high value added products from bauxite ore available in Kutch district which ore was currently sold or exported as it is without any value addition. The intention of respondent No.5 was in line with and supported by Government of Gujarat Industries and Mines Policies, 2009. The project was to be first of its kind in Gujarat, with technology supplied to it by National Aluminum Company Ltd. (shortly known as NALCO), a Government of India Enterprise. A share holding agreement dated 30.11.2011 had been entered into between GMDC and Earth Refining Company Ltd. whereby GMDC had agreed to be joint venture partner, and to subscribe to 26% of the equity share capital of the new company. NALCO has provided advanced technology for the project.

14. It was further submitted in para 15 (g) of the reply that, the opinions of all the subordinate officers are "inconsequential and not binding on the Revenue Minister". The decision of the Minister cannot be faulted on the basis of certain notings of a lower authority.

15. One Mr. Hemendera Jayantilal Shah, Additional Secretary, Revenue Department filed the reply on behalf of the respondent-State. In paragraph 3.4 it was contended that the notings from the Government files reflect only the exchange of views amongst the officers of the departments. The decision of the State Government to grant permission for sale of the land could not be said to be

arbitrary, malafide or in the colourable exercise of power. Three reasons were given in support thereof:-

(i) If the land had been directed to be vested in the State Government, State would have been required to pay compensation to M/s Indigold under Section 89A(5) which is otherwise a long-drawn process involving Chief Town Planner and State Level Valuation Committee, for the purpose of determining the valuation of the land, and thereafter for finding the suitable and interested party to set up an industry on the land in question.

(ii) In the sale to Alumina, the State Government's own interest through its public sector undertaking had been involved, and therefore there has been a substantial compliance of the spirit flowing from the provisions of Section 89A(5).

(iii) The price of the land in question was around Rs.4.35 crores as per the Jantri (i.e. official list of land price) at the relevant time, and it had come down to Rs.2.08 crores, as per the revised Jantri rated of 2011. Thus, apart from time being consumed in the process, perhaps there would have been a loss to the public exchequer. Thereafter, it was stated in paragraph 4 of the reply as follows:-

> "I further respectfully say that the action of the State Government was bonafide and taking into consideration all the aspects of the matter, viz. (i) the land is being used for the industrial purpose, (ii) a dire need for industrialization in the Kutch District; (iii) MoU arrived at during the Vibrant Summit, 2009, whereby, a ready and interested party was available to start the industry immediately on the land in question; and (iv) GMDC possessing 26% of the share in such interested party, i.e. M/s Alumina Refinery Pvt. Ltd." It is relevant to note that no reply was filed on behalf of Indigold.

Additional pleadings of the parties in this Court:-

16. As far as this Court is concerned, a counter affidavit was filed on behalf of the State Government by one Mr. Ajay Bhatt, Under Secretary, Land Reforms. In his reply, he stated that in any event in the present process the State is the beneficiary in permitting this transaction with GMDC which is a Government Undertaking. It will have 26% stock in respondent No.5. In paragraph 4(E)(e)(ii) he stated that since the Government's own interest was involved, there has been a substantial compliance of the spirit flowing from the provisions of Section 89A(5) of the Act.

17. A counter was also filed in this Court by one Mr. Deepak Hansmukhlal Gor, Vice President of respondent No.5-Alumina. He pointed out that although the petition in the High Court was moved as a PIL, the petitioner No.1 was in fact a leader of the opposition party in the State. In order to mislead the Court it was stated in the petition that the land was worth Rs.250 crores. It was further submitted that to seek an interim relief a false statement had been made in the writ petition that no activity had been initiated by respondent No.5 on the concerned land by the time writ petition was filed. The respondent No.5 had made substantial investment and construction on the land, and photographs in that behalf were placed on record. It was also submitted that the decision of the

State Government was in tune with Mineral Development Policy, 2008 of the Government of India and Gujarat Mineral Policy, 2003. It was then pointed out that apart from other controversies, the present controversy has also been included for the consideration of Hon'ble Mr. Justice M.B. Shah, Former Judge of this Court. The sale of land in the present case was rightly considered as a special one, and the challenge thereto was highly unjustified and impermissible. The respondent No.5 filed various documents thereafter, including the various permissions obtained by respondent No.5 for the project and the technology supply agreement entered into between NALCO and M/s Earth Refining Company Ltd. It was submitted that the Respondent No. 5 is a bona-fide purchaser of the land, and in any case it should not be made to suffer for having invested for industrial development. It is claimed that Respondent No. 5 has made an investment to the tune of Rs 6.85 crores as on 31.3.2012 on the project, and moved in some machinery on the site.

18. The appellant No.1 has filed his rejoinder to both these counters. He has stated that he has not suppressed that he is a political activist, which is what he has already stated in the petition. He has maintained his earlier submissions in the writ petition, and denied the allegations made in the two counter affidavits.

19. As stated earlier, GMDC has applied for joining as respondent No.6. In its application it has stated that Alumina was selected through transparent evaluation. Then, it was short-listed for setting up the project in Kutch at the Vibrant Gujarat Summit in 2009. It also defended the Government's decision on the ground that it is going to have 26% equity in respondent No.5.

Points for consideration before this Court:

20. It, therefore, becomes necessary for this Court to examine whether the decision taken by the Government to permit the transfer of the agricultural land from respondent No. 4 to respondent No. 5, was legal and justified. For that purpose one may have to consider the developments in this matter chronologically as disclosed from the above pleadings of the parties, as well as from the material available from the Government files placed for the perusal of the Court. Thereafter, one will have to see the scheme underlying Sections 89 and 89A, and then examine whether there has been any breach thereof, and if it is so what should be the order in the present case?

Material on record and the material disclosed from the files of the Government and the Collector:-

21. The respondents have contended that the sale transaction between respondent Nos.4 and 5 took place because of the financial constraints faced by respondent No.4 Indigold Refinery Limited, and that is reflected in their letter dated 16.6.2009 addressed to the Collector, Bhuj. The letter-head of the respondent No.4 shows that it claims to have a gold refinery at Chitradurg in State of Karnataka. This letter refers to their earlier letter dated 6.12.2008, and letter dated 12.6.2009 from respondent No.5 Alumina. The relevant paragraph of letter dated 16.6.2009 reads as follows:-

> "……..

• With regret we have hereby to inform you that due to financial constraints on our part we are unable to execute our proposed refinery project on the said land. We are well aware of the fact that sufficient amount of time has passed from the date of permission granted by the office of Deputy Collector-Bhuj to set up the project. We have tried our level best to set up the industry on the land in question." • M/s Alumina Refinery (P) Ltd. having their registered office in Mumbai has shown keen interest to set their Alumina Refinery Project on our above mentioned ownership land. • A copy of consent letter dated 12.06.2009 has already been sent to your office by M/s Alumina Refinery (P) Ltd., whereby they have applied to avail the permission to purchase our above ownership land u/s 89.

• We appreciate and are thankful to your office and Government of Gujarat for giving us an opportunity to purchase and set up of our then proposed refinery project on the above mentioned agricultural land.

• We would like to confirm that we had a clear intention to set up industry on the above mentioned land, it is only because of non availability of monetary fund we are not in a position to set up our industry on the above mentioned agricultural land. Further, we are also not having any intention to take any undue advantage in form of booking any profit by sale of ownership land to M/s Alumina Refinery (P) Ltd.

We, hereby request your office to kindly grant the permission to sale all the above land and allow us to execute the Sale Deed for registration with the competent authority....." (emphasis supplied)

22. The earlier letter dated 6.12.2008 mentioned in this letter of 16.6.2009, however, nowhere mentions that respondent No.4 had any financial constraints because of which it could not set up the industry and thefore it wanted to sell the particular land. This letter is seen in the file of the Collector. This letter reads as follows:-

"INDIGOLD REFINERIES LIMITED 6th December 2008 To, Collector of Kutch, Bhuj, State of Gujarat Sub:- Permission for the sale of agricultural land admeasuring 39 acres 25 gunthas at Moti Reladi Kukama, Taluka Bhuj, District Kutch, State of Gujarat.

Dear Sir, Reference to above, we have to respectfully inform your good self that we had purchased land as per details here below for setting up of Industrial project:-

Sr.no.	Name of Village	Survey No.	Measurement Acres and gunthas
1.	Kukama	94/1	4/14
2.	Kukama	94/2	2/16
3.	Moti Reladi	101/1	9/30
4.	"	106	6/10
5.	"	100/1	2/20
6.	"	107	4/15

7.	"	105/4	5/21
8.	"	110/2/3	4/16
Total		39 acres 25 gunthas	

The above piece of land was purchased with the permission granted by Deputy Collector, Bhuj, Kutch, wide letter no. LND/VC/1169/03 dated 2nd May 2003. We further respectfully inform yourself that we are no more interested to put any industrial project in the said land and therefore we are disposing off entire piece of land as per aforesaid details to our prospective client. We, therefore, request your good self to kindly give us your permission for sale, so as to enable us to register the sale deed with the concern competent authority. We hope you will extend your maximum corporation and assistances in this regard and oblige.

Thanking you Yours faithfully Sd/-

Indigold Refineries Ltd.

Hanumantrao V. Kharat" (emphasis supplied)

23. As stated earlier, the File notings of the Revenue Department, were obtained through an RTI inquiry, and were placed on record alongwith the Writ Petition. The learned counsel for the State of Gujarat was good enough to produce the original files for our perusal. In the file of the Revenue Department, there is an Email dated 1.7.2009 from Shri Nitin Patel, Chairman & MD of respondent No.5 forwarding his letter dated 30.6.2009 addressed to Smt. Anandiben M. Patel, Hon'ble Minister of Revenue recording the minutes of the meeting held in her office on 29.6.2009. Immediately thereafter, the respondent No.5 has written a letter to the Chief Minister of Gujarat seeking permission to purchase these lands. The Secretary to the Chief Minister, Shri A.K. Sharma has then sent a letter on 2.7.2009 to the Principal Secretary, Revenue Department informing him that Shri Nitin Patel, of respondent No.5, had approached them with their representation dated 18.6.2009. It had inked an MOU during the Vibrant Gujarat Global Summit for establishing an Alumina Refinery, and they had identified a land suitable for that purpose. This letter further stated:

"On verification of the issue, necessary action may kindly be taken at the earliest. In the meantime, a brief note indicating the possible course of action may please be sent to this office."

24. In view of this note from the Secretary to the Chief Minister, the Revenue Department sought the factual report from the Collector by their letter dated 6.7.2009. What we find however, is that instead of sending a factual report, the Collector fowarded the original proposal of respondent No.5 itself to the Department, and sought their decision thereon in favour of Alumina through his letter dated 31.7.2009. Thereafter, we have the note dated 7.8.2009 in the Government file which is signed by then Section Officer and Under Secretary, Land Revenue. This note refers to the fact that a letter dated 2.7.2009 had been received from the Secretary to the Chief Minister. Thereafter, a letter dated 31.7.2009 had been received from the Collector, Kutch stating that respondent No.4 had purchased

the concerned land admeasuring 39 acres and 25 guntas, but no industrial use had been made, and that the respondent No.5 had shown his willingness to purchase the land. Thereafter, the note records what the Collector had stated viz.

"Taking into consideration the reasons shown in the submission of Alumina Refinery Company addressed to the Hon'ble C.M., dated 18.6.2009, it is submitted to grant permission for purchasing land".

25. The departmental note thereafter states in sub-paragraph A, B, C of paragraph 4, that under the relevant law the purchaser of the land should commence the industrial activity within a period of 3 years from date of the certificate of purchase, and within 5 years start the manufacture of goods and provide the services. Where the purchaser fails to commence the industrial activity, the Collector has to initiate an enquiry as to whether the purchaser has failed to commence industrial activity or production, as mentioned in clause (b) of sub-section 4. Thereafter, if on giving the purchaser an opportunity to be heard, the Collector comes to a conclusion that the purchaser has failed to do so, he has to determine the payment of compensation, and pass an order that the land shall vest in the State Government. Thereafter the note records:-

> " .....Taking into consideration the above provisions, whatever action required to be taken, is to be taken by Collector, Kutch, means there is no question at all of the authority for a period of more than five years. Further vide letter dated 6.7.2009, Collector was informed to submit factual report. Instead of the same, proposal is submitted by him. Vide order dated 1.5.2003 Deputy Collector has granted permission to Indigold Refinery Company under Section-89 of the T.A. with regard to the lands in question. The time limit of this permission has come to an end. Now another company, Alumina Refinery Co. wants to purchase land of this company and establish a project. Looking to the same, taking into consideration the above provisions, whatever action is required to be taken, the same is to be taken at his (Collector) level only. This is submitted for consideration whether to inform Collector accordingly or not?
>
> As Collector is required to take action as per the legal provisions, any action on proposal of Collector is not required to be taken by this office. Therefore, proposal of the Collector be sent back.
>
> Submitted respectfully..." (emphasis supplied)

26. Since, the Secretary of the Hon'ble Chief Minister had sought a note indicating the possible course of action, the Deputy Secretary, Land Revenue made a note on 25.8.2009, and at the end thereof, he stated as follows:-

> "..... Under these circumstances, looking to legal provisions, there is a provision that either the company carries out the industrial activity or the State Government resumes the land. There is no provision for mutual transfer by the parties.

> As suggested by the Secretary to the Hon'ble C.M., note indicating the above position be sent separately."

27. A note was, thereafter, made by the Principal Secretary, Land Revenue, which recorded that as per existing policy such sale was not permissible. In para 2 of his note he stated:

> "as per rules, the land is to be resumed by Collector in case of failure to utilize for industrial use". In para 5 thereof he however suggested "that in such case, as in cases under the Land Acquisition Act, 50% of the unearned income being required to be charged by the State Government can be introduced as a policy measure".

The Principal Secretary, Revenue Department marked para 2 above as "A" and then remarked on 29.8.2009 as follows:-

"We may resume as "A" of pre-page and allot as per the existing policy on land price".

The Chief Secretary wrote thereon on 1.9.2009 – "We should take back the land. Allotment may be separately examined".

What is relevant to note is that the Minister of Revenue Smt. Anandiben Patel thereafter put a remark on 10.9.2009:-

"Land is of private ownership. As a special case, permission be granted for sale".

28. Thereafter, it is seen from this file that in view of this direction by the Minister, the matter was further discussed. A note was then made by the Principal Secretary, Revenue Department on 21.9.2009 - "Discussed. We may resubmit to adopt a procedure for such cases". The Principal Secretary, Land Revenue made a detailed note thereafter on 14.10.2009 referring to the amendment brought in by Gujarat Act No.7 of 1997 incorporating Section 63AA in the Bombay Tenancy and Agricultural Lands Act, 1948, and the developments in the present matter up to the noting made by the Minister, that the land may be permitted to be sold as a special case. Thereafter, he sought an opinion as to whether or not an action similar to a provision under the Land Acquisition Act on the occasion of sale of land providing for taking of 50% amount of unearned income by the State Government, be taken in the present case. The Chief Secretary made a note thereon as follows:-

> "It would be proper to give land to the new party provided industry department recommends as per the laid down rules. As indicated in page 9/D note (marginal). Let us take back land under 63AA and then re-allot to the new party".

15.10 The Minister still made a note thereon on 4.11.2009:-

"As a special case as suggested earlier, permission for sale be given".

In view of this direction by the minister, the department has, thereafter, taken the decision that the permission be given as a special case but not to be treated as precedent. Thus, the opinion of the Principal Secretary, Land Revenue that 50% of the unearned income be taken by the Government was not accepted. Similarly, the opinion of the Chief Secretary that the land be resumed, and then be re-allotted to the new party was also not accepted.

29. This has led to the communication from the State Government to the Collector dated 18.12.2009 that the Government had granted the necessary permission to respondent No.5 to purchase the land, treating it as a special case. The said letter reads as follows:-

> "Urgent/RPAD Sr. No.: GNT/2809/2126/Z State of Gujarat Revenue Department 11/3 Sardar Bhavan Sachivalay Gandhinagar Date: 18/12/2009 To, The Collector Kutch-Bhuj Subject: Shri Nitin Patel c/o M/s Indigold Refinery/Alumina Representation qua the land of Kukma and Moti Reldi Reference: Your letter dated 31/9/09 bearing no. PKA-3- Land- Vs. 2083/2009 Sir, In connection with your above referred and subject letter, the land of Kukma and Moti Reldi admeasuring Acre 39 Guntha 25 was purchased by Indigold Refinery as per the provisions of Bombay Tenancy and Agricultural Lands (Vidharbha Region and Kutch Area) Act, 1958; Section 89. However due to financial incapability, the Company is unable to establish industry and other company M/s Alumina Refinery Pvt. Ltd. being ready to purchase the said land, upon careful consideration the Government on the basis of treating the case as "A special case and not to be treated as precedent" has granted the permission.
>
> 2. Papers containing pages 1 to 89 are returned herewith.
>
> Encl:
>
> As above Yours sincerely Section Officer Revenue Department State of Gujarat Copy to:
>
> Select File/Z Branch Select File/Z Branch/N.S.A"

30. Thereafter, the Deputy Collector has issued an order dated 15.1.2010 granting permission to sell the land for industrial purpose under Section 89A of the Act. He, however, added that the action of issuing the certificate can be taken only after the submission of a project report and technical recommendation letter of Industries Commissioner by respondent No.5. The above referred order dated 15.1.2010 of the Deputy Collector granting permission to sale the land reads as follows:-

> No. Jaman Vashi/218/09 Office of Deputy Collector Bhuj, Date-15/01/2010 To Shri Hanumantrav V. Kharat Indi Gold Refineries Limited 201-212, EMCS House 289 SBSL, Fort Mumbai-400 001 Subject:- Regarding getting the approval for sale of the agricultural land of village Kukma and Moti Reldi, Taluka Bhuj purchased for industrial purpose, under Section-89-A of the Tenancy Act. Read:- Letter No.

Ganat/2809/2126/Z dated 18/12/2009 of the Revenue Department of the Government, Gandhinagar.

Sir, With reference to the above subject it is to be informed that vide this office certificate No. Land/Vasi/1169/03 dated 01/05/2003 you have been granted permission under Section-89-A of the Tenancy Act for purchasing agricultural land for industrial purpose as under:-

In the above lands as the company due to financial circumstances is not in a position to establish any industry, with reference to your application dated 06/12/2008 seeking the permission for sale of the above land for industrial purpose to Shri Alumina Refinery (Pvt.) Limited, Mumbai for the Alumina Refinery project, vide the above referred letter of the R.D. of the Government as a "special case and with a condition not to treat as the precedent" the permission is granted, which may be noted.

As the above land is admeasuring more than 25 Acres, in this case on submission of the Project Report and the Technical recommendation letter of Industries Commissioner, G.S., Gandhinagar by the party desirous to purchase the land Alumina Refinery (Pvt.) Ltd., Mumbai, further action can be taken by this office for issuing the certificate under Section-89 of the Tenancy Act, which may be noted.

Sd/-

Deputy Collector, Bhuj Copy to Alumina Refinery (Pvt.) Ltd.

1501-1502 Shiv Shankar Plaza-

Near HDFC Bank, Sector-8 Airoli, New Mumbai-400 708"

31. This led to the sale deed between respondent No.4 and 5 for sale of the lands at Rs.1.20 crores. It is, however, interesting to note that the sale deed is signed for Indigold by Nitin Patel on the basis of the power of attorney from them, and for Alumina by his brother Nilesh Patel. Subsequently the permission from the Industries Commissioner was obtained on 8.3.2010, and the certificate under Section 89A (3) (c) (i) of purchase for bona-fide industrial purpose on 21.5.2010. The submissions on behalf of the appellants:-

32. The decision of the State Government to permit the transfer of the concerned agricultural lands was challenged by the appellants on various grounds. Firstly, it was submitted that Section 89 basically bars transfer of agricultural land to the non-agriculturists. Section 89A makes an exception only in favour of a bonafide industrial user. The industry is required to be set-up within three years from the issuance of necessary certificate issued by the Collector for that purpose, and the production of the goods and services has to start within five years. If that is not done, the Collector has to take over the land after holding an appropriate enquiry under sub-section (5) of 89A, and the

land has to vest in the Government after paying the compensation to the purchaser which has to be determined having regard to the price paid by the purchaser. In the instant case, it is very clear that the respondent No. 4 had expressed their inability to develop the industry way back on 6.12.2008. The Collector was, therefore, expected to hold an enquiry and pass appropriate order. This was a power coupled with a duty. A judgment of this Court in Indian Council for Enviro-Legal Action Vs. Union of India & Ors. reported in 1996 (5) SCC 281, was relied upon to submit that a law is usually enacted because the legislature feels that it is so necessary. When a law is enacted containing some provisions which prohibit certain types of activities, it is of utmost importance that such legal provision are effectively enforced. In Section 89A there is no provision for a further transfer by such a party which has not developed the industry, and therefore, the Collector ought to have acted as required by Section 89A (5). In that judgment it was observed "enacting of a law, but tolerating its infringement, is worse than not enacting a law at all." It was submitted that in the instant case the state itself has issued an order in violation of the law.

33. It was then submitted that the Collector was expected to dispose of the land by holding an auction. The judgment of this court in Centre for Public Interest Litigation and Ors. Vs. Union of India and Ors. reported in 2012 (3) SCC 1 was relied upon in support, wherein it has been held that natural resources are national assets and the state acts as trustee on behalf of its people. Public Interest requires that the disposal of the natural resources must be by a fair, transparent and equitable process such as an auction. The same having not been done, the State exchequer has suffered. Reliance was also placed on the judgment in Noida Entrepreneurs Association Vs. Noida and ors. reported in 2011 (6) SCC 508 to submit that whatever is provided by law to be done cannot be defeated by an indirect and circuitous contrivance.

34. In the instant case, the transfer of the land has been permitted because respondent No. 5 directly approached the Chief Minister and thereafter the Revenue Minister. It was submitted that such an act of making of a special case smacks of arbitrariness. The judgment of this Court in Chandra Bansi Singh Vs. State of Bihar reported in 1984 (4) SCC 316 was relied upon in this behalf. In that matter the state of Bihar had released a parcel of land acquired by it for the benefit of one particular family which had alleged to have exercised great influence on the Government of the time. The action of the State was held to be a clear act of favouritism. Another judgment of this Court in Manohar Joshi Vs. State of Maharashtra and Ors. reported in 2012 (3) SCC 619 was also relied upon to criticise a direct approach to the ministers rather than going through the statutory authorities. Reliance was also placed on the judgment in Bhaurao Dagdu Paralkar Vs. State of Maharashtra reported in 2005 (7) SCC 605 which has explained the concept of 'fraud' from paragraph 9 to 12 thereof. In paragraph 12 amongst others it has referred to an earlier judgment in Shrisht Dhawan Vs. Shaw Bros reported in 1992 (1) SCC 534 which relies upon the English judgment in Khawaja Vs. Secy. of State for Home Deptt. reported in 1983 (1) All ER 765. In para 20 of Shrisht Dhawan (supra) this Court has observed:-

> " If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope.' Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of

> power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades……"

35. The learned senior counsel for the appellants Mr. Huzefa Ahmadi submitted that the appellants' writ petition should not have been dismissed only on the ground of delay, in as much as the environmental clearance to the project was granted on 19.2.2012 and the writ petition was filed in March 2012. He submitted that similarly the appellant cannot be criticised for suppression of any information about the investment made by respondent No. 5, since the appellant cannot be aware of the same. In any case he submitted that in as much as there has been an immediate interim order, the plea of large investment having been made is untenable. As far as the objection to the appellant No 1 being a person belonging to a rival political party is concerned, he submitted that he has specifically accepted that he is a political activist. In any case, he submitted that the Collector did not act in accordance with law at any point of time. Similarly, the order passed by the Government is not a reasoned order and is undoubtedly arbitrary. The power in the Collector implied a duty in him to act in accordance with law. He relied upon a judgment of this Court in Deewan Singh & Ors. Vs. Rajendra Pd. Ardevi & Ors. reported in 2007 (10) SCC 528 in this behalf.

Submissions on behalf of the State Government:-

36 . The defence of the Government has principally been that because Indigold was not in a position to set up the industry, and Alumina had given a proposal in the Vibrant Gujarat summit to set up its project on the very land, the proposal was accepted. It had entered into an MOU with GMDC which was to have 26% equity therein. While looking into the proposal, initially there was some hesitation on the part of the Government as can be seen from the notings of the officers in the Government files. However, ultimately looking into the totality of the factors, the Government took the decision to permit the transfer of the land. It is not mandatory that the land must be resumed under Section 89A (5) of the Tenancy Act, if the initial purchaser does not set up the industry. Section 89A (5) does not operate automatically. Besides, the permission to Indigold to sell the land can be explained with reference to the authority of the Collector available to him under the first proviso to Section 89(1) read with condition No. (4) of the permission dated 1.5.2003 granted to Indigold to purchase the concerned lands. This condition No. (4) reads as follows:-

> "4. These lands cannot be sold, mortgaged, gifted or transferred in any manner etc. without obtaining prior permission of the competent officer." Last but not the least, Section 126 of the Tenancy Act was relied upon to submit that the State Government has an overall control which permits it to issue the necessary directions. This Section 126 reads as follows:-
>
> "126. Control- In all matters connected with this Act, the State Government shall have the same authority and control over the [Mamlatdar] and the Collectors acting under this Act as [it has and exercises] over them in the general and revenue administration."

37. The learned senior counsel Mr. Andhyarujina appearing for the State, submitted that the Collector had the authority to grant such a permission to sell under Rule 45 (b) of the Bombay Tenancy and Agricultural Lands Rules, 1959. This rule reads as follows:-

"45.Circumstances in which permission for sale, etc. of land under section 89 may be granted - The Collector or any other officer authorised under the proviso to sub-section (1) of section 89 may grant permission for sale, gift exchange, lease or mortgage of any land in favour of a person who is not an agriculturists or who being an agriculturists, cultivates personally land not less than three family holdings whether as tenure holder or tenant or partly as tenure holder and partly as tenant in any of the following circumstances:-

a) such a person bona fide requires the land for a non- agricultural purpose; or

b) the land is required for the benefit of an industrial or commercial undertaking or an educational or charitable institution" .....

Submissions on behalf of the other respondents:-

38. Since it was the respondent No.4 Indigold, which had initially purchased the land for industrial purpose, the stand of Indigold was of significance. It is, however, very relevant to note that Indigold had neither filed any affidavit in the High Court, nor in this Court, and their counsel Mr. Trivedi stated that he has no submissions to make. It is the failure of the respondent No. 4 to set up the industry, and the subsequent justification on the basis of financial difficulties for the same which has led to the sale of the land. It is strange that such a party had nothing to state before the Court. This is probably because it had already received its price after selling the land. The respondent No. 4 appeared to be very much disinterested in as much as even the sale documents were signed on their behalf by Mr. Nitin Patel, the Managing Director of Alumina. Mr. Ahmadi, learned counsel for the appellant therefore alleged collusion amongst all concerned.

39. The respondent No. 5, however, contested the matter vigorously. Mr. Krishnan Venugopal, learned senior counsel appearing for respondent No. 5 pointed out that the respondent No. 5 had entered into a correspondence with GMDC earlier, and thereafter participated in the Vibrant Gujarat Summit. He pointed out that the respondent No. 5 had previous experience in dealing in Alumina products, and therefore was interested in setting up the plant in Kutch. It intended to use the bauxite available in that district, and finally it was going to have a production of 25,000 metric tonnes of Alumina per-annum. It was being set up with an investment of Rs. 30 crores. The project was being set up in furtherance of the Industrial Policy of the State of Gujarat and with the technical know-how from NALCO. He drew our attention to the project report and the photographs showing the work done so far.

40. It was submitted that the respondent No.5 had also entered into an MOU with GMDC whereunder GMDC was to supply bauxite for 25 years, and it was to have 26% equity participation.

It is however, material to note that there are 3 MOUs placed on record. The first MOU is dated 13.1.2009 between Alumina Refinery Pvt. Ltd. and GMDC which is basically like a declaration of intent to set up the plant, and it contains the assurance of support from the Government of Gujarat. The second MOU between them is dated 9.9.2009, and it records that Government of Gujarat has agreed to support this refinery, and that the GMDC had agreed to supply, on priority basis, the plant-grade bauxite to this plant. It is this document which states that GMDC will invest in the equity of Alumina Refinery to an extent not exceeding 26%. It contains the promise to supply bauxite. Mr. Krishnan Venugopal, fairly accepted that this document cannot be construed as a contract, and that it can at best be utilised as a defence to insist on a promissory estoppel. The third MOU is dated 30.11.2011 which is an agreement between Earth Refinery Pvt. Ltd. which the holding company of Respondent No. 5 and GMDC. In clause 2.1 of this agreement they have agreed to set up a joint venture Company by name Alumina Refinery Ltd. Clause 6.2 of this agreement states that equity participation of GMDC in this company shall be 26%. The obligation of GMDC has been spelt out under clause 4.2 to supply bauxite.

41. The principal submission of respondent No. 5 is that it is a bonafide purchaser of land of respondent No. 4, it has a serious commitment for industrial development, and it is acting in accordance with the industrial policy of the State. There is nothing wrong if the Minister directs the transfer of the unutilized land of respondent No. 4 to respondent No. 5 for industrial purpose, and this should be accepted as permissible. The minister's action cannot be called malafide since it is in the interest of the industrial development of the State. Mr. Krishnan Venugopal submitted that the right to transfer is incidental to the right of ownership, and relied upon paragraph 36 of the judgment of this Court in DLF Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Ors. reported in 2003 (5) SCC 622. He further submitted that unless the possession of the unutilized area is taken over by the State, the landlord's title to it is not extinguished. There is no automatic vesting of land in the instant case. He relied upon the judgment of this Court in Ujjagar Singh Vs. Collector reported in 1996 (5) SCC 14 in this behalf.

42. It was then submitted that notings cannot be made a basis for an inference of extraneous consideration, and reliance was placed upon the observations of this Court in paragraph 35 in Jasbir Singh Chhabra Vs. State of Punjab reported in 2010 (4) SCC 192. He pointed out that the law laid down in Centre for Public Interest Litigation and Ors. Vs. Union of India and Ors. (supra) had been clarified by a Constitution Bench in the matter of Natural Resources Allocation, In Re: Special Reference (1) of 2012 reported in 2012(10) SCC 1. He referred to paragraph 122 of the judgment which quotes the observations from Katuri Lal Lakshmi Reddy Vs. State of J&K reported in 1980 (4) SCC 1 as follows:-

> " 122. In Kasturi Lal Lakshmi Reddy v. State of J&K, while comparing the efficacy of auction in promoting a domestic industry, P.N. Bhagwati, J. observed: (SCC p. 20, para 22) "22. ... If the State were giving a tapping contract simpliciter there can be no doubt that the State would have to auction or invite tenders for securing the highest price, subject, of course, to any other relevant overriding considerations of public wealth or interest, but in a case like this where the State is allocating resources such as water, power, raw materials, etc. for the purpose of encouraging setting up of

> industries within the State, we do not think the State is bound to advertise and tell the people that it wants a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. The State may choose to do so, if it thinks fit and in a given situation, it may even turn out to be advantageous for the State to do so, but if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry....." He also referred to paragraph 146 of the judgment (Per Khehar J), therein, where the learned Judge has observed that the court cannot mandate one method to be followed in all facts and circumstances, and auction and economic choice of disposal of natural resources is not a constitutional mandate. It was therefore submitted that, it was not necessary that the Collector ought to have opted for auction of the concerned parcel of land.

43. The learned senior counsel Mr. Krishnan Venugopal, lastly drew our attention to the Jantri prices of the land in 2008. He pointed out that at the highest, the State would have sold this land, as per the Jantri price, for Rs. 4.35 crores. Assuming that the State was also to pay Rs. 1.20 crores as compensation to Indigold, the loss to the State would come to Rs 3.15 crores. He submitted that if it comes to that, the respondent No. 5, alongwith Indigold, could be asked to compensate the state for this difference of 3.15 crores or such other amount as may be directed, but its project must not be made to suffer.

44. GMDC was represented by learned senior counsel Mr. Giri. He defended the action of the State as something in furtherance of the industrial policy of the State. If the land was to be sold and compensation was to be given, it may not have resulted into much benefit to the state. He relied upon Section 7 of the Transfer of Property Act, to submit that every person competent to contract, and entitled to transferable property can transfer such property, and under S 10 of the said Act any condition restraining alienation was void. He relied on paragraph 20 of the judgment in Prakash Amichand Shah Vs. State of Gujarat reported in 1986 (1) SCC 581, to submit that divesting of title takes place only statutorily, and which had not happened in the instant case. Examination of the Scheme underlying Sections 89 and 89A above:-

45. Before we examine the submissions on behalf of all the parties, it becomes necessary to examine the scheme underlying the relevant sections 89 and 89A. As can be seen, Section 89 essentially bars the transfers of agricultural lands to non-agriculturists. The said section is split into four parts.

(a) Sub-section (1) provides that no sale or mortgage, gift, exchange or lease of any land, or no agreement in that behalf shall be valid in favour of a non-agriculturist. The first proviso to Section 89 (1) makes an exception viz. that the Collector or an officer authorised by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage for that purpose, in such circumstances as may be prescribed. The second proviso of course provides that no permission is required where the land is being sold to a person who is not an agriculturist, but it is sold for agricultural purpose.

(b) Sub section (2) provides that the above restriction will not apply to a sale etc. in favour of an agricultural labourer or an artisan

(c) Sub-section (3) similarly provides that the above restriction will not apply to a mortgage in favour of a cooperative society, to secure a loan therefrom.

(d) Sub-section (4) lays down that the restriction under Section 90 with respect to the reasonable price for the land to be sold will not apply to the sale under Section 89(1).

46. Section 89A creates an exception to Section 89 for sale of land for bona-fide industrial purposes in certain cases. This section is split into five sub-sections. Sub-section (1) of Section 89A deals with those lands for which no permission is required under sub-section (1) of Section 65B of the Bombay Land Revenue Code, 1879, i.e. lands such as those in industrial zone etc. It lays down that nothing in Section 89 will prohibit the sale or the agreement of sale of such zonal land in favour of any person for use of such land by such person for a bona-fide industrial purpose. Section 89A, creates an exception to Section 89 by allowing a sale of land for bonafide industrial purpose in certain cases as contemplated under the said section. These requirements are laid down in the provisos

(a) to (d) of sub-section (1) and in sub-section (2) to (4) of Section 89A. They are as follows:-

(i) That the land is not situated within an urban agglomeration,

(ii) A prior permission of the Industries Commissioner of the State is to be obtained where the area of the land proposed to be sold exceeds ten hectares,

(iii) The land proposed to be sold shall not exceed four times the area on which the construction of the industry is to be put up excluding the additional land for pollution measures,

(iv) If the land belongs to a tribal, it shall be subjected to certain additional restrictions,

(v) Within 30 days the purchaser has to inform the Collector of such purchase failing which he is liable to a fine,

(vi) The Collector has thereafter to make an enquiry whether the land is purchased for a bonafide industrial purpose and issue a certificate to that effect. In case he is not satisfied of the bonafide industrial purpose, he has to hear the purchaser, and thereafter he may refuse issuance of such certificate against which an appeal lies to the State Government.

(vii) Lastly, the purchaser has to commence the industrial activity within three years from the date of certificate, and start the production of goods and services within five years from the date of issuance of certificate.

47. Where the purchaser fails to start the industrial activity as stipulated above, Section 89A (5) requires the Collector to hold an enquiry, wherein he has to give the purchaser an opportunity of

being heard. Thereafter, if he confirms such a view, he is expected to pass an order that the land shall vest in the Government which will, however, be done after determining appropriate compensation payable to the purchaser, which has to be done having regard to the price paid by the purchaser. Then the land shall be disposed of by the Government having regard to the use of the land. Thus, the only authority contemplated under the section is the Collector, and the decision is to be taken at his level. It is only in the event of his refusing to give the certificate of purchase for bonafide industrial purpose that an appeal lies to the State Government. Thus, where one wants to purchase agricultural land for industrial purposes, one has to first obtain the permission of the Industries Commissioner. The purchaser has also to inform the Collector about the purchase within 30 days of such purchase, and obtain a certificate that the land is purchased for a bonafide industrial purpose. He has to see to it that the industrial activity starts in three years from the date of such certificate, and the production of goods and services also starts within five years thereof, which period can be extended by the State Government, in an appropriate case. In the event the purchaser fails to commence such industrial activity, the Collector has to make an enquiry, and thereafter pass an appropriate order of resumption of the land on determining the compensation. Thus, the entire authority in this behalf is with the Collector and none other.

Have the provisions of Sections 89 and 89A been complied in the present case:-

48. Now, we may examine the developments in the present matter on the backdrop of these statutory provisions. It is relevant to note that in their first letter dated 6.12.2008, the respondent No.4 has not referred to any financial constraint. The letter merely states that respondent No.4 wanted to dispose off the entire piece of land since they were no more interested in putting up any industrial project in the said land. As can be seen from Section 89A, the object of the section is to permit transfer of agricultural land, only for a bonafide industrial purpose. Where the land exceeds ten hectares, such a purchaser has to obtain, to begin with, a previous permission of the Industries Commissioner before any such sale can be given effect to. Thereafter, the purchaser has to send a notice to the Collector within 30 days of the purchase, and the Collector has to be satisfied that the land has been validly purchased for a bonafide industrial purpose, in conformity with the provisions of sub-section (1), and then issue a certificate to that effect. There is a further requirement that the purchaser has to commence the industrial activity within three years, and has to start the production within five years from the date of issuance of the certificate. Admittedly no such steps were taken by Indigold, nor was any affidavit in reply filed by them, either before the High Court or before this Court. Mr. Trivedi, learned counsel, appeared for Indigold, and he was specifically asked as to what were the attempts that had been made by respondent No.4 to set up the industry, and what were the difficulties faced by it. He was asked as to whether there was any material in support of the following statement made in Indigold's letter dated 16.6.2009 i.e. 'we have tried our level best to set up the industry on the land in question.' Mr. Trivedi stated that he had nothing to say in this behalf. All that he stated was that the respondent No.4 purchased the land, it was unable to set up its unit, and it sold the land to respondent No.5.

49. What is, however, material to note in this behalf is that whereas the land is supposed to have been purchased in 2003 at a price of Rs.70 lakhs, it is said to have been sold at Rs.1.20 crores in 19.1.2010. It is very clear that even before the letter of 16.6.2009 proposing to sell the land to

respondent No.5, in December 2008 itself respondent No.4 had written to the Collector that they were no more interested in putting up the industrial project, and therefore they wanted to dispose off the piece of land to their prospective clients. That being the position, it was mandatory for the Collector at that stage itself to act under sub-Section 5 of Section 89A to issue notice, conduct the necessary enquiry, determine the compensation and pass the order vesting the land in the State Government. It is very clear that Collector has done nothing of the kind. In any case he should have taken the necessary steps in accordance with law at least after receiving the letter dated 16.6.2009. Again he did not take any such steps.

50. It has been pointed out by the respondents that the representative of respondent No.5 participated in the Vibrant Gujarat Global Investors Summit on 31.1.2009, and signed an MOU with respondent No.6 for setting up a specialty alumina plant in Kutch. The MOU stated that the Government of Gujarat was assuring all necessary permissions to respondent No.5. The respondent No.5 will be investing an amount of Rs.30 crores in the proposed plant, and it will provide employment to 80 persons. Thereafter, the above referred letter dated 12.6.2009 was addressed by the respondent No.5 to the Deputy Collector Bhuj. The letter sought permission to purchase land belonging to Indigold. It referred to the letter of respondent No.4 dated 6.12.2008. It stated that the respondent No.5 would like to purchase the land for a bonafide industrial purpose, for setting up their upcoming project, Alumina Refinery Limited, on the land admeasuring 39 acres and 25 gunthas, situated in villages Kukma and Moti Reladi. It then sought the permission from the competent authority, under Section 89 of the Tenancy Act, 1958 to register the sale in their favour.

51. After writing to the Collector on 16.6.2009, without waiting for any communication from him, Alumina wrote to the Chief Minister on 18.6.2009. Directors of Alumina had a meeting with the Minister of Revenue Smt. Anandiben Patel on 29.6.2009, which was recorded by Mr. Nitin Patel on 30.6.2009. The Chief Minister's Secretary wrote to the Principal Secretary, Revenue Department on 2.7.2009 seeking a note on the possible course of action. The Revenue Department sought a factual report from the Collector, who instead of furnishing the same, forwarded the proposal of Alumina itself to the Department for granting the permission for the sale. The Department looked into the statutory provisions, and then recorded on 7.8.2009 that the Collector is required to take an action at his level in the matter, and the proposal be sent back to him. After looking into the legal position, the Principal Secretary, Revenue Department and the Chief Secretary of the State wrote that the land be taken back, and thereafter the issue of allotment be examined separately.

52. The matter could have rested at that, but the Minister of Revenue put a remark that permission be granted as a special case, since the land is of private ownership. The matter was again discussed thereafter, and then a suggestion was made by the departmental officers that 50% of the unearned income may be sought from the seller. The Chief Secretary noted that land may be given to the new party provided Industries Department recommends it as per the laid down rules. He maintained that the land be taken back, and then be re-allotted to the new party. The Minister, however, again passed an order that as suggested earlier by her, permission be given and, therefore, the Collector ultimately granted the permission as directed by the Government. Thus, as can be seen, that instead of the statutory authority viz. the Collector acting in accordance with the statutory mandate, only because a direction was given by the Minister that the statutory authority was bypassed, and even

the enquiry as contemplated under sub-section 5 of Section 89A was given a go-by. Thus, as can be seen from the above narration what emerges from the record is that whereas Sections 89 and 89A contemplate a certain procedure and certain requirements, what has been done in the present matter is quite different. We may refer to Lord Bingham's work titled 'Rule of Law' where in the Chapter on exercise of power, he observes that:

> 'Ministers and public officers at all level must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably' .

He quotes from R v. Tower Hamlets London Borough Council [1988] AC 858, which states:

> 'Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely, that is to say, it can validly be used only in the right and proper way which the parliament, when conferring it, is presumed to have intended.'

53. It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. This proposition of law laid down in Taylor Vs. Taylor (1875) 1 Ch D 426,431 was first adopted by the Judicial Committee in Nazir Ahmed Vs. King Emperor reported in AIR 1936 PC 253 and then followed by a bench of three Judges of this Court in Rao Shiv Bahadur Singh Vs. State of Vindhya Pradesh reported in AIR 1954 SC 322. This proposition was further explained in paragraph 8 of State of U.P. Vs. Singhara Singh by a bench of three Judges reported in AIR 1964 SC 358 in the following words:-

> "8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted...." This proposition has been later on reiterated in Chandra Kishore Jha Vs. Mahavir Prasad reported in 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka reported in 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Limited vs. Essar Power Limited reported in 2008 (4) SCC 755.

54. (i) Therefore, when Indigold informed the Collector on 6.12.2008 that they were 'no more interested' to put up any industrial project, and were disposing of the entire piece of land to their prospective client, the Collector was expected to hold the necessary enquiry. This was the minimum that he was expected to do. After holding the enquiry, if he was convinced that the industrial activity had not been started, he was expected to pass an order that the land will vest in the State which will have to be done after determining the compensation payable having regard to the price paid by the purchaser. In the instant case, the respondent No.4 claims to have purchased the land for Rs.70 lakhs. As pointed out by Mr. Krishnan Venugopal himself, as per the jantri price of the lands at that time, i.e. even at the Government rate in 2008, the land was worth Rs.4.35 crores. The collector was expected to dispose of the land by auction which is the normal method for disposal of natural

resources which are national assets. Out of that amount, the compensation payable to the respondent no.4 would have been around Rs.70 lakhs having regard to the amount that the respondent No.4 had paid. This is because respondent no. 4 had purchased agricultural land to put up an industry, and they had taken no steps whatsoever for over five years to set up the industry. They were not expected to purchase the land, and thereafter sell it for profiteering. The Jantri price is an official price. In actual auction the State could have realised a greater amount. In permitting the sale inter-se parties, the State exchequer has positively suffered.

(ii) On the other hand, in the event, the Collector was to form an opinion after receiving the bids or otherwise that it was not worth disposing of the land in that particular way, he could have divested Respondent No. 4 of the land by paying compensation, and re-allotted the same to the Respondent No 5 at an appropriate consideration. The statute required him to act in a particular manner and the land had to be dealt in that particular manner only, and in no other manner, as can be seen from the legal position, accepted in various judgments based on the proposition in Taylor vs. Taylor.

55. Thus inspite of the Secretaries repeating their advice, the Minister of Revenue Smt. Anandiben Patel has insisted on treating this case as a special case for which she has recorded no justifiable reasons whatsoever, and orders were issued accordingly. Under Section 89A(3), the Government is the appellate authority where the Collector does not grant a certificate for purchase of bonafide industrial purpose. Thus what has happened, thereby is that the powers of the statutory authority have been exercised by the Government which is an appellate authority.

56. The State Government gave three additional reasons when it defended its decision. (i)The first reason was that if the land had been directed to be vested in the State Government, State would have been required to pay compensation to Indigold, and it would have been a long- drawn process for determining the valuation of the land, and thereafter for finding the suitable and interested party to set up an industry. As stated earlier, this plea is not tenable. If the law requires something to be done in a particular manner, it has got to be done in that way and by no other different manner. (ii) The second reason given was that the action was in State's own interest because through its public sector undertaking i.e. GMDC, it was involved in the transaction viz. that is it is going to have 26% equity. As far as this part is concerned again it is difficult to accept this reason also because one does not know what will be the value of shares of the new company. (iii) Third reason given was that the land was worth Rs.4.35 crores as per the Jantri in 2008, and as per the revised Jantri in 2011 it had come down to Rs.2.08 crores. This is a situation which was brought about by the State itself and this cannot be a ground for the State to submit that it would not have gained much in the process.

57. That apart it has to be examined whether the Government had given sufficient reasons for the order it passed, at the time of passing such order. The Government must defend its action on the basis of the order that it has passed, and it cannot improve its stand by filing subsequent affidavits as laid down by this Court long back in Commissioner of Police, Bombay vs. Gordhandas Bhanji reported in AIR 1952 SC 16 in the following words:-

> "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the

order of what he meant, or of what was in his mind, or what he intended to do.

Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself." This proposition has been quoted with approval in paragraph 8 by a Constitution Bench in Mohinder Singh Gill vs. Chief Election Commissioner reported in 1978 (1) SCC 405 wherein Krishna Iyer, J. has stated as follows:-

> "8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out." In this context it must be noted that the Revenue Minister's direction merely states that it is a private land, and the Governments letter dated 18.12.2009 speaks of the financial incapability of Inidgold. Neither the letter dated 18.12.2009 from the Government to the Collector, nor the order passed by the Deputy Collector on 15.1.2010 mention anything about:

1. the mineral policy of the Government of Gujarat.

2. the time taking nature of the process of acquiring the land and re- allotting it.

3. That the second sale was under the authority of the Collector available to him under the first proviso to Section 89(1) read with condition no. (4) of the permission dated 1.5.2003 granted to Indigold to purchase the concerned lands.

In the absence of any of these factors being mentioned in the previous orders, it is clear that they are being pressed into service as an after- thought. The Government can not be allowed to improve its stand in such a manner with the aid of affidavits.

58. As noted earlier, the State Government is an Appellate Authority under sub-section 3 of Section 89A, and it could not have given a direction to the Collector who was supposed to take the decision under his own authority. We may profitably refer to a judgment of a Constitutional Bench in State of Punjay vs. Hari Kishan reported in AIR 1966 SC 1081. In that matter, the respondent desired to construct a cinema at Jhajhar. He submitted an application and under the orders of the State Government all applications were directed to be referred to the State Government. Therefore, though his application was initially accepted, the SDO informed him that the application was rejected. He appealed to the State Government and the appeal was rejected which has led to the petition in the High Court. The Punjab High Court framed the question as to whether the State of Punjab was justified in assuming the jurisdiction which was conferred on the licensing authority by the act. The Supreme Court held in paragraph 4 of the judgment, that the course adopted by the State of Punjab had resulted in the conversion of the appellate authority into the licensing authority. That was not permissible, and so it is in the present case. The reliance by the State Government on

the overall control of the State under Section 126 of the Tenancy Act cannot be used when in the instant case the power is with the Collector and the appellate power is with the State Government. The power under Section 126 can be utilized for giving general guidelines, but not for interference or giving directions in individual cases.

59. The submission that condition No.4 of the permission to purchase, obtained by respondent No.4 in 2003 permits the Collector to pass such an order is equally untenable. There is nothing in the statutory scheme to suggest that a second sale, inter se parties, after the failure of a purchaser to set up an industry is permissible. In such an event, the statute requires an enquiry to be conducted by the collector. If he is satisfied that there is a failure to set up the industry, the compensation to be paid to the purchaser is determined. After this stage the land vests in the Government. It is thus clear that the condition No 4 in the permission obtained by Respondent No. 4 is bad in law, not having its basis in any statutory provision. Even assuming that the Collector had that power to lay down such a condition, the authority to permit the sale as per the said condition had to be exercised by him in the manner contemplated under Section 89 A (5) viz. after holding the enquiry as prescribed. Here the enquiry itself was dispensed with. Rule 45(b) of the Bombay Tenancy and Agricultural Lands Rules, 1959 also cannot be pressed into service for the reason that, neither under Section 89 nor under Section 89A, a sale inter- se parties is contemplated or permitted.

60. Now, what is to be noted is that wherever an agriculturist is in possession of a land, either as an owner or as a tenant protected by the statute, transfer of his land for industrial purposes is subject to the conditions regulated by the Act. It is for the protection and preservation of the agricultural land that the bar against conversion is created under Section 89. Thereafter, as an exception, only a bonafide use for industrial purpose is permissible under section 89A. Ownership of respondent No.4 was subject to the conditions of utilization for bonafide industrial purpose, and it was clear on record that respondent No.4 had failed to utilize the land for bonafide industrial purpose. The reliance on Sections 7 and 10 of the Transfer of Property Act is also misconceived in the present case, since the Tenancy Act is a welfare enactment, enacted for the protection of the agriculturists. It is a special statute and the sale of agricultural land permitted under this statue will have to be held as governed by the conditions prescribed under the statute itself. The special provisions made in the Tenancy Act will therefore prevail over those in the Transfer of Property Act to that extent.

61. Besides, the present case is clearly a case of dictation by the State Government to the Collector. As observed by Wade and Forsyth in Tenth Edition of Administrative Law:-

> “if the minister’s intervention is in fact the effective cause, and if the power to act belongs to a body which ought to act independently, the action taken is invalid on the ground of external dictation as well as on the obvious grounds of bad faith or abuse of power”.

The observations by the learned authors to the same effect in the Seventh Edition were relied upon by a bench of three judges of this Court in Anirudhsinhji Karansinhji Jadega and anr. vs. State of Gujarat reported in 1995 (5) SCC 302. In this matter the appellant was produced before the Executive Magistrate, Gondal, on the allegation that certain weapons were recovered from him. The

provisions of TADA had been invoked. The appellant's application for bail was rejected. A specific point was taken that the DSP had not given prior approval and the invocation of TADA was non-est. The DSP, instead of granting prior approval, made a report to the Additional Chief Secretary, and asked for permission to proceed under TADA. The Court in para 13, 14, 15 has held this to be a clear case of 'dictation', and has referred to Wade and Forsyth on 'Surrender Abdications and Dictation'.

62. The respondent No.5 had the courage to state that the notings of the Secretaries were inconsequential. As a beneficiary of the largesse of the Government, respondent No.5 could say that, but it is not possible for us to accept the same. In Trilochan Dev Sharma vs. State of Punjab reported in AIR 2001 SC 2524 what is observed by this Court is relevant for our purpose "In the system of Indian Democratic Governance, as contemplated by the constitution, senior officials occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politications, for carrying out commands having no sanctity in law." A higher civil servant normally has had a varied experience and the ministers ought not to treat his opinion with scant respect. If Ministers want to take a different view, there must be compelling reasons, and the same must be reflected on the record. In the present case, the Secretaries had given advice in accordance with the statute and yet the Minister has given a direction to act contrary thereto and permitted the sale which is clearly in breach of the statute.

63. Now, the effect of all that is stated above is that the land which was purchased by respondent No.4 for Rs.70 lakhs is permitted by the Government of Gujarat to be sold directly to respondent No.5 at Rs.1.20 crores to set up an industry which could not have been done legally. It is undoubtedly not a case of loss of hundreds of crores as claimed by the appellants, but certainly a positive case of a loss of a few crores by the public exchequer by not going for public auction of the concerned property. It is true as pointed out by Mr. Venugopal, learned senior counsel that in a given case the state may invite an entrepreneur and give an offer. However, in the instant case, the sale of the land for industrial purpose is controlled by the statutory provisions, and the State was bound to act as per the requirements of the statute. The minister's direction as seen from the record clearly indicates an arbitrary exercise of power. The orders passed by the Government cannot therefore be sustained. As seen earlier, there is neither a power nor a justification to make any special case, in favour of the Respondent No 5. Such exceptions may open floodgates for similar applications and orders, even though the Gujarat Government is contending that this order is purportedly not to be treated as a precedent.

64. In our view, considering the scheme of the act, the process of industrialization must take place in accordance therewith. As stated earlier if the law requires a particular thing should be done in a particular manner it must be done in that way and none other. The State cannot ignore the policy intent and the procedure contemplated by the statute. In the instant case, the State could have acquired the land, and then either by auction or by considering the merit of the proposal of respondent No.5 allotted it to respondent No.5. Assuming that the application of the Respondent No 5 was for a bona-fide purpose, the same had to be examined by the industrial commissioner, to begin with, and thereafter it should have gone to the collector. After the property vests in the Government, even if there were other bidders to the property, the collector could have considered

the merits and the bona-fides of the application of Respondent No. 5, and nothing would have prevented him from following the course which is permissible under the law. It is not merely the end but the means which are of equal importance, particularly if they are enshrined in the legislative scheme. The minimum that was required was an enquiry at the level of the Collector who is the statutory authority. Dictating him to act in a particular manner on the assumption by the Minister that it is in the interest of the industrial development would lead to a breach of the mandate of the statute framed by the legislature. The Ministers are not expected to act in this manner and therefore, this particular route through the corridors of the Ministry, contrary to the statute, cannot be approved. The present case is clearly one of dereliction of his duties by the Collector and dictation by the Minister, showing nothing but arrogance of power.

65. The High Court has erred in overlooking the legal position. It was expected to look into all the earlier mentioned aspects. The impugned judgment does not reflect on the issues raised in the petition. It could not be said that the petition was delayed and merely because investment had been made by the respondent No.5, the court would decline to look into the important issues raised in the PIL.

Epilogue:-

66. Before we conclude, we may observe that India is essentially a land of villages. Although, urbanization and industrialization is taking place, the industry has not developed sufficiently, and large part of our population is still required to depend on agriculture for sustenance. Lands are, therefore, required to be retained for agricultural purposes. They are also required to be protected from the damage of industrial pollution. Bonafide industrial activity may mean good income to the entrepreneurs, but it should also result into good employment and revenue to the State, causing least pollution and damage to the environment and adjoining agriculturists. While granting the permission under Section 89A (5) the Collector has to examine all these aspects. This is because the only other exception for conversion of agricultural lands to non-agricultural purpose is for those lands which are in an industrial zone. As far as the conversion of lands otherwise than those in the industrial zone is concerned, all the aforesaid precautions are required to be taken when a decision is to be arrived at as to whether the application is for a bonafide industrial purpose. In the instant case, there were newspaper reports of apprehensions and protest of the adjoining farmers. The Revenue Secretary and the Chief Secretary had placed the statutory provisions on record. It was expected of the Government and the Revenue Minister to take cognizance of these apprehensions of the farmers as well as the statutory provisions brought to her notice by the secretaries. She has simply brushed aside the objections of the secretaries merely because the Chief Minister's secretary had written a letter, and because she was the minister concerned. While over-ruling the opinion of secretaries to the concerned department, the Minister was expected to give some reasons in support of the view she was taking. No such reason has come on record in her file notings. She has ignored that howsoever high you may be, the law is above you.

67. Development should not be measured merely in terms of growth of gross domestic product, but it should be in terms of utility to the community and the society in general. There is a certain inbuilt wisdom in the statute which is the mandate of the legislature which represents the people. The

Minister has clearly failed to pay respect to the same.

Hence, the following decision:-

68. Having noted the legal position and the factual scenario, the impugned judgment and order passed by the High Court will have to be set aside. The prayers in the PIL will have to be entertained to hold that the direction of the State Government dated 18.12.2009 and the consequent order issued by the Collector of Kutch on 15.1.2010 is arbitrary, and bad in law for being in violation of the scheme and the provisions of Sections 89 and 89A of the Tenancy Act. The direct sale of land by Indigold to Alumina is also held to be bad in law, and inoperative.

69. (i) In normal circumstances, the order hereafter would have been to direct the Collector to proceed in accordance with Section 89A(5) viz., to hold an enquiry to decide whether the purchaser viz. Indigold had failed to commence the industrial activity and the production of goods and services within the period specified. In the instant case, there is no need of any such direction to hold an enquiry, in view of the letter of Indigold itself, dated 6.12.2008, wherein, it clearly stated that they were no more interested in putting up any industrial project in the said land.

(ii) Consequently, there will be an order that the land shall vest in the State Government free from all encumbrances. This vesting order, however, has to be on payment of appropriate compensation to the purchaser as the Collector may determine. In the instant case, there is no need of having this determination, for the reason that Indigold has received from Alumina Rs. 1.20 crores as against the amount of 70 lakhs, which it had paid to the agriculturists when it bought those lands in 2003. Neither Indigold nor Alumina is making any grievance towards this figure or the payment thereof. In fact, it is the case of both of them that the direct sale by Indigold to Alumina for this amount as permitted by the State Government be held valid. That being so, this amount of Rs. 1.20 crores would be set-off towards the compensation which would be payable by the State Government to the purchaser Indigold, since the land was originally purchased by Indigold, and is now to vest in the State Government.

(iii) The third step in this regard is that the land is to be disposed off by the State Government, having regard to the use of the land. The land was supposed to be used for the industrial activity on the basis of the utilization of bauxite found in Kutch, and respondent No. 5 has proposed a plant based on use of bauxite. The disposal of the land will, however, have to be at least as per the minimum price that would be receivable at the Government rate. In the facts and circumstances of this case, having noted that the respondent No.5 claims to have made some good investment, and that the Respondent No.5 has also offered to pay, without prejudice, the difference between Rs.4.35 crores and Rs.1.20 crores i.e. Rs.3.15 cores to the State, the land will be permitted to be disposed of by the State Government to Alumina provided Alumina pays this amount of Rs. 3.15 crores to the State Government. This particular order is being made having further noted that, Alumina has acted on the basis of the commitment made to it by the Government of Gujarat in the Vibrant Gujarat Summit, and in furtherance of the industrial development policy of the State. It is also relevant to note that the respondent No.5 had made an application to the Collector in the year 2009 for permitting the purchase of the land, and has been waiting to set up its industry for the last four

years. Mr. Ahmadi, learned senior counsel appearing for the appellants has also submitted that, as such, appellants are not against the development of Kutch area, but they do want the state to follow the law and exchequer not to suffer. In the circumstances, although we do not approve the action of the State Government, and hold it to be clearly arbitrary and untenable, we are of the view that the aforesaid order will be appropriate to do complete justice in the matter.

70. In the circumstances, we pass the following orders:-

(a) The appeal is allowed in part;

(b) The impugned judgment and order passed by the High Court is set- aside;

(c) The PIL No.44 of 2012 filed by the appellants is allowed by holding that the order dated 18.12.2009 passed by the Government of Gujarat and by the Collector of Kutch on 15.1.2010, are held to be arbitrary and bad in law;

(d) In the facts and circumstances of this case, the sale of the concerned land by Indigold to Alumina is held to be bad in law. The land involved in the present case is held to have vested in the State of Gujarat free from all encumbrances, and the amount of Rs. 1.20 crores paid by Alumina to Indigold is treated as full payment towards the compensation payable by the State to Indigold.

(e) If Alumina is interested in their proposed project, it shall pay an amount of Rs. 3.15 crores to the Government of Gujarat within three months hereafter. On such a payment being made, an order of allotment of the land to Alumina will be issued by the State Government. The further activities of Alumina on the concerned parcel of land will start only after this payment is made, and in the event the amount is not so paid within three months hereafter, the Government will proceed to take further steps to dispose of the land having regard to the use of the land.

(f) In the facts of the present case, there shall be no order as to costs.

.....J.

[H.L. Gokhale] .....J.

[J. Chelameswar] New Delhi Dated: January 23, 2014

Sr.No.	Name of Village	Survey No.	Acre/Guntha
1	Kukma	94/1	4.14
2	Kukma	94/2	2.16
3	Moti Reldi	101/1	9.30
4	Moti Reldi	106	6.10
5	Moti Reldi	100/1	2.20
6	Moti Reldi	107	4.15
7	Moti Reldi	105/4	5.21

8	Moti Reldi	110/2/3	4.19	
		Total	39.25	
