IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19693 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

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Approved for Reporting	Yes	No

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BABUBHAI ISHWARBHAI PATEL
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR VIKRAM J THAKOR(2221) for the Petitioner(s) No. 1
MR ROBIN PRASAD(9344) for the Petitioner(s) No. 1
MR JAY TRIVEDI, AGP for the Respondent(s) No. 1
MR NV GANDHI(1693) for the Respondent(s) No. 7,9
MR ASHOK A PUROHIT(6267) for the Respondent(s) No. 10,7.1,7.2,7.3,7.4,7.5,8,9.1,9.2,9.3,9.4,9.5
NOTICE SERVED BY DS for the Respondent(s) No. 1,11,2,3,4,5,6

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CORAM:**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

Date : 16/02/2026

ORAL JUDGMENT

1. By way of filing present petition under Article 226 of the Constitution of India, petitioner has prayed for following reliefs:

(A) That Your Lordship may be pleased to admit and allow this petition.

(B) That Your Lordship may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing

and setting aside the impugned order dated 9.6.2017 passed by the Ld. Special Secretary, Revenue Department (Appeals), State of Gujarat in Revision No. MVV/HKP/AMD/219/2013 at Annexure-A, order dated 23.8.2013 passed by Ld. District Collector in LB Revision Application No.285 of 2011 at Annexure-I and order dated 18.4.2011 passed by Ld. Dy. Collector, Viramgam Prant in RTS Appeal No. 11 of 2009 at Annexure-H and be pleased to restore the revenue entry no.1440 dated 28.11.2007 (Annexure-D).

(C) Pending admission, hearing and till final disposal of this petition, by way of interim relief, Your Lordship may be pleased to stay the operation, implementation and execution of the impugned order dated 9.6.2017 passed by the Ld. Special Secretary, Revenue Department (Appeals), State of Gujarat in Revision No. MVV/HKP/AMD/219/2013 passed by Ld. District Collector in LB Revision Application No. 285 of 2011 at Annexure-I and order dated 18.4.2011 passed by Ld. Dy. Collector, Viramgam Prant in RTS Appeal No.11 of 2009 at Annexure-H, in the interest of justice.

(D) Grant such other and further relief(s) as deemed just and proper by this Hon'ble Court in the interest of justice.

2. The case of the petitioners can be summarized in a nutshell as under:

2.1 Petitioner herein has become owner and occupant of the land bearing survey no.1 (Old survey no.181) admeasuring 7891 sq meters and survey no.857 (Old survey no.186 paiki admeasuring 7588 sq.mtr and survey no.186 paiki admeasuring 11534 sq. meters) in all total land admeasuring 27013 sq. meters situated in the village Kukvav, Tal. Detroj-Rampura, Dist: Ahmedabad. The subject land belongs to total 8 persons i.e. Solanki

Babiba Bhagwantsang and 7 others. They had executed a registered power of attorney in favour of Shri Bharatkumar Kalidas Patel. Pursuance to which a sale deed had been executed between the power of attorney holders of the original property holders and petitioner. The amount of sale consideration had already been paid up and registered sale deed had been executed before the competent authorities. Pursuance to which an entry was mutated in the revenue record on 28.11.2007 vide entry no.1440. As the document is registered and as per the provision of Section 135(C) of the Gujarat Land Revenue Code, if any registered document is to be placed before the competent revenue authority, in that event, as per the provision of the Statute the revenue authority has to make an entry by mutating the same in the revenue record, and subsequently, the said entry was certified on 31/01/2008. The respondent nos.7 to 10 were aggrieved with the said entry, therefore, they had challenged the said entry by way of preferring appeal before the Deputy Collector. After considering and appreciating the merits of the case, the Deputy Collector had cancelled the said entry mutated in the revenue record, therefore, petitioner has challenged the same by way of preferring revision before the Collector, the Collector had dismissed the same, hence, order of the Collector is challenged before the SSRD, and SSRD has also confirmed the same, hence, present petition is preferred.

3. Learned advocate Mr. Vikram Thakor appears for the petitioner submits that it is well within the knowledge of one

and all that if any registered document is placed before the revenue authority, in that event, incumbent officer shall have to make necessary entry in the revenue record by way of mutating the same. It is the requirement of law and as per provisions of law, more particularly, Section 135(C) of the Gujarat Land Revenue Code, if any registered document is to be placed before the revenue authority the authority has to mutate the same in the records of right. Admittedly, herein this case on hand, petitioner herein has become owner and occupant of the said property by way of executing registered sale deed and paying the amount of sale consideration and pursuance to which an entry mutated in the revenue record. Then after, after lapse of period of two years from the date of certifying the said entry, the respondent nos. 7 to 10 have challenged the entry before the Deputy Collector by way of preferring an appeal, and in the midst of the said proceedings matter had already been amicably settled between the parties, pursuance to which settlement deed had been placed and along with settlement deed a withdrawal pursis had also been presented wherein it is stated that matter has already been amicably settled between the parties, and therefore, they do not wish to continue with the appeal proceedings and want to withdraw the said proceedings, despite the fact that an application preferred to withdraw the appeal, the Deputy Collector had not considered the same and allowed the appeal by assigning specific reasons which were not raised by the appellants in the appeal. In short, appeal was decided on the basis of altogether different issues which were never raised by the respondent nos. 7 to 10 in the appeal. The Deputy Collector found glaring discrepancies in the name of the parties and held that name of the parties mentioned in the document are not tallied with the revenue records. It is further held that name of one lady Gajuba Prahladsang was there in the revenue record as a co-sharer of the disputed property, she has not given any power to power of attorney and her consent was also not obtained by the authority at the time of mutating the entry in the revenue record, therefore, there is merit in the appeal, and therefore, the revenue entry requires to be cancelled.

4. So far as second issue raised is that the original property holder of the said property had already availed loan from the bank, an entry to that effect also mutated in revenue record, and therefore, unless and until the said entry is removed/cleared from the record, transaction pertaining to the said parcel of land could not be made without intimating to the bank. Therefore, considering the above-stated discrepancies available on record, the entry requires to be cancelled. Learned advocate Mr. Thakor submits that being aggrieved by and dissatisfied with the said decision delivered by the Deputy Collector petitioners have preferred revision before the Collector, the Collector dismissed the said revision application by holding that the reasons assigned by the Deputy Collector are just, fair, reasonable, legal and in consonance with the provisions of law, hence, an appeal is preferred before the Special Secretary, Revenue Department. However, at that relevant point of time with a sole intent to clarify the position of fact and also rectify the said defects raised by all the revenue authorities, compromise deed as well as consent deed prepared and produced by the petitioner before the authority

concerned wherein signature of Gajuba Prahladsang was also there and she had endorsed the said deed. The copy of the said compromise deed is appended with the petition. Learned advocate Mr. Thakor submits that compromise deed contains signature of Gajuba and consists of particular transactions in categorical terms specifically stating that the said property had been sold to the petitioner on 12.07.2006 by way of executing registered sale deed through power of attorney holder of originally property owners, amount of sale consideration of Rs.71,000/- had already been received by all the family members. In fact, sale deed had been executed on 12.07.2006 whereas her name had entered into revenue record on 23.11.2006 by way of heirship entry. In short, record reveals that on the date when registered sale deed had been executed by and between the parties at that relevant point of time her name was not there in the revenue record, and therefore, she did not sign the said document and issue power to power of attorney, and as such there is no discrepancy in revenue record, he submits that her name had entered into revenue record subsequently after execution of sale deed. The Deputy Collector had pinpointed the said entry at the time of cancellation of mutation entry in the revenue proceedings, therefore, with a sole intent to clarify the position of ground reality registered consent deed prepared and presented before the SSRD, contending that "she has no objection if the said entry mutated in the revenue record and certified by the Mamlatdar is to be remained as it is."

5. Learned advocate Mr. Thakor further submits that, in fact, at the time of pendency of those proceedings before the

revenue authority simultaneously a civil litigation had also been instituted by the respondent nos.7 to 10 before competent civil court by filing civil suit to cancel the said registered sale deed executed by and between the petitioner and power of attorney holder respective parties and the said proceedings have already been withdrawn by the respondent nos.7 to 10 from the competent civil court as compromise have been arrived at between the parties during the pendency of the proceedings, and to substantiate his claim copy of the order passed by the competent civil court below Exh.1 application is tendered across the bar which is directed to be taken on record. He further submits that, as on today, as such there is no dispute pending between the respective parties even "no objection" certificate purportedly issued by the competent bank in favour of the parties had also been obtained and placed before the SSRD during the pendency of proceedings. The said documents supplied/presented to the authority with a sole intent to show the bonafide act and actions of the petitioner. He submits that despite the fact that the pertinent issue raised by the Deputy Collector and Collector in their orders respectively at the time of canceling the entry mutated in the revenue records. During the pendency of the revision before the SSRD, all those set of documents have been produced by the petitioner with a sole intent to clarify the position of fact that the bonafide transactions have been taken place between the parties, despite the fact that all those documents and material available on record the SSRD had dismissed the revision application by reiterating the reasons assigned by the Deputy Collector and Collector in the revenue proceedings without assigning any reasons pertain to those documents/materials placed on record during the pendency of proceedings with a sole intent to clarify the position of ground reality that under which circumstances the said bonafide transaction took place straightaway dismissed the appeal, and by doing so the authority concerned has committed grave error.

6. He further submits that considering the above-stated totality of facts of matter, as on today, matter has amicably settled between the parties and aggrieved parties have no objection and documents upon which reliance is being placed by the petitioner is registered deed executed before competent court/authority, in that event, as per statutory provision of law, more particularly provision of Section-135(C) of the Gujarat Land Revenue Code as well as principle of law laid down by the Hon’ble Apex Court as well as this Hon’ble Court in numerous case laws regarding entry is to be mutated in record based upon production of registered documents, the entry no. 1440 mutated on 28.11.2007 in the revenue record and then after certified by the Mamlatdar is required to be restored by quashing and setting aside the order passed by the Deputy Collector, Collector and SSRD.

7. Learned advocate Mr. Thakor who represents the petitioner has also produced the copy of the order passed by the learned civil judge in the civil proceedings. He emphatically submitted that, in fact, on the strength of the settlement arrived at by and between the parties, the suit filed by the respondent no.7 to 10 to cancel the registered sale deed executed between the parties on the strength of the execution

of power of attorney of the original property holders had already been withdrawn and below Exh.1 the Court concerned has passed order to grant permission to withdraw the said suit. Therefore, the civil ligation instituted at the instance of the respondent nos. 7 to 10 to cancel the sale deed executed by and between the parties had already been withdrawn whereas present proceedings instituted by invoking the provisions of the RTS proceedings whereupon documents upon which reliance is being placed by the petitioner are registered documents and other side has "no objections" if entry mutated on record and subsequently certified by the Mamlatdar is to be restored.

8. Learned advocate Mr. Ashok A. Purohit appears on behalf of respondent nos. 7 to 10 has fairly conceded before this Hon'ble Court that at the earlier point of time disputes cropped up between the parties, and therefore, they have filed appeal before the Deputy Collector to cancel the entry mutated in the revenue record by the Mamlatdar. However, during the midst of the proceedings, matter had already been amicably settled between the parties and they have filed a pursis to withdraw the appeal, to their utter shock and surprise instead of permitting appellants to withdraw their appeal, the Deputy Collector had allowed the appeal by assigning reasons which were not raised by the appellants in the appeal.

9. He further submits that, in fact, at that relevant point of time, respondent nos. 7 to 10 were aggrieved with the execution of the registered sale deed, and therefore, with a sole intent to cancel the said registered sale deed executed in

favour of the petitioner by the power of attorney holder of the original property holders challenge the execution of registered sale deed by way of filing civil suit before the competent civil court, and during the pendency of those proceedings, matter had already been amicably settled between the parties and suit filed by respondent nos. 7 to 10 had already been withdrawn. Copy of the order is already placed on record. He submits that on the strength of the above-stated development took place in the matter and considering the totality of the facts of the matter and as on today, as such, there is no dispute pending between the parties in that event, entry mutated in the revenue record and then after certified by the Mamlatdar vide entry no.1440 dated 28.11.2007 is to be restored by quashing and setting aside the order passed by the Deputy Collector, Collector and SSRD in the revenue proceedings by allowing the present petition, in that event, respondent nos. 7 to 10 has no objection.

10. Learned AGP Mr. Jay Trivedi who appears on behalf of State has objected the present application with vehemence submits that essentially there is a dispute between two private individual parties, State has a very limited role to play in their internal disputes. He submits that, in fact, being aggrieved and dissatisfied with the entry mutated in the revenue record and then after certified by the Mamlatdar, appeal had been preferred by the respondent nos. 7 to 10 before the competent revenue authority. However, as per the record, during the midst of the proceedings, matter had already been amicably settled between the parties, and therefore, they had submitted a pursis narrating those particular facts that they do not wish

to continue with the proceedings and want to withdraw those proceedings, but as machinery has already put into motion on the basis of preferring appeal, therefore, at the time of giving permission to withdraw the appeal, it is a duty of the incumbent officer to verify about the veracity of the claim of the appellant, and Deputy Collector has come to the conclusion that there are some glaring discrepancies in the name of parties have been found out and those names have not been tallied with revenue records. More particularly one lady namely Gajuba Prahladsang's name is there in the revenue record, she has not assigned any power to power of attorney and also her consent qua execution of registered sale deed had not been obtained. The second reason assigned was to the effect that an entry was mutated in the revenue record which crystallized the position of fact that original property holders had already obtained loan from the Gujarat State Agriculture Rural Development Bank, and an entry to that effect had already been mutated, therefore, before entering into the transaction, the said entry is required to be cleared. He further submits that aggrieved party had also filed a civil suit before the competent civil court to cancel the registered sale deed executed by the parties. Therefore, considering the above-stated totality of the facts of the matter, the authority concerned has passed just, fair, legal and reasonable order, and the said orders are not required to be interfered at the hands of this Hon'ble Court in the present proceedings. However, he has fairly conceded before this Hon'ble Court that the subject matter pertaining to RTS proceedings and during the pendency of the proceedings, matter has already been amicably settled between the parties. The documents to that effect have already been placed on record. Order of the civil court prima-facie shows and suggests that the proceedings of the civil suit have also been terminated on the strength of the withdrawal pursis submitted by the original plaintiff it is found out that amicable settlement had already been arrived at between the parties. Those documents are required to be verified by the authority concerned, and therefore, matter may be remanded back to the authority concerned to decide afresh based upon those new set of documents available on record.

11. Heard learned advocate Mr. Vikram Thakor for the petitioners, learned advocate Mr. Ashok Purohit for the respondents as well as learned Assistant Government Pleader Mr. Jay Trivedi for the respondent-State.

12. I have gone through the Record & Proceedings and having considered the arguments canvassed by the learned advocates for the respective parties. It is an admitted position of fact that petitioner herein has purchased certain parcels of land by way executing registered sale deed and paying the amount of sale consideration, and before entering into the transaction he has also verified the titles of the paper, the said sale deed had been executed by the power of attorney holder of the original property holders. They had issued power in favour of one Bharatkumar Kalidas Patel and from whom present petitioners have purchased the said property by way of executing registered sale deed. Pursuance to execution of registered sale deed an entry dated 28.11.2007 vide entry no. 1440 had been mutated in the revenue record, and then after, certified on 31/01/2008.

13. It is an admitted position of fact that respondent nos. 7 to 10 were not ready and agreeable with the execution of said registered sale deed, and therefore, challenged the said mutation entry by way of preferring appeal before the Deputy Collector. It is a specific stand of the respondent nos. 7 to 10 that they had not signed any documents and assigned any power to power of attorney holder, who in turn executed registered sale deed based upon the said power with the predecessor in title of the petitioner, and he executed sale deed in favour of petitioner, and therefore, the said entry mutated based upon the execution of registered sale deed is required to be quashed and set aside, and their names are required to be reinserted into revenue record by cancelling the said entry mutated in revenue record. However, record reveals that during the pendency of the proceedings matter has already been amicably settled between the parties, and they have filed a consent deed specifically stating that they were aggrieved and dissatisfied with the entry mutated in the revenue record based upon the execution of registered sale deed, but now matter has already been amicably settled by and between the parties, and they have already received their share, and therefore, they have taken decision not to proceed further with the said appeal, hence, they may be permitted to withdraw the appeal preferred before the revenue authority. They have also filed withdrawal pursis narrating those particular facts.

14. It is found out from the record that though those particular facts have been stated by the parties in the proceedings before the Deputy Collector despite the fact

instead of terminating the proceedings of appeal by allowing the withdrawal pursis the Deputy Collector has partly allowed the appeal by assigning reasons that certain particulars have been found out from the record, which crystallized the position of fact that name of the parties mentioned in the 7/12 abstract and documents pertaining to power of attorney as well as sale deed are to be kept in a juxtaposition condition and verified, in that event, it would have been found out that there are glaring discrepancies in the name of parties. Name of one Gajuba Prahladsang is there in the revenue record, more particularly, in 7/12 abstract as one of the co-sharer of the property whereas her name was not found in power of attorney, she has not given any power to power of attorney. Therefore, it can safely be said that sale deed had not been executed by her. These particulars have not been verified by the Mamlatdar at the time of verifying record and mutating the entry in the revenue record, and the entry mutated in the record prima-facie found out to be defective in nature and cannot be kept to be remained pending, and hence simply on the count of withdrawal application preferred by the appellants those proceedings cannot be terminated.

15. It is found out from the operative part of the order that he had assigned second reason to the effect that the original property holder had already availed loan from the Gujarat State Agriculture Rural Development Bank by mortgaging the said property and an entry to that effect had already been mutated in the revenue record. At the time entering into the transaction, the said entry was very much available on record. Despite the fact that entry pertaining to property owners have

obtained loan is in existence they had entered into transaction without cancelling the said entry. There is defect in title of the property, and therefore, permission of simpliciter withdrawal of the appeal cannot be permitted.

Being aggrieved by and dissatisfied with the decision delivered by the Deputy Collector, an appeal is preferred before the Collector. The Collector has verified the Record & Proceedings and ultimately jumped to the conclusion that judgment and order passed by the Deputy Collector is just, fair, reasonable, legal and based upon sound principle of law and does not require interference, and therefore, dismissed the appeal.

Being aggrieved by and dissatisfied with the decision delivered by the Collector, a revision is preferred before the SSRD wherein applicant herein has produced certain documents to rectify the defects found available in the revenue proceedings. A consent deed was prepared which was purportedly signed by Gajuba Prahladsang as well as "no objection" certificate obtained from the bank. Those set of documents are placed before the SSRD during the pendency of the proceedings. It is found out from the record that despite the fact that those two defects have been rectified by the petitioner during the midst of the proceedings before the SSRD with a sole intent to clarify the position of fact despite the fact the SSRD had dismissed the appeal by reiterating the same reasons which were given by the Deputy Collector and confirmed by the Collector in the revenue proceedings at the time of cancelling the entry mutated in the revenue record. It is also an admitted position of fact that at the time of rejecting the appeal of the petitioner specific reasons about those documents have not been given by the SSRD. It is also an admitted position of fact that the original parties were aggrieved with the said decision about mutation of entry in the revenue records have already withdrawn the proceedings, and essentially dispute is between two private individual parties, and now, they have buried all the difference and settled the disputes by way of filing a settlement pursis specifically stating that they do not wish to continue with the said proceedings and they may be permitted to withdraw the appeal filed by them.

16. The authority concerned has found some additional grounds at the time of entertaining the said appeal. It seems that the said view adopted by the revenue authority concerned is not palatable, believable and justifiable one. At this juncture, I would like to rely and refer upon the provisions of Section 135(C) of the Gujarat Land Revenue Code contemplated in the Statute, which reads as under:

> **Section 135(C)** : Any person acquiring the right on any land by succession, survivorship, inheritance, partition, purchase, mortgage, gift, [8][lease or Certificate of No Dues made under sub-section (2) and (3) of section 125L and section 133(2), or otherwise] any right as holder, occupant, owner, mortgagee, assignee of the rent thereof, shall make a report of such acquisition of such right, either manually or electronically, to the designated officer within the period of three months from the date of such acquisition, and the said designated officer shall at once, give a written acknowledgment of the receipt of such report to the person making it :

Provided that where the person acquiring the right is a minor, or otherwise disqualified, his guardian or other person, having charge of his property, shall make the report to the designated officer :

Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the designated officer :

Explanation I.—The rights mentioned above include a mortgage without possession, but do not include an easement or a charge not amounting to a mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882.

Explanation II.-A person in whose favour a mortgage is discharged or extinguished, or lease determines, acquires a right within the meaning of this section.]

The language employed in the Section itself crystallized the position of fact that if any person acquiring a right by virtue of execution of registered document shall be exempted from the obligation to report to the designated officer itself goes on to show that if any document is registered one, in that event, executor of the document need not have to approach to the designated officer for the purpose of mutating revenue entry in the revenue record, and therefore, it is the duty of the designated officer if any registered documents are to be placed by the parties before the competent revenue authority in that event even without issuing notice to the other side straightaway they have to mutate the name of the parties in the revenue record. The language employed in the Statute itself crystallized position of fact and it is the mandate of the Statute to act in a particular manner.

17. It is also found out from the record that an appeal had been preferred before the SSRD and during the pendency of those proceedings matter had already been settled between the parties and therefore documents in the form of consent deed have been placed on record wherein Gajuba Prahladsang had signed the papers and also given consent the effect that she has "no objection" if entry is to be mutated in the name of petitioner. The said document is registered one wherein she had stated in a very categorical terms that her name had entered into the revenue record on the basis of heirship entry mutated in the revenue record and said entry mutated subsequent to the date of execution of registered sale deed. Therefore, it can safely be said that, as such, there is no discrepancies of name of the parties in the revenue record. Still with a sole intent to clarify the air, the consent deed is prepared and placed on record stating that the amount of sale consideration received by the family members and she has also got her share and she has no objection if name of the purchaser (petitioner) is to be mutated in the revenue record. Secondly, a copy of no due certificate issued by the bank is also placed on record whereupon signature of the competent authority of the bank is clearly found out. Therefore, at the time of entertaining the appeal the SSRD has to assign specific reasons about the same, the operative part of the order crystallized the position of fact that SSRD has not entertained the appeal preferred by the petitioner by assigning the same reasons which were given by the Deputy Collector and Collector at the time of cancelling the entry mutated in the revenue record without making reference to newly supplied papers. If any development took place during the pendency of

proceedings and those particulars are brought to the notice of the incumbent officer, in that event, he/she is duty bound to assign reasons to accept or not to accept the same. Prima-facie, it seems that the said view adopted by the SSRD is not correct and legally tenable. Ld. SSRD ought to have consider the documents and material available on record at the time of deciding the appeal and has to give justifiable reasons not to entertain the revision application. Therefore, the said view adopted by the SSRD is not legally sustainable and requires to be quashed and set aside.

18. In view of the above-stated totality of the facts of the matter, the present petition is allowed, and order dated 09.06.2017 passed by the Ld. Special Secretary, Revenue Department (Appeals), State of Gujarat in Revision No. MVV/HKP/AMD/219/2013, order dated 23.8.2013 passed by Ld. District Collector in LB Revision Application No.285 of 2011 and order dated 18.4.2011 passed by Ld. Dy. Collector, Viramgam Prant in RTS Appeal No. 11 of 2009, are hereby, quashed and set aside as well as the revenue entry no.1440 dated 28.11.2007, is hereby restored.

(DIVYESH A. JOSHI,J)

AMIT ITALIAN