Supreme Court of India
Gohil Jesangbhai Raysangbhai & ... vs State Of Gujarat & Anr on 25 February, 1947
Author: H Gokhale
Bench: Surinder Singh Nijjar, H.L. Gokhale

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4123 OF 2012

Gohil Jesangbhai Raysangbhai & Ors. … Appellant (s)

Versus

State of Gujarat & Anr. … Respondent (s)

WITH CIVIL APPEAL NO.4124 OF 2012 CIVIL APPEAL NO.4125 OF 2012 CIVIL APPEAL NO.4126 OF 2012 CIVIL APPEAL NO.4127 OF 2012 CIVIL APPEAL NO.4129 OF 2012 CIVIL APPEAL NO.4130 OF 2012 CIVIL APPEAL NO.4131 OF 2012 CIVIL APPEAL NO.4132 OF 2012 CIVIL APPEAL NO.4133 OF 2012 CIVIL APPEAL NO.4134 OF 2012 CIVIL APPEAL NO.4135 OF 2012 J U D G E M E N T H.L. Gokhale J.

All these Civil Appeals raise the questions with respect to the validity of Section 43 of Bombay Tenancy and Agricultural Lands Act, 1948 as applicable to the State of Gujarat, now known in the State of Gujarat as Gujarat Tenancy and Agricultural Lands Act, 1948 ("Tenancy Act" for short). This section places certain restrictions on the transfer of land purchased or sold under the said Act. These appeals raise the questions also with respect to the validity of resolution dated 4.7.2008 passed by the Government of Gujarat to give effect to this section, and which resolution fixes the rates of premium to be paid to the State Government for converting, transferring, and for changing the use of land from agricultural to non-agricultural purposes. Thirdly, these appeals seek to challenge the minimum valuation of land as per the rates contained in the list called as "Jantri" prevalent since 20.12.2006.

2. The Tenancy Act was passed way-back in the year 1948, as a beneficial legislation and as a part of agrarian reform. This section has been amended twice thereafter, first in 1960 and then in 1977. The aforesaid challenge was first taken in the High Court of Gujarat by filing various Special Civil Applications (i.e. Writ Petitions) bearing Spl. C.A. No.12661 of 1994 and others which came to be dismissed. Thereafter the Letter Patent Appeals bearing Nos.1127 of 2008 and others were filed against the judgments rendered by Single Judges in these different Special Civil Applications. The judgment rendered by a Division Bench dated 3.5.2011 in a group of these Letter Patent Appeals and Special Civil Applications once again repelled the challenge. This common judgment has led to this group of 12 Civil Appeals. The issues raised in these Civil Appeals are by and large similar, though there are some additional points in some of these Civil Appeals depending upon the facts of each of those cases.

3. Mr. Huzefa Ahmadi and Mr. P.H. Parekh, both senior counsel, and Mr. Bharat Patel, learned counsel, have amongst others appeared for the appellants. Mr. Rohinton Nariman, senior counsel and Ms. Hemantika Wahi have appeared for the State of Gujarat and its officers to defend the impugned judgment.

4. The above referred Section 43 of the Tenancy Act reads as follows:-

> "43. Restriction on transfers of land purchased or sold under this Act.- (1) No land or any interest therein purchased by a tenant under section 17B, 32, 32F, 32-I, 32-O, 32U, 43-ID or 88E or sold to any person under section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, there shall be partitioned without the previous sanction of the Collector.
>
> Provided that no previous sanction of the Collector shall be required, if the partition of the land is among the members of the family who have direct blood relation or among the legal heirs of the tenant:
>
> Provided further that the partition of the land as aforesaid shall not be valid if it is made in contravention of the provisions of any other law for the time being in force;
>
> Provided also that such members of the family or the legal heirs shall hold the land, after the partition, on the same terms, conditions, restrictions as were applicable to such land or interest thereat therein purchased by the tenant or the person.
>
> (1A) The sanction under sub-section (1) shall be given by the Collector in such circumstances and subject to such conditions, as may be prescribed by the State Government.
>
> (1AA) Notwithstanding anything contained in sub-section (1), it shall be lawful for such tenant or a person to mortgage or create a charge on his interests in the land in favour of the State Government in consideration of a loan advanced to him by the State Government under the Land Improvement Loans Act, 1884, the Agriculturists' Loan Act, 1884, or the Bombay Non-Agriculturists' Loans Act, 1928, as in force in the State of Gujarat, or in favour of a bank or co-operative society, and without prejudice to any other remedy open to the State Government, bank or co-operative society, as the case may be, in the event of his making default in payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government, bank or co-operative society, as the case may be, to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan.

Explanation, - For the purposes of this sub-section, "bank" means –

(a) the State Bank of India constituted under the State Bank of India Act, 1955;

(b) any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;

(c) any corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

(d) the Agricultural Refinance and Development Corporation, established under the Agricultural Refinance and Development Corporation Act, 1963.

(1B) Nothing in sub-section (1) or (1AA) shall apply to land purchased under section 32, 32F or 64 by a permanent tenant thereof, if prior to the purchase, the permanent tenant, by usage, custom, agreement or decree or order of a court, held a transferable right in the tenancy of the land.

(2) Any transfer or partition, or any agreement of transfer, or any land or any interest therein in contravention of sub-section (1) shall be invalid."

5. The English version (as incorporated in the impugned judgment) of Gujarat Government Resolution dated 4.7.2008 to give effect to this section, and which resolution lays down the rates of premium reads as follows:-

> "Regarding brining simplification in the procedure of converting the land of new tenure under new and impartible tenure and under the restricted tenure of Tenancy Act into old tenure for the agricultural or Non-agricultural purpose.
>
> Government of Gujarat Revenue Department Resolution No.NSJ-102006-571-J (Part-2) Sachivalaya Gandhinagar.
>
> Dated 04/07/2008 Preamble:-
>
> The prior permission of the Collector shall be required to be obtained after making payment of the consideration prescribed by the State Government, by issuing special or general order for transferring any land purchased by the tenants, under Sections-17-kh, 32, 32-chh, 32-t, 32-d, 32-bh & 43-1-gh or Section 88-ch or any land sold to any person under Sections 32-g or 64, as per section-43 (1) of Bombay Tenancy & Agricultural Lands Act 1948 or its interest, sale, gift, transfer, mortgage, lease or transfer of name or executing written present for transfer or any interest. Without obtaining prior permission of the Collector, partition of any such land or any interest therein can not be made. According to Section 43(1-A), the Collector is required to grant permission as per the circumstances prescribed by the Government and as per Section 73-kh of Bombay Land Revenue Code, 1879, by virtue of this Act or by virtue

of any condition connected with type of tenure, without prior permission of State Government, the Collector or any officer authorized by the State Government, any land holding can not be transferred in the name of another person or its partition can not be made. On making payment of the amount prescribed by the State Government by a special or general order, such permission can be granted.

The prior permission of the Collector/Government is required to be obtained for transfer, change of purpose or partition of the rented land (including the land allotted to the Ex-armymen), and the land granted or re-granted under different tenure and under Inami Abolition Act allotted for the agricultural purpose vide different resolutions of the Government and land reserved for cattle. The State Government has implemented the policy in respect of converting such land in old tenure so that there may be simplification in transfer of land known as new tenure and in other transaction.

According to the resolution No.JMN/3997/83/A dated 15/01/98 of the department, at the time of granting such land wherein the interest of Government is included for non-agricultural purpose, the procedure of the assessment of the value of the land is being conducted through the Committee at District Level and Sate Level. Much time is consumed in this procedure of assessment of value at the various stages and the time limit is not prescribed for assessment of value. Considering all these facts, the State Government had decided to adopt the approach valuation based on Jantri vide Resolution dated 20/12/2006 No.NSHJ/102006/571/J. The time of public shall be saved by its acceptance and uniformity in respect of valuation in the entire State shall be maintained. Thus, it was under consideration of the Government to bring simplification by applying the procedure of valuation based on jantri by making change in existing valuation procedure and by putting into force one resolution in this regard instead of different resolutions.

-:: R E S O L U T I O N ::-

On the basis of the letter No.STP/102008/174/H.1 dated 31/03/2008 of the Revenue Department, for the purpose of Stamp duty, a new Jantri has been put into force by issuing the Circular No. Stamp/ Technical/07/08/1512 dated 31/03/2008 with effect from 01/04/2008 by the Superintendent of Stamps, Gandhinagar. After studying and careful consideration, the Government has held that the valuation of the land of new and impartible tenure and of restricted tenure type of Tenancy Act is to be done as per the rate of Jantri (as per Annual Statements of rates-2006 and as per the amendments made from time to time).

By consolidating all resolutions/circulars existing instructions in respect of valuation, it has been decided to follow the following procedure.

1. The new policy of the rates of premium for converting and transfer/ for change of purpose of land of new and impartible and restricted tenure land from agricultural to agricultural purpose or non-agricultural purpose, shall be as under.

Sr. No.	Purpose	Area	Tenure premium	Rate of which type of tenure	Transfer at
1	2	3	4	5	6
1	From Agricultural to the purpose of agricultural old tenure	The entire rural area of the State except following Urban Areas, East, area under ULC, Mahanagar Palika area, Urban Development Authority area, Municipality area, Notified area, cantonment area	After 15 years	Zero	It shall be transferred for the purpose of agricultural at old tenure, but premium shall be liable to be paid for non-agricultural purpose.
2	From Agricultural to the purpose of agricultural old tenure	The entire rural area of the State except following Urban Areas, East, area under ULC, Mahanagar Palika area, Urban Development Authority area, Municipality area, Notified area, cantonment area	After 15 years	50%	It shall be transferred for the purpose of agricultural at old tenure, but premium is liable to be paid for non-agricultural purpose
3	For Non-agricultural purpose	The area of the entire State	After 15 years	80%	The land shall be considered of old tenure after sale/transfer or change of purpose

The aforesaid policy shall be equally applied in the entire State except the exception of the following (A) and (B).

(A) At the time of transfer, when the land of rural area of new and impartible tenure or restricted type of tenure is allotted as a gift or present to the Educational or

Charitable institutes for non-agricultural purpose, 50% amount shall be recovered as premium.

(B) The following rates shall be applicable to the land holding under Kutch Inami Abolition Act and new and impartible tenure.

Sr. No.	Purpose	Area	Tenure premium	Rate of type of tenure	Transfer at which
1	From Agricultural to the purpose of agricultural old tenure	Rural Area	After 15 years	Zero	It shall be transferred for the purpose of agricultural at old tenure, but premium is liable to be paid for non-agricultural purpose
2	From Agricultural to the purpose of agricultural old tenure	Urban Area	After 15 years	20 (twenty) times amount of assessment	It shall be transferred for the purpose of agricultural at old tenure, but premium is liable to be paid for non-agricultural purpose
3	For Non-agricultural purpose	The urban and rural areas	After 15 years	50%	The land shall be considered under old tenure after sale/transfer or change of purpose.

2. The procedure of converting the land of new tenure into old tenure for the purpose of agricultural to agricultural (for the purpose of Sr.No. 1 & B(1) of the aforesaid para No.1). (A) If such lands of New Tenure and Restricted tenure under Tenancy Act have been in continuous possession for 15 year or more than it since its grant to the last date of every month, are liable to be converted into old tenure for agricultural purpose, after eliminating the entry “New & Impartible Tenure” and noting “liable for premium only for non-agricultural purpose” on its place, the Mamalatdar of concerned Taluka on his own motion shall issue such orders within 15 days and shall have to inform the concerned holder in writing. At the same time, it shall be the responsibility of the Mamalatdar to get the mutation entry of the said order entered into the Right of Record and to get it certified as per rules.

(B) In the cases also wherein, the land is required to be converted from agricultural to agricultural purpose into old tenure by recovering 50% premium or 20 times amount of assessment, the Mamalatdar shall have to issue orders as stated above in 2(A) after recovering the premium. In the case wherein 50% premium is required to be recovered in Urban Area for agricultural to agricultural purpose, the procedure as mentioned in paragraph No.3 shall have to be adopted.

(C) It shall be the responsibility of the Prant Officer to see that the entry of such orders and its mutation entry are made in record without fail. The Prant Officer shall have to forward the certificate to the effect that any such entry is not remained to be entered in the record to the Collector till the date 25th of every month.

(D) On finalization of the certified mutation entry as per the aforesaid Sr.No.2 (A), the details to the effect that "liable for premium only for non-agricultural purpose" shall have to be mentioned certainly in bold letters in column of tenure and other rights of Village Form No.7/12.

(E) If breach of tenure is committed in the land, the procedure for breach of tenure shall be initiated towards such land instead of converting them into old tenure.

(F) Moreover at the time of granting such permission if there is any encumbrance upon the land, then the abovementioned concerned officer shall have to issue orders accordingly by granting permission of transfer in old tenure including encumbrance.

(G) In the context of lacuna in respect of the order issued for converting the land of new tenure including Tenancy Act into old tenure for agricultural purpose or the mutation in that regard, the competent authorities shall have to conduct the revision proceedings as per the standing instructions issued by the Government.

(H) The above mentioned procedure shall have to be reviewed in the meeting of Revenue officers held by the Collector every month.

(I) In the case of breach of tenure, for this purpose, 15 (fifteen) years shall have to be reckoned from the date of order of regnant issued lastly.

3. Procedure of converting from New Tenure to Old Tenure for Non-agricultural purpose.

(A) On receipt of application in prescribed form as per Appendix –I by Collector, application shall have to be forwarded to Mamlatdar office within 7 days (Seven) for scrutiny as per check list. On receipt of such application after scrutiny, Mamlatdar shall have to submit the report to Prant officer within 20 (twenty) days after making all types of scrutiny and site inspection and the Prant officer shall have to forward the report to Collector after verification within 10 days.

(B) After receiving report of Mamlatdar through Prant Officer, after verifying all record, Collector shall have to take decision within 30 (thirty) days and the said decision shall have to be informed to concerned person. The calculation of the amount of premium shall have to be made as per the rate of Jantri prevailing on the date of decision.

(C) If premium is to be paid as per decision of the Collector, then on getting such information the concerned person shall have to pay the amount of premium within 21 (twenty one) days.

(D) After depositing amount of such premium, the Collector shall have to pass order in this regards within 3 (three) days.

(E) If amount of premium is not paid within twenty one days, then assuming that concerned person is not interested in getting permission and chapter should be filed. However, in some cases, if concerned person submits an application then and if Collector considers the reasons just, then as per the merits of the case, by the reasons to be recorded in writing, instead of 21 (twenty one) days, the Collector can extend till one year from date of intimation of decision. But if during this period there is change in price of Jantri then premium shall have to be recovered accordingly. After one year applicant shall have to submit an application afresh.

F) When the permission is required to be granted to the charitable institutes for non-agricultural purpose after recovery, such institution is required to have been registered under Public Trust Act. In this regard Certificate of registration before Competent Authority/Charity Commissioner shall have to be produced with file and audited accounts of last three years. If the purpose of applicant's institution is only for "No profit No loss" basis, for charitable activities like Charitable hospital, dispensary, cattle house, Library, Elder house, Orphan House etc. then such institution shall have to be considered as Charitable Institution.

G) The check list regarding chapters to be given for prior permission at the Collector level and departmental level shall have to be prepared as per Schedule-2 of herewith. The Collector can call for check list and necessary information if he deems fit.

4. Delegation of Powers:-

(A) Now premium is required to be recovered on the basis of Jantri, all powers of all area of district shall be vested with Collector.

(B) Instead of forwarding of the present the chapter regarding valuation of more than Rs.50/- lacs to Government, the chapters regarding valuation of more than Rs.1 crore shall have to be forwarded to Government for prior permission.

(C) As per above 4(B), the permission shall have to be granted by making verification of record at department level entirely in respect of the chapter received by the department and by obtaining the consent of the government.

5. Regarding considering rates of Jantri:

(A) When sale is required to be made from agriculture to agriculture purpose, the valuation shall be made by considering rate of agriculture Jantri prevailing in Urban and Rural area.

(B) In rural area, when the land is used for non-agriculture purpose, valuation shall be made by considering rates of Jantri for that purpose.

(C) In urban area, for non-agriculture purpose, valuation shall be made after considering rates of Janri of developed land.

(D) When non-agriculture use is made for educational, social, charity or other purpose, then valuation shall be made in rural area, by considering rate of Jantri for residential purpose and in Urban area, by considering rate of Jantri of the development land.

(E) The Collector shall have to consider rate of Jantri which are applicable to zone, ward or block where the land is situated. The rate of Jantri of other zone, ward or block shall not be considered.

(F) When “rate of developed land” is not mentioned in Jantri of the area, valuation shall be made by considering the purpose and rate of prevailing Jantri of the said area.

6. Procedure for disposal of pending chapters:-

(a) In the pending chapters in respect of fixing premium at district level and state level, in all chapters wherein the decision is required to be taken after 1/4/2008, the calculation of the premium shall be made on the basis of the rate as per Jantri.

(b) The chapters which have not been placed in the District Valuation Committee, such chapters pending at District level, shall not be placed in the District Valuation Committee, but their valuation shall be made as per Jantri. The chapters which have been sent to the Deputy Town Planner for valuation, shall be called back and calculation of the premium shall be made on the basis of rate as per Jantri.

(c) The chapters decided by the District Valuation Committee, shall also be disposed again at the Collector level by deciding the premium on the basis of the rate of Jantri.

(d) The chapters pending at the state level, shall not be sent back to the district or shall not be produced in the Valuation Committee of State level, but permission shall be given by taking consent of the Government and considering the rate of Jantri.

(e) The pending chapters which have been valuated in the office of the Chief Town Planner and which have not been valuated, shall be received back and permission shall be given after taking consent of the Government and applying the price of Jantri.

(f) The chapters sent back from the state level to the district level for compliance, shall not be sent back in the department, but as per above instruction, the Collector shall have to dispose the chapters by deciding the price on the basis of Jantri.

(g) In the cases where the chapters have been received at the State level and necessity arises for compliance on the basis of the record, the chapters of the amount upto Rs.1/- (one) crore, shall be disposed in accordance with rules by returning the chapter and by making complete verification at the Collector level as per the check list and by returning the chapters be returned.

(h) In the chapters remained pending at the district and the state level also, in all cases wherein the permission order is required to be issued after 1-04-2008 also, the orders shall have to be issued by deciding the premium as per Jantri.

7. In the cases of land allotted under gifting of land (bhoo- dan) and under The Gujarat Agriculture Land Ceiling Act, 1960, any provision of this resolution shall not be applied.

8. On implementation of the aforesaid procedure, the resolutions/circulars mentioned in appendix-3 in toto and the resolutions/circulars mentioned in appendix-4 partly are superseded only for the part in mentioned in column-4 of the Appendix-4.

In this manner, on account of superseding the resolution entirely or partly, the orders issued before 01/04/2008 shall not be affected under the provisions/instructions of these resolutions/circulars.

9. On the basis of the policy framed vide resolution dtd. 20/12/2006 of the department for bringing in force the procedure of valuation based on new Jantri with effect from dtd. 01/04/2008, this issue with the concurrence of finance department vide their note dtd. 15/05/2008 and 27/06/2008 on this department file of even number.

By order and in the name of Governor of Gujarat, [Anish Mankad] Joint Secretary, Revenue Department, State of Gujarat." The consequent requirements under Section 43 read with aforesaid

resolution dated 4.7.2008

6. As we have noted earlier the Tenancy Act was passed as a part of the agrarian reform. The Act as such does not permit transfer of agricultural land for non-agricultural purpose, and the same is barred under Section 63 of the Act. That section permits such a transfer only in certain contingencies as provided under that Section. Section 43 with which we are concerned in the present matter and which appears in Part III of Chapter III of the Act. Chapter III provides for Special rights and privileges of tenants, and contains provisions for distribution of land for personal cultivation. Part III, thereof, provides for restrictions upon holding of land in excess of ceiling area. Section 43 has to be seen in this context.

7. The principal part of Section 43 lays down that the land which is purchased by a tenant under the various Sections referred to in Section 43 shall not be transferred in any manner except as permitted in Section

43. The original Section 43 did not contain any such exception. The Gujarat (Amendment) Act No. XVI of 1960 introduced the words "on payment of such amount as the State Government may by general or special order determine" in Section 43. The constitutionality of the section was examined by a Division Bench of the Gujarat High Court in Shashikant Mohanlal Vs. State of Gujarat reported in AIR 1970 Gujarat 204. The Court held that the State is theoretically the owner of all the land, and occupants hold these lands under the State. It was argued before the said Division Bench that this section does not lay down any guidelines. However, the High Court held that the amount as introduced under the Amendment was the charge which the State was seeking, for permitting the transfer since the occupancy right as such was not transferable as of right.

8. The validity of the above amendment of 1960 came up for consideration before the Supreme Court in the case of Patel Ambalal Gokalbhai Vs. State of Gujarat reported in 1982 (3) SCC 316. This Court held that the Amendment was protected under the 9th Schedule to the Constitution, and therefore immune from any challenge. Subsequently, by Amendment Act No. XXX of 1977, the words "in consideration of payment of such amount..." came to be substituted in place of the words "on payment of such amount..." Thus, the section now permits such a transfer by the tenant after the appropriate amount as determined by the State Government by a general or special order is paid by way of consideration, and only after a previous sanction is obtained from the Collector for effecting the transfer. Thus, the State Government has to lay down by general or special order the payment which is required to be made for such a transfer. If the agriculturist is seeking such a transfer, he has to make the necessary payment, and the transfer will be permitted only after a prior sanction is obtained from the Collector. The transfer is however not by way of a right.

9. As far as the determination of this amount is concerned, the same was earlier entrusted to the District Level Committee or the State Level Committee as per the Government Resolution dated 15.1.1998. However, the Government found that much time used to be consumed for determination of this price at different stages. Besides, uniformity had to be brought in with respect to determination of valuation in particular areas. Therefore, the State Government decided to adopt the approach of valuation based on Jantri, i.e. the list of rates containing the minimum valuation of

land as per the Government Resolution dated 20.12.2006. It is for this purpose that the aforesaid resolution dated 4.7.2008 was passed. As can be seen from paragraph 4 of this Resolution, now the premium is required to be recovered on the basis of the Jantri, and all the powers concerning the transfers in the entire District are vested in the Collector. The Jantri contains the rates which are fixed for the purpose of valuation of the land for levying the stamp duty under the Bombay Stamp Act. Those rates in the Jantri are incorporated by virtue of this Resolution for the purpose of permitting these transfers.

Submissions of the appellants

10. The Resolution provides that the transfer shall be permissible only after 15 years of possession of the land by the tenant. The main grievance of the appellants is that for transfer of such lands in the entire State (except Kutch) from agricultural to non-agricultural purposes, the premium payable shall be 80 per cent of the price received by the agriculturists as determined as per the Jantri rates. Thus, whatever may be the price mentioned in the document of transfer, the valuation of the land will be done as per the rates in the Jantri, and 80 per cent of such amount will be payable to the State for permitting such a transfer. The contention of the appellants is that the requirement of the payment of consideration at such a high rate amounts practically to expropriation, and is violative of Article 300A of the Constitution of India, which lays down that no person shall be deprived of his property save by authority of law. Such high premium is arbitrary, unreasonable and unconscionable. It is also pointed out that the applications for transfer are not decided quickly enough. They are kept pending for a long time, whereby, the agriculturists seeking to transfer the land suffers.

11. If we take two of the twelve cases which are before us, we can see the submissions advanced on behalf of the appellants in a factual matrix. In Civil Appeal No.4129/2012 the appellant Savitaben represented by Mr. Ahmedi is an agriculturist in Surat. She made an application for conversion for non-agricultural purpose on 16.4.2003. She is having a land admeasuring about 4,875 sq. mts. at plot No. 65 in revenue survey no. 90. Another application in the same survey no. was decided on 4.7.2005 at the rate of premium of Rs. 700 per sq. mts. The above referred Resolution came to be passed on 4.7.2008. Her application though made earlier, was not decided until then. It was decided thereafter, and she was asked to pay the premium at the rate of Rs.12000 sq. mts by order dated 7.8.2008 passed by the Collector on the basis of circle rates. The case of one Kashiben, represented by Mr. Bharat Patel, is similar. She is the appellant in Civil Appeal No.4130/2012, and is having her property at Vadodara. It is her submission that because of the application of this Resolution, exorbitant amount is being sought. The application is not being decided in reasonable time. The land is being wasted and is being used by other people for dumping garbage.

12. It was submitted on behalf of most of the appellants that the land was in the possession and cultivation of their family from their forefather's time, and they had a stake in the land. It was submitted by them that they had paid the price to purchase the land under Section 32G of the Tenancy Act. The land having been purchased for a price, it is not a largess given by the State. Reliance was placed on paragraph 43 and 44 of the judgment in Nagesh Bisto Desai Vs. Khando Tirmal Desai reported in AIR 1982 SC 887 to submit that the purpose of prior permission was only

to protect the tenant from selling the land at a throw away price, and not for the State to profiteer. It was then submitted that the amount to be charged under Section 43 was at the highest in the nature of a fee and not a tax and, therefore, it has to be proportionate. The Jantri rates were being applied in an arbitrary manner, and the premium at 80 per cent was unconscionable. (It must however be noted that it was pointed out on behalf of the Government that after the judgment of the High Court, the premium has been reduced to 40 per cent.) It was also submitted that Rule 25C of the rules framed under the Act gives guidelines, and when read with that Rule, Government cannot charge any dis-proportionate amount under Section 43 of the Act.

13. It was submitted that it is the date of the application which should be considered as the material date for deciding the valuation of the property, and not the date of the decision on the application by the Collector. Besides, the decision on the application cannot be indefinitely delayed. Reliance was placed on paragraph 8, 11 and 12 of the judgment of this Court in Union of India Vs. Mahajan Industries Ltd. reported in 2005 (10) SCC 203 to submit that date of application is the material date. Reliance was also placed on the judgment of this Court in State of Gujarat Vs. Patel Raghav Natha reported in 1969 (2) SCC 187 (para 11 and 12) to submit that the decisions in revenue matters must be taken within reasonable time. In the facts of that case it was held that it must be arrived at within 90 days.

14. On the concept of reasonableness, reliance was placed on paragraph 38 of the judgment in K.B. Nagur, M.D. (Ayurvedic) Vs. Union of India reported in 2012 (4) SCC 483. It was held therein that when no specific time limit is provided for taking the decision, the concept of reasonable time comes in. It was submitted that good governance required a timely decision and for that judgment of this Court reported in Delhi Airtech Services Pvt. Ltd. Vs. State of Uttar Pradesh reported in 2011 (9) SCC 354 relied upon. (It was also submitted that Section 43 should be read alongwith Section 69 of the Act.) The period for decision making should at the highest be 90 days from the date of application. Reply on behalf of the respondents

15. Mr. Nariman, learned senior counsel appearing for the respondents submitted that essentially the amount which was being charged under Section 43 (as it stands now) was by way of consideration for the permission to transfer the agricultural land for non agricultural purpose. This amount which was being charged was a premium to be paid to the State, and this is because the land theoretically belongs to the State, and all the cultivators are holding the land under the State. The kind of authority which the tenant acquired after making the necessary payment for purchase of the land under the statute was to cultivate the land himself. The land was not to be put to non agricultural use, or else the tenant would lose the land under the provision of the statute, and it would be given to those who needed it for personal cultivation. In his submission, the premium was therefore justified. He informed us that after the impugned judgment of the High Court, the premium has been brought down to 40%. In his submission, the Jantri rate had to be applied on the date of sanction as the Section provided for a prior sanction. He, however, accepted that the decision on the application for conversion to non- agricultural purpose has to be in reasonable time. Consideration of the submissions

16. We may at this stage refer to the judgment of the Division Bench of the Gujarat High Court in Shashikant Mohanlal (Supra) by P.N.Bhagwati, CJ as he then was in the High Court. With respect to this co- relation between Sections 32 to 32R of this statute and Section 43, the Division Bench observed as follows:-

> "7. The Act as originally enacted in 1948 was intended to regulate the relationship of landlord and tenant with a view to giving protection to the tenant against exploitation by the landlord but in 1956 a major amendment was made in the Act introducing a radical measure of agrarian reform. The Legislature decided that the tiller of the soil should be brought into direct contact with the State and the intermediary landlord should be eliminated and with that end in view, the Legislature introduced a fasciculus of sections from Section 32 to S. 32-R and S. 43. These sections came into force on 13th December 1956 and they provided for the tenant becoming deemed purchaser of the land held by him as tenant. Section 32 said that on 1st April 1957 every tenant shall, subject to certain exceptions which are not material for the purpose of the present petitions, be deemed to have purchased from him landlord, free from all encumbrances subsisting thereon on the said day, land held by him as tenant provided he was cultivating the same personally. If the landlord bona fide required the land either for cultivating personality or for any non-agricultural purpose, he could after giving notice and making an application for possession as provided in Section 31, sub-section (2), terminate the tenancy of the tenant subject to the conditions set out in Sections 31-A to 31-D but if he did not take steps for terminating the tenancy of the tenant within the time prescribed in Section 31, the tenant became the deemed purchaser of the land on 1st April 1957. If the landlord gave notice and made an application for possession within the time prescribed in Section 31, the tenant would not become the deemed purchaser of the land on 1st April 1957 but he would have to await the decision of the application for possession and if the application for possession was finally rejected, he would be the deemed purchaser of the land on the date on which, the final order of rejection was passed. Now if the tenant becomes deemed purchaser of the land, there would be no difficulty, for the intermediary landlord would then be eliminated and direct relationship would be established between the State and the tiller of the soil. But what is to happen if the tenant expresses his unwillingness to become deemed purchaser of the land? The Legislature said that in such a case the tenant cannot be permitted to continue as a tenant he would have to go out of the land. If the tenant is permitted to continue as a tenant, the object and purpose of the enactment of the legislation, namely, to eliminate the middleman, would be defeated. The Legislature therefore, provided in Section32-P that if the tenant expresses his unwillingness to become deemed purchaser of the land and the purchase consequently becomes ineffective, the Collector shall give a direction providing that the tenancy in respect of the land shall be terminated and the tenant summarily evicted. The land would then be surrendered to the landlord subject to the provisions of Section 15 and if the entire land or any portion thereof cannot be surrendered in accordance with the provisions of Section 15, the entire land or such portion thereof, as the case may be, shall be

disposed of by sale according to the priority list. The priority list consists of persons who would personally cultivate the land and the sale of the land to them would ensure that the tiller of the soil becomes the owner of it and there is no intermediary or middleman to share the profits of his cultivation. Since the tenant is made the deemed purchaser of the land in order to effectuate the policy of agrarian reform to eliminate the intermediary landlord and to establish direct relationship between the State and the tiller of the soil so that soils of his cultivation are not shared by an intermediary or middleman who does not put in any labour, the Legislature insisted that the tenant must personally cultivate the land of which he is made the deemed purchaser. The tenant, said the Legislature, would continue to remain owner of the land only so long as he personally cultivated it; he must make use of the land for the purpose of which it was given to him as owner. If the tenant failed to cultivate the land personally either by keeping it fallow or by putting it to non-agricultural use, he would lose the land under Section 32B and the land would be given away to others for personal cultivation in accordance with the provisions of Section 84-C."

17. As far as the right of the State to charge the premium is concerned the Division Bench observed as follows in paragraph 11 thereof:-

"11. As the section stands there can be no doubt that it is implicit in the language used in the section that the payment contemplated is payment to the State Government. It must be remembered that the State is theoretically the owner of all land; all occupants hold under the State. If an occupant is not entitled to trnasfer his land without the permisson of the State, the state can very well say that the permission to transfer the land would be granted only if he pays a premium to the State as the sovereign owner of the land. As a matter of fact, such a provision is to be found in Section 73-B of the Bombay Land Revenue Code, 1879. That section which was introduced in the Code with retrospective effect by Gujarat Act 35 of 1965 provides that where any occupancy, by virtue of any conditions annexed to the tenure by or under the Code is not transferable or partible without the previous sanction of the State Government, the Collector or any other officer authorised by the State Government, such sanction shall not be given except on payment to the State Government of such sum as the State Government may by general or special order determine. The Legislature has also similarly provided in Section 43 that if the tenant who is otherwise under an inhibition to transfer, wnats to transfer the land, he shall do so only on payment of such amount as the State Government may by general or special order determine. That is the charge which the State makes for permitting transfer where the occupancy is not transferable as of right. It is no doubt true that the words "to the State Government" are not to be found after the word "payment" in Section 43 but that does not make any difference. These words were perhaps not explicity used by the Legislature as the Legislature might have felt that even without these words the meaning of the section was reasonably clear....."

18. The above decision has not been interfered with by this Court in any manner. A similar provision has been made in Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950. Section 4 of this Act reads as follows:-

4. (1) A watan land resumed under the provisions of this Act shall [subject to the provisions of Section 4A] be regranted to the holder of the watan to which it appertained, on payment of the occupancy price equal to twelve times of the amount of the full assessment of such land within [five years] from the date of the coming into force of this Act and the holder shall be deemed to be an occupant within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the rules made thereunder; all the provisions of the Code and rules relating to unalienated land shall, subject to the provisions of this Act, apply to the said land:

Provided that in respect of the watan land which has not been assigned towards the emoluments of the officiator, occupancy price equal to six times of the amount of the full assessment of such land shall be paid by the older of the land for its regrant:

Provided further that if the holder fails to pay the occupancy price within the period of [five years] as provided in this section, he shall be deemed to be unauthorisedly occupying the land and shall be liable to be summarily ejected in accordance with the provisions of the Code. (2) The occupancy of the land regranted under sub-section (1) shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine. (3) Nothing in [sub-sections (1) and (2)] shall apply to any land-

(a) the commutation settlement in respect of which provides expressly that the land appertaining to the watan shall be alienable without the sanction of the State Government; or

(b) which has been validly alienated with the sanction of the State Government under section 5 of the Watan Act.

Explanation-For the purpose of this section the expression “holder” shall include-

> i) all persons who on the appointed day are the watandars of the same watan to which the land appertained, and
>
> ii) in the case of a watan the commutation settlement in respect of which permits the transfer of the land appertaining thereto, a person in whom the ownership of such land for the time being vests.
>
> (emphasis supplied)

19. This Section 4 came up for consideration before a bench of three Judges of this Court in Nagesh Bisto Desai (supra), and in paragraph 43 this Court approved the scheme of the Section under which

the transfer is subject to the sanction of the Collector, and on payment of requisite amount. This paragraph reads as follows:-

> 43. It still remains to ascertain the impact of Sub- section (2) of Section 4 of Act No. 60 of 1950 and Sub-section (3) of Section 7 of Act No. 22 of 1955, and the question is whether the occupancy of the land regranted under Sub-section (1) of Section 4 of the former Act and Sub-section (2) of Section 7 of the latter Act is still impressed with the character of being impartible property. All that these provisions lay down is that the occupancy of the land regranted under Sub-section (1) of Section 4 of the former Act shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may, by general or special order, determine. It is quite plain upon the terms of these provisions that they impose restrictions in the matter of making alienations. On regrant of the land, the holder is deemed to be an occupant and therefore the holding changes its intrinsic character and becomes Ryotwari and is like any other property which is capable of being transferred or partitioned by metes and bounds subject, of course, to the sanction of the Collector and on payment of the requisite amount.

20. These two judgments answer the submission of the appellants that the amount which is being charged is not a tax but a fee. It is neither. It is a premium for granting the sanction. This is because under this welfare statute these lands have been permitted to be purchased by the tenants at a much lesser price. As held in Shashikant Mohanlal (supra), the tenant is supposed to cultivate the land personally. It is not to be used for non agricultural purpose. A benefit is acquired by the tenant under the scheme of the statute, and therefore, he must suffer the restrictions which are also imposed under the same statute. The idea in insisting upon the premium is also to make such transfers to non- agricultural purpose unattractive. The intention of the statute is reflected in Section 43, and if that is the intention of the Legislature there is no reason why the Courts should depart therefrom while interpreting the provision.

21. It was submitted by the appellants that assuming that the valuation of the land is permitted to be done as per the Jantri rates, it must be so done on the basis of the rates as prevalent on the date of the application. The resultant injustice was highlighted in the case of Savitaben in Civil Appeal No. 4129/2012. The fact however, remains that the Section speaks of previous sanction. As noted earlier, Section 4(2) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 also speaks about the previous sanction. Thus, this is the theme which runs through all such welfare agricultural enactments, and a similar provision in the said Act has been left undisturbed by the bench of three Judges of this Court. Therefore, the Jantri rate to be applied will be on the date of the sanction by the Collector, and not on the date of the application made by the party.

22. Rule 25C of the Rules framed under the Bombay Tenancy and Agricultural Lands Act, 1948, was relied upon by the appellants. It speaks about the circumstances in which, and conditions subject to which sanction shall be given by the Collector under Section 43 for transfer. The rule was relied upon by the appellants to submit that Government cannot charge any disproportionate amount

under Section 43. The rule however, does not create any such restrictions on the provisions under Section 43. In fact, the rule makes it clear that transfer of an agricultural land for non-agricultural purpose is not easy. It is only sub-clause (e) thereof under which such a transferor will have to make his case which is when a transfer is sought for a bonafide purpose. Even so, this does not absolve one from taking any prior sanction. It will only mean that if the application is bonafide, normally the transfer will be sanctioned, because as such there is no right to insist on a transfer for non-agricultural purpose.

23. As far as the levy of the 80 per cent of the amount is concerned, it was submitted that it was unconscionable, and it would mean expropriation, and will be hit by Article 300A of the Constitution. Once we see the scheme of these provisions, in our view, no such submission can be entertained. In any case Mr. Nariman has pointed out that after the impugned judgment, the State Government has reduced the levy to 40 per cent which is obviously quite reasonable.

24. The last point which requires consideration is with respect to the period for considering the application, and granting the sanction. There is some merit in the submission of the appellants in this behalf. Such application cannot be kept pending indefinitely, and therefore we would expect the Collector to decide such applications as far as possible within 90 days from the receipt of the application, on the lines of the judgment of this Court in Patel Raghav Natha (supra). In the event the application is not being decided within 90 days, we expect the Collector to record the reasons why the decision is getting belated.

25. For the reasons stated above we do not find any reason to interfere in the impugned judgment rendered by the Division Bench, approving the decisions rendered by the Single Judges in the Writ Petitions. All appeals are, therefore, dismissed with no order as to costs.

.....J.

[Surinder Singh Nijjar] .....J.

[H.L. Gokhale] New Delhi Dated : February 25, 2014
