

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 272 of 2022**

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/SECOND APPEAL NO. 272 of 2022

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE J. C. DOSHI**

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Approved for Reporting	Yes	No
	YES	
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NAGAR SEVA SADAN MANGROL

Versus

MOTIVARASH PREMJBHAI DAMABHAI

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Appearance:

MR CP CHAMPANERI(5920) for the Appellant(s) No. 1

HCLS COMMITTEE(4998) for the Respondent(s) No. 1

RAVI B SHAH(5346) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 29/01/2026****ORAL JUDGMENT**

1. By an oral order dated 11.07.2022, the present Second Appeal, preferred by Nagar Seva Sadan, Mangrol, through its Chief Officer, came to be admitted on the following substantial questions of law, which are reproduced hereunder for the sake of clarity:-

“1. Whether the judgment and decree passed by the First appellate court in Regular Civil Appeal No.29 of 2018 upholding the judgment and decree passed in the Regular Civil Suit No.02 of 2010 is in accordance with the settled principles of law and evidence on the record?

2. Whether the resolution of local authority to enter into

agreement can be equated with concluded contract/agreement and if no whether Honorable Courts below have erred by not rightfully appreciating and interpreting the documentary evidences (resolution of municipality) that are placed on record by the plaintiff-respondent herein?

3. Whether the Honorable Courts below have committed error in not holding the suit of plaintiff barred by limitation?

4. Whether the Honorable Courts below can direct enforcement of specific performance though no valid agreement/contract is executed between the parties?

5. Whether the courts below has right. Authority, powers or jurisdiction to direct execution of sale deed of government land that too in a suit where government is not made a party?

6. Whether the Honorable Courts below have committed an error by passing a judgment and decree in contravention to the provisions of Order 14 Rule 2 of the Code of Civil Procedure, 1908?

7. Whether the Honorable Courts below have committed an error by directing the appellant herein to execute a sale deed in favour of the respondent herein though the respondent herein during the trial of the suit did not claim any relief pertaining to declaration of his title over the suit land?"

BRIEF FACTS:-

2. The appellant herein was the original defendant in Regular Civil Suit No. 02 of 2010 before the learned Principal Civil Judge, Mangrol. The suit was instituted by the present respondent—original plaintiff seeking specific performance of an alleged agreement to sell, declaration of rights, permanent injunction, and a direction to the appellant to execute a sale deed in respect of the suit land. The plaintiff's case rested on an assertion that the land had been allotted

to him pursuant to Resolution No. 22 allegedly passed in 1973 by the General Board of the Nagarpalika. Upon service of summons, the appellant entered appearance and filed a written statement at Exh. 16, *inter alia*, objecting to the maintainability of the suit on the ground of non-joinder of necessary parties. It was contended that, in view of the Government Notification dated 19.05.1988 issued by the Urban Development and Urban Housing Department, the Collector was vested with authority to transfer Government land; hence, the State of Gujarat through the Collector was a necessary party. The appellant also disputed the plaintiff's claim of ownership and possession, asserting that the land was Government land vested in the Nagarpalika and that the documents relied upon by the plaintiff — including Resolution No. 22 (Exh. 24), payment receipts (Exhs. 25 and 26), and an unsigned agreement to sell (Exh. 29) — did not establish any lawful right, title, or identifiable interest in the absence of proper description or supporting revenue record.

2.1. The learned Trial Court, by judgment and decree dated 26.09.2017, decreed the suit, declared the plaintiff entitled to ownership and possession of the suit land, and directed execution of a registered sale deed in his favour. The appellant challenged the said decree by filing Regular Civil Appeal No. 29 of 2018, contending, *inter alia*, that the Trial Court had failed to properly appreciate the evidence, had not decided the preliminary issue of maintainability in accordance with law, and had overlooked material contradictions and legal defects. The appeal, however, came to be dismissed by the learned 2nd Additional District Judge, Keshod, on 08.02.2022, confirming the decree of the Trial Court. Aggrieved by the concurrent findings of the Courts below, the appellant has preferred the present Second Appeal.

SUBMISSIONS OF THE APPELLANT:-

3. Learned advocate Mr. C.P. Champaneri, appearing for the appellant, with considerable vehemence, contended that the General Body of Nagar Seva Sadan, Mangrol lacked the authority, legal competence, even the *locus standi*, to pass any resolution for alienation of immovable property vested in the municipal body. It was urged that municipal property is held in trust for the benefit of the public at large, and that the elected body, instead of adhering to the well-settled doctrine of public trust, acted in an arbitrary and autocratic manner by transferring the suit land to the plaintiff without resorting to a public auction or adopting any transparent procedure ensuring fairness and equal opportunity.

3.1. In buttress of the aforesaid submission, learned advocate placed reliance upon the decision of the Hon'ble Supreme Court in **Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh & Others, (2011) 5 SCC 29**, as well as the judgment of the Division Bench of this Court in **Babalabhai Tapubhai Khuman v. State of Gujarat, 2013 (0) GLHEL-HC 230029**, to contend that disposal of public property must conform to constitutional principles of fairness, transparency and non-arbitrariness.

3.2. Developing the second limb of his argument, learned advocate Mr. Champaneri submitted that the State Government, through the Urban Development and Urban Housing Department, had issued a circular dated 27.12.1971 bearing No. KP-234-71-MUN-1470-10716-71-D, clarifying the legal position under Sections 65(2) and 146(1) of the Gujarat Municipalities Act. By virtue of the said circular, it was contended, the authority to grant sanction for sale of

municipal property is vested in the Collector, who alone is *in seisin* of the matter and empowered to take a decision regarding such alienation, subject to the conditions stipulated therein.

3.3. It was further submitted that the aforesaid notification did not remain static, but came to be successively reviewed and modified by subsequent governmental notifications dated 15.04.1987 and 19.05.1998, whereby additional stipulations and regulatory conditions were engrafted. By virtue of these later instruments, even the authority of the Collector to accord sanction for the grant, transfer, or sale of Government or municipal land stood circumscribed by statutory safeguards and procedural fetters. The submission, therefore, was that the Collector does not enjoy unfettered or absolute discretion in matters of alienation of public property.

3.4. Learned advocate Mr. Champaneri urged that every disposition of Government or municipal land must not only conform to the conditions prescribed by the State Government from time to time, but must also withstand scrutiny on the touchstone of the Doctrine of Public Trust and the Doctrine of Equality, as authoritatively expounded by the Hon'ble Supreme Court in *Akhil Bhartiya Upbhokta Congress (supra)* and later reiterated in *Centre for Public Interest Litigation & Others v. Union of India & Others, (2012) 3 SCC 1*. Any alienation effected in derogation of these constitutional imperatives, it was contended, would be rendered legally unsustainable.

3.5. It was further contended that, in the case at hand, Resolution No. 22 passed by the General Body of Nagar Palika / Nagar Seva

Sadan, Mangrol was adopted in complete oblivion of the binding governmental notifications as well as the governing doctrines of public trust and equality. Ergo, any sale founded upon such a resolution, being contrary to settled principles of law, is *non est* in the eyes of law and incapable of conferring any valid right, title, or interest.

3.6. Learned advocate Mr. Champaneri also canvassed an additional but substantial objection that, even de hors the statutory and constitutional infirmities, the suit instituted by the plaintiff is *ex facie* barred by the law of limitation. It was submitted that a suit for specific performance is governed by Article 54 of the Limitation Act, whereunder limitation commences either from the date fixed for performance of the contract or, in the absence of such a date, from the point of time when the plaintiff has notice that performance has been unequivocally refused. On this score as well, according to learned advocate, the plaintiff's claim is rendered legally untenable.

3.7. He further placed reliance upon Article 58 of the Limitation Act to contend that a suit seeking any declaration must be instituted within a period of three years from the date when the right to sue first accrues. In amplification of this submission, learned advocate adverted to the averments contained in the plaint and submitted that the plaintiff has resorted only to a vague and omnibus assertion that the cause of action arose, without specifically pleading the crucial date on which the Nagar Palika allegedly refused, or the plaintiff first acquired notice of such refusal, to execute the sale deed.

3.8. In the aforesaid backdrop, learned advocate Mr. Champaneri emphasized that the expressions "right to sue" and "first accrues"

employed in Article 58 are of decisive import and cannot be rendered otiose. It was incumbent upon the plaintiff to plead, with precision and clarity, the point of time when the right to sue initially crystallized. Once such right accrues on a particular date, it constitutes the first accrual, and any subsequent or continuing breach does not furnish a fresh starting point of limitation so as to resuscitate a time-barred claim.

3.9. Juxtaposing these submissions with the impugned judgments, learned advocate contended that the learned courts below have committed a manifest error of law in decreeing the suit for specific performance on the strength of a resolution which, according to him, is *non est* and legally unenforceable. The concurrent findings, being contrary to the settled principles governing limitation as well as the legality of the foundational resolution, are thus assailed as perverse and unsustainable, warranting interference in second appeal notwithstanding the otherwise circumscribed scope of jurisdiction.

SUBMISSIONS OF THE RESPONDENT:-

4. *Per contra*, learned advocate Mr. Ravi B. Shah appearing for the respondent has, with considerable emphasis, contended that the jurisdiction of this Court in a Second Appeal is markedly circumscribed, particularly where concurrent findings of fact are assailed. It is urged that this Court, while exercising powers under Section 100 of the Code of Civil Procedure, cannot embark upon a re-appreciation of evidence or supplant the factual determinations concurrently recorded by the learned courts below. According to learned advocate, it would be wholly impermissible for this Court to adopt a different view on factual issues merely because another view is conceivable. On this score, it is submitted that the present appeal,

being devoid of any substantial question of law, deserves outright dismissal.

FINDINGS, ANALYSIS AND CONCLUSION OF THE COURT:-

5. I have heard the learned advocates appearing for the respective parties at length and with due consideration. I have also meticulously perused the judgments and decrees rendered by the learned courts below, along with the concurrent findings recorded therein.

6. It is trite that findings of fact recorded by the courts below are ordinarily immune from interference in a Second Appeal. Such restraint, however, is not absolute. Where a finding is shown to be perverse, founded upon no evidence, predicated on a misreading of material evidence, or rendered in disregard of statutory mandate, this Court would be justified nay, duty-bound to interdict the same within the narrow confines of Section 100 of the Code of Civil Procedure.

6.1. It is equally well settled that, to qualify as a “substantial question of law,” the issue must be debatable, not previously settled by binding precedent, and must have a material bearing on the ultimate decision of the case, inasmuch as the rights of the parties are concerned. A mere question of law, or a question touching upon appreciation of evidence, does not *ipso facto* attain the status of a substantial question of law unless it transcends the factual realm and strikes at the very root of the legal framework governing the lis.

6.2. The Hon’ble Supreme Court, in **M/s. Dutta Cycle Stores & Ors. v. Smt. Gita Devi Sultania & Ors.**, reported in **(1990) 1 SCC**

586, has expounded the contours of what constitutes a substantial question of law, observing *inter alia* as under:—

“4. Whether or not rent for the two months in question had been duly paid by the defendants is a question of fact, and with a finding of such fact, this Court does not ordinarily interfere in proceedings under Article 136 of the Constitution, particularly when all the courts below reached the same conclusion. But where the finding of fact is based on no evidence or opposed to the totality of evidence and contrary to the rational conclusion to which the state of evidence must reasonably lead, then this Court will in the exercise of its discretion intervene to prevent miscarriage of justice.”

7. In *Madan Lal v. Mst. Gopi & Anr., AIR 1980 SC 1754*, the Hon’ble Supreme Court authoritatively held that where the courts below have disregarded the weight of preponderant circumstances and have permitted their conclusions to be swayed by inconsequential or extraneous considerations, interference by the High Court would not only be justified but warranted in the interests of justice. The relevant observations read thus:-

“2. The principal point of controversy involved in the suit was whether Mansaram was in a fit state of mind when he executed the deed of adoption. This, substantially, is a question of fact but we find that the trial Court and the District Court wholly ignored the weight of preponderating circumstances on the record and allowed their judgments to be influenced by inconsequential matters. The High Court was, therefore, justified in reappreciating the evidence and in coming to its own independent conclusion on the basis of that evidence.

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8. May we add that this judgment, properly understood,

will not be a charter for interference by the High Courts with findings of facts recorded by the final Court of facts. The situation, here, was of an exceptional character where evidence which was incapable of supporting more than one conclusion was considered as justifying a conclusion which no reasonable tribunal could rationally reach.”

8. In exposition of the aforesaid principles of law, this Court must now ascertain whether the courts below were swayed by any irrelevant considerations or extraneous factors while decreeing the suit. A careful scrutiny of the impugned judgments reveals that the learned Trial Court, without advertng to the vital issue of limitation and without examining the binding notifications issued by the Town Development and Urban Development Department of the State Government — though specifically pleaded in the written statement, proceeded on an erroneous assumption of law.

PROCEEDINGS BEFORE LEARNED TRIAL COURT:-

8.1. The learned Trial Court merely relied upon Sections 65 and 146 of the Gujarat Municipalities Act to conclude that the General Body of Mangrol Nagar Palika possessed the authority and legal competence to pass Resolution No. 22 for sale of the suit land to a private individual, either upon request or otherwise. The court further reasoned that since the Nagar Palika had accepted the sale consideration pursuant to the resolution allegedly passed in the year 1973, it was legally bound to execute the sale deed in favour of the plaintiff.

8.2. These considerations, which overlooked statutory restrictions and binding governmental directives governing alienation of municipal property, appear to have substantially weighed with the

courts below and ultimately formed the foundation for passing the decree. Such an approach, being contrary to settled legal principles and reflective of non-consideration of material aspects, calls for closer judicial scrutiny in the present Second Appeal.

PROCEEDINGS BEFORE LEARNED APPELLATE COURT:-

8.3. The learned First Appellate Court, while exercising jurisdiction under Section 96 of the Code of Civil Procedure, functions as the final court on facts and, therefore, is duty-bound to undertake a comprehensive reappraisal of the entire evidence adduced by both sides and to independently re-evaluate the findings recorded by the Trial Court. It is trite that a first appeal is a continuation of the original proceedings, and the whole case is therein open for rehearing both on questions of fact and law.

8.4. Regrettably, in the present case, the learned Appellate Court has failed to discharge this solemn obligation. A perusal of the impugned judgment indicates that the appellate court has, in substance, merely reproduced the reasoning of the Trial Court in a different form, without engaging in an independent analysis of the issues involved. The reasons assigned are conspicuously scant and do not satisfy the judicial requirement of a reasoned determination.

8.5. Order XLI Rule 31 of the Code of Civil Procedure mandates that the appellate judgment shall state the points for determination, the decision thereon, and the reasons for such decision. Read in conjunction with the scheme of Order XLI, the provision underscores the obligation upon the appellate court to render an independent and conscious adjudication. Even where the appellate court concurs with the conclusions of the Trial Court, it is

nonetheless incumbent upon it to demonstrate application of mind and record its own reasons, albeit briefly, in affirmation of the decree under challenge.

8.6. The impugned appellate judgment, on its perusal on face, found bereft of such independent reasoning, thus falls short of the legal standards governing appellate adjudication.

9. In the aforesaid backdrop, if the case of the parties is examined *vis-à-vis* the pleadings on record, it emerges that the plaintiff instituted the present suit seeking specific performance of Resolution No. 22 allegedly passed by the General Body of Nagar Palika, Mangrol on 31.07.1973. The suit, however, came to be instituted only decades later, revealing an inordinate and unexplained delay spanning nearly thirty-seven years. Such a yawning hiatus between the asserted cause and the initiation of proceedings cannot be brushed aside as a mere procedural irregularity.

9.2. Order VI Rule 2 of the Code of Civil Procedure casts a clear obligation upon the plaintiff to set out material facts constituting the cause of action. The pleadings in the present case, however, are conspicuously cryptic and bereft of any explanation as to what transpired during this prolonged interregnum. The plaintiff has vaguely averred that possession of the suit land was obtained in the year 2004. Even assuming this assertion to be correct, that would, at the highest, constitute the point of time when the plaintiff could reasonably have noticed that the Nagar Palika had failed to perform its alleged obligation to execute the sale deed.

9.3. In light of Article 54 of the Limitation Act, 1963, a suit for

specific performance is required to be instituted within three years either from the date fixed for performance or, in the absence of such date, when the plaintiff has notice that performance is refused. Reckoned from 09.11.2004, as suggested by the plaintiff's own pleadings, the present suit is *ex facie* barred by limitation. Regrettably, neither the learned Trial Court nor the learned First Appellate Court has adverted to this foundational issue. Limitation strikes at the very root of the maintainability of the suit, and failure to consider such a vital aspect renders the findings recorded by the courts below not merely erroneous but perverse, being in the teeth of settled legal principles.

10. Nonetheless, the question of maintainability of the suit is but one facet of the controversy. An equally seminal legal issue, which warranted earnest consideration by the courts below, is whether the General Body of the Mangrol Nagar Palika possessed any lawful authority or jurisdiction to pass a resolution for sale of municipal land property which, in essence, partakes the character of public property.

10.1. Indubitably, the Government Notification dated 19.05.1988, forming part of the pleadings, did not require formal exhibition, being a statutory instrument whose existence and applicability were specifically pleaded in the written statement. A conjoint reading of the said notification along with the preceding Government Resolutions makes it pellucid that, under Sections 65(2) and 146(1) of the Gujarat Municipalities Act, the authority to sanction sale of municipal or government land vests in the Collector, and that too subject to strict compliance with the conditions enumerated therein. Ergo, even the Collector's power is not unbridled but hedged with

statutory limitations and procedural safeguards. Despite specific pleadings in this regard, particularly adumbrated in the written statement of the Mangrol Nagar Palika, both the learned Trial Court and the learned First Appellate Court have proceeded *sub silentio* on this vital aspect. Such omission, touching the very competence of the authority to alienate public property, furnishes a compelling reason for this Court to interfere with the concurrent findings.

10.2. It thus emerges that the General Body of the Nagar Palika had no locus, authority, or jurisdiction to resolve upon the sale of municipal land to a private individual. Alienation of public property cannot be effectuated through resolutions passed in excess of statutory powers. This brings into focus another profound constitutional dimension whether public land, held by the State or by a local authority in trust for the people, can at all be transferred in derogation of the doctrine of public trust and the mandate of equality enshrined under Article 14 of the Constitution of India.

10.3. The Hon'ble Supreme Court in **Akhil Bhartiya Upbhokta Congress (supra)** has expansively enunciated that the State, in a democratic polity, acts as a trustee of public resources. Distribution of State largesse, be it land, contracts, licences, or mineral rights must be informed by transparency, fairness, and adherence to the doctrine of equality. Any private alienation of public property in breach of these constitutional principles is liable to be declared arbitrary and *non est* in the eye of law. The relevant observations of the Hon'ble Supreme Court read thus:—

“65. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any

person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non- discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent

authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.”

11. It has been reiterated with approval in *Centre for Public Interest Litigation (supra)*, wherein the Hon’ble Supreme Court annulled the allocation of valuable natural resources, namely the 2G spectrum, for having been effectuated in a manner inconsistent with the constitutional mandate of fairness, transparency, and equality.

11.1. The Division Bench of this Court has also had occasion to advert to and apply the aforesaid dictum in *Babalabhai Tapubhai Khuman (supra)*, wherein the Bench examined the legality of the action of the Collector, Bhavnagar, in allotting public land in favour of a private individual without adhering to the doctrine of public trust and the constitutional principle of equality. In paragraphs 8.3 to 8.5, the Division Bench, *inter alia*, observed as under:—

“8.3 In the first place, we do not approve the allotment of Government land to any private individual on his application for the same. While selling a public property or granting its lease, the normal method is auction or calling for tenders/bids, so that all the intending purchasers/ lessees will have an equal opportunity of submitting their bids/tenders. We are conscious of the fact that there may be exceptional situations where adopting such a course may not be insisted upon, but in the present case, there are no such exceptional situations brought to our notice justifying the grant of the land in favour of the respondent No.4 on one simple

application.

8.4 The practice and the policy of the State and/or its agencies/ instrumentalities in allotting the land on the basis of applications made by individuals has been very strongly deprecated by the Supreme Court in one of its recent pronouncements in the case of Akhil Bhartiya Upbhogta Congress V/s. State of Madhya Pradesh and others, reported in (2011) 5 SCC 29. We may quote with profit the observations made by the Supreme Court in paragraphs 65, 66 and 67 as under :-

"65. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non- discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefitted by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/ instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/ instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any

other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similar situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution." (emphasis supplied).

8.5 Bearing the aforesaid principles in mind, we hold that the Government should not act in a manner which would benefit a private party at the cost of the State. Such an action would be both unreasonable and contrary to public interest. The Supreme Court in the case of Shri Sachidanand Pandey and another V/s. State of West Bengal and others, reported in (1987) 2 SCC 295, has observed that the State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles will have to be observed. Public interest is the paramount consideration. One of the methods of securing the the public interest, when it is considered necessary to dispose of the

property, is to sell the property by public auction or by inviting tenders. In the words of the Supreme Court, nothing should be done which gives an appearance of bias, jobbery or nepotism.”

12. In the backdrop of the aforesaid settled proposition of law, this Court finds that the learned Courts below did not even advert to, much less undertake a judicial rumination upon, the applicability of the doctrine of equality and the doctrine of public trust. Instead, the lis was erroneously treated as though it were a simpliciter dispute between two private individuals seeking specific performance of a contract, wholly divorced from the public law elements indubitably embedded in the controversy.

12.1. Such omission to consider germane and determinative legal principles renders the concurrent findings recorded by the learned Courts below palpably erroneous and perverse, being in stark deviation from the settled canons of law. The substantial question of law, as formulated hereinabove, therefore stands answered in favour of the appellant.

13. Ergo, the present Second Appeal succeeds and is hereby **allowed**. The judgment and decree dated 26.10.2017 passed by the learned Additional Civil Judge, Mangrol in Regular Civil Suit No. 2 of 2010, as well as the judgment and decree dated 08.05.2022 rendered by the learned Second Additional District Judge, Keshod–Junagadh in Regular Civil Appeal No. 29 of 2018, are hereby quashed and set aside.

13.1. Consequently, the Regular Civil Suit instituted by the plaintiff shall stand dismissed. There shall be no order as to costs. Decree be

drawn accordingly.

13.2. Record and Proceedings be transmitted back forthwith to the learned Court below.

14. In view of the disposal of the main matter, the connected Civil Application, if any, shall also stand disposed of.

MANISH MISHRA

(J. C. DOSHI,J)