

**Reserved On : 24/02/2026
Pronounced On : 17/04/2026**

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 107 of 2026

In R/SPECIAL CIVIL APPLICATION/11610/2025

With

CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2026

In R/LETTERS PATENT APPEAL NO. 107 of 2026

With

CIVIL APPLICATION (FOR ORDERS) NO. 2 of 2026

In R/LETTERS PATENT APPEAL NO. 107 of 2026

With

R/LETTERS PATENT APPEAL NO. 108 of 2026

In

R/SPECIAL CIVIL APPLICATION NO. 11366 of 2025

With

CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2026

In R/LETTERS PATENT APPEAL NO. 108 of 2026

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R/SPECIAL CIVIL APPLICATION NO. 11366 of 2025

With

CIVIL APPLICATION (FOR ORDERS) NO. 2 of 2026 In

R/LETTERS PATENT APPEAL NO. 108 of 2026

In

R/SPECIAL CIVIL APPLICATION NO. 11366 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

**and
HONOURABLE MR.JUSTICE D.N.RAY**

Approved for Reporting	Yes	No
	✓	

**SANT SHRI ASHARAM ASHRAM THROUGH TRUSTEE AND
AUTHORIZED SIGNATORY RAJESHKUMAR SHADILAL BHARTI
Versus
STATE OF GUJARAT & ORS.**

Appearance:

MR.MIHIR THAKORE, SENIOR COUNSEL WITH MR.RASHESH SANJANWALA, SENIOR COUNSEL, MR.RUDRAM TRIVEDI AND MR.PARINAZ FANIBANDA FOR MR. AADIT R SANJANWALA(9918) for the Appellant(s) No. 1

MR.S. H. VIRK(7392) for the Respondent(s) No. 3

MR.GURUSHARAN H. VIRK, LD.GOVERNMENT PLEADER WITH MS.DHARITRI PANCHOLI AND MR.BRIJENSINGH THAKUR, GOVERNMENT PLEADERS for the Respondent(s) No. 1,2,4,5,6

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**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR.JUSTICE D.N.RAY**

**CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)**

1. For the convenience of readers, the judgment is divided into parts as indicated in the table of contents, given hereinbelow :-

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I. INTRODUCTION

2. The abovereferred two letters patent appeals under Clause 15 of the Letters Patent, are directed against two separate orders of the same date passed by the learned Single Judge of this Court in two writ petitions filed by the appellant herein, namely Sant Shri Asharam through its authorized signatory Rajeshkumar Shadilal Bharti.

3. The Special Civil Application No.11610 of 2025 has been filed with the following reliefs:-

“(a) The Hon'ble Court may be pleased to issue an appropriate writ, order or direction to quash and set aside the order dated 18.07.2025 passed by Gujarat Revenue Tribunal in Appeal/AMD/82/2025 (part of Annexure B Colly);

(b) Pending hearing and final disposal of this petition, this Hon'ble Court may be pleased to stay operation, implementation and execution of the order dated 18.07.2025 passed by Gujarat Revenue Tribunal in Appeal/AMD/82/2025 (part of Annexure B Colly)

(c) Pending hearing and final disposal of this petition/Application, this Hon'ble Court may be pleased to stay operation, implementation and execution of the order dated 04/04/2025 passed by the City Mamlatdar, Sabarmati, Ahmedabad in No. JMN/DABAAN/MOTERA/CASE No. 5/2023 (part of Annexure B Colly);

(d) Pending the hearing and final disposal of this petition, the Hon'ble Court may be pleased to direct the respondents authorities to maintain status quo and not take any coercive measures to takeover possession of the Petitioner's Ashram land;

(e) Interim and Ad-interim relief in terms of prayer clause(b) above;

(f) For such other and further reliefs that the Hon'ble Court deems fit in the interest of justice."

4. In Special Civil Application No.11366 of 2025, following reliefs have been sought for:-

"(a) The Hon'ble Court may be pleased to quash and set aside the order dated 18.07.2025 passed by Gujarat Revenue Tribunal in Appeal/AMD/83/2025 (part of Annexure B Colly);

(b) Pending hearing and final disposal of this petition/Application, this Hon'ble Court may be pleased to stay operation, implementation and execution of the order dated 18.07.2025 passed by Gujarat Revenue Tribunal in Appeal/AMD/83/2025 (part of Annexure B Colly)

(c) Pending hearing and final disposal of this petition/Application, this Hon'ble Court may be pleased to stay operation, implementation and execution of the order dated 04/04/2025 passed by City Deputy Collector (West) Ahmedabad in Sharatbhang/Case No.7/2023;

(d) Pending the hearing and final disposal of this petition, the Hon'ble Court may be pleased to direct the respondents authorities to maintain status quo and not take any coercive measures to takeover possession of the Petitioner's Ashram land;

(e) Interim and Ad-interim relief in terms of prayer clause (b) to (d) above;

(f) For such other and further reliefs that the Hon'ble Court deems fit in the interest of justice."

5. The writ petitions, thus, were directed against two separate orders of the same date 04.04.2025, passed by the City Mamlatdar, Sabarmati, Ahmedabad in *JMN/Dabaan/Motera/Case No.5 of 2023* and City Deputy Collector (West), Ahmedabad in *Sharatbhang/Case No.7/2023*. The orders of the Gujarat Revenue Tribunal (GRT) are also of the same date in two separate appeals.

6. The learned Single Judge has dismissed both the writ petitions upturning the challenge to the orders of forfeiture and eviction from the lands, subject matter of the aforesaid proceedings. Both the letters patent appeals, though, have been heard simultaneously and separately, but since there are common facts and some overlapping issues, we deem it fit and proper to decide both the appeals by this common judgment, for the sake of brevity and clarity. However, the specific issues pertaining to each of the two writ petitions would obviously be dealt with separately in this judgment at appropriate stages.

I. COMMON FACTS OF BOTH THE WRIT PETITIONS:-

7. The common facts in both the writ petitions are that the petitioner, namely Sant Shri Asharam Ashram is a registered Public Charitable Trust under the provisions of the Gujarat Public Trusts Act' 1950 bearing registration No.E/2345.

8. The object of the trust, as mentioned in its constitution, is to undertake charitable, educational and spiritual activities, to cultivate spiritual faith in people, give

spiritual education, uplift and enlighten people, educate people of mental and physical well being through Ayurveda, cultivate harmony and friendship in different communities, educate people on Indian culture and tradition, to develop patriotism, educate the weaker section of the society, etc.

9. It is the case of the petitioner trust that it was allotted / granted about 39,094 sq.mtrs of land at Mouje Village Motera, Taluka Gandhinagar (now Taluka Sabarmati, District Ahmedabad) by orders of the State Government from time to time. The Ashram is spread over the land conglomeration of 39,094 sq.mtrs. which was allotted to the petitioners by undertaking due process of law. A *Gurukul* is located on the land allotted vide order dated 30.04.1980 (amended on 26.03.1981) and the constructions on the said land have been raised after the development permission dated 28.05.2008.

10. The remaining constructions are on the lands granted vide orders dated 23.07.1992, 16.12.1997 and 06.01.1999. As noted by the learned Single Judge, the petitioner has applied for regularization of the said constructions on the said balance lands, for which applications are pending consideration as on date. The documents regarding the allotment of lands, development permission dated 28.05.2008 and the regularization applications made in around February'2023, are appended with the writ petition. It is noted therein that as stated, the applications for regularization of the existing constructions were made prior to the initiation of proceedings in question in the month of October' 2023.

11. The petitioner has produced the photographs of the Ashram to demonstrate various activities undertaken by the Ashram and that it runs a school on the allotted lands based on the permission obtained from the authorities along with the hostel facilities for hundreds of children. The existing structures are being used for meditation, spiritual activities including Ayurvedic, Homeopathic and Naturopathic clinics, etc. Various communications of praises on the activities received by the petitioner Trust have been placed on record.

12. There is another Trust of the same organization in the name of *Sant Shri Aashramji Mahila Udhyan Ashram*, which was allotted an additional area of 10 acres from survey No.282/A/paiki by an order dated 05.01.1999 for afforestation, copy whereof has also been placed on record. As per Condition No. '2' of the said allotment order, if the area allotted came to less than 10 acres, additional area for afforestation would be given from land next to the Ashram for afforestation.

13. It is the common case of the petitioner in both the writ petitions that since the area allotted for afforestation was less than 10 acres, the petitioner was given permission to cultivate trees in the areas adjoining Ashram. The petitioner has grown more than 300 trees in the said area surrounding the Ashram.

14. It is the categorical case of the petitioner in both the writ petitions that the petitioner is not claiming any ownership or occupancy rights in the area over and above 39,094 sq.mtrs and that the petitioner has not put the

additional land other than allotted area to any use / construction thereon. The case of the petitioner is that the petitioner - trust had cultivated the trees and the additional land in its occupation is open and remained vacant at all times.

15. It is also the case of the petitioner that the additional area of adjoining land, next to the Ashram for afforestation, was made up of uneven lands and *Kotars*. Because of the flow of water from the *Kotars*, there was soil erosion and the trees planted by the Trust were being damaged. The petitioner, therefore, has constructed a retaining wall over the said land, but claims no ownership of the said surrounding land. It is open and vacant.

16. It is the case of the petitioner that vide letter dated 04.10.2007, the petitioner requested the Collector, Gandhinagar to allot an additional area of 11,982 sq.mtrs from survey No.282/A/paiki.

17. The State Government passed a resolution dated 06.01.1999 to the effect that consideration may be taken from the petitioner for the additional area of 4,860 sq.mtrs. within 30 days.

18. It is the case of the petitioner that the said land (of 4,860 sq.mtrs.) was allotted for all purposes but only as a procedural formality, the Collector was directed to accept the consideration / *Upaj Dand* and issue a formal order. Even by an order dated 12.09.1999, the encroachment of 4,860 sq.mtrs had been regularized on consideration to the tune of

Rs.2,39,841/-, duly deposited by the petitioner, receipt of which was issued on 28.01.1999 bearing No.71.

19. The stand of the petitioner is that the petitioners had deposited Rs.61,819/- in excess, in respect of the allotment order of the year 1997 and the said excess amount was settled with regard to *Upaj Dand* amount to be paid for allotment in respect of *Nadi paiki* land. Additionally, a panchnama was carried out on 07.01.2009 by the Circle Officer, which also records that the petitioner has been allotted total 7,748 sq.mtrs of land from *Sabarmati Nadi* (Sabarmati River).

III. CONTENTIONS RELATING TO THE CURRENT PROCEEDINGS:-

20. It is the common case of the petitioner to challenge the orders passed in *Dabaan* and *Sharadbhang* proceedings, that on 03.06.2021, Ahmedabad Urban Development Authority (AUDA) wrote to the Collector, Ahmedabad to reserve certain land and not to create any third party rights, on such lands until further instructions. The said communication included petitioner's land admeasuring 17,916 sq.mtrs amongst other 23 lands owned by the State Government and *gauchar* land, as indicated in a table therein.

21. On 25.01.2022, the Collector, Ahmedabad passed an order to reserve the aforesaid 24 lands (including the petitioner's land) for acquisition for future plan of Commonwealth Games / Olympic Games. The petitioner has obtained the order dated 11.09.2023 of the State Government,

which provided for formation of a special purpose vehicle by the name of Gujarat Olympics Infrastructure and Planning Corporation Ltd. (GOLYMPIC) to monitor and coordinate works towards development of Sardar Vallabhbhai Patel Enclave, copy whereof had been placed on the record of the writ petition.

22. At that stage, the petitioner filed a Special Civil Application No.17521 of 2024 challenging the order dated 25.01.2022 of the Collector imposing reservation, which was disposed of by the judgment and order dated 26.03.2025 on the statement made in the affidavit of the City Deputy Collector that there was no reservation and the communication dated 25.01.2022 of the Collector was merely an inter-departmental communication.

23. A perusal of the memo of the said writ petition brought on record indicates that the challenge therein was to the communication dated 25.01.2022 on the apprehension that such reservation may entail forfeiture of petitioner's land. The petitioner contended therein that the reservation of land cannot be based on presumptive forfeiture and the alleged breach of condition is a speculative and legally impermissible reason.

24. A further perusal of the judgment and order dated 26.03.2025 of disposal of the said petition indicates that the Writ Court, while noticing the statement of the City Deputy Collector on oath, has directed the State authorities to place an entry as regards the order of disposal of the said writ

petition in the revenue record, for the fact that the effect of the order dated 25.01.2022 has already been mutated in the revenue record vide entry No.9180.

25. Thereafter, a notice dated 06.10.2023 under Section 79A of the Code was issued to the petitioner for breach of condition Nos.3, 6 and 7 in respect of the allotment order dated 30.04.1980 and condition No.2 of the allotment orders dated 23.07.1992 and 16.12.1997. The proceedings under *Sharatbhang Case No.7 of 2023* are in furtherance of the said show cause notice.

26. The petitioner filed a reply dated 30.11.2023 to the said notice and a further reply dated 13.06.2024 was filed with a list of documents dated 20.06.2024; third reply dated 10.02.2025 was filed along with the list of documents and fourth reply is dated 25.02.2025.

27. By order dated 04.04.2025, the City Deputy Collector (West), Ahmedabad forfeited the lands granted to the petitioner by the orders dated 30.04.1990 (amended on 26.03.1991), 23.07.1992 and 16.12.1997, for breach of conditions of the said orders and directed for removal of the constructions made by the petitioner.

28. Parallely, by issuance of another notice under Section 61 of the Code dated 31.08.2023, the *Dabaan Case No.5 of 2023* was registered by the City Mamlatdar, Sabarmati and an order of even dated, i.e. 04.04.2025 has been passed directing the petitioner to vacate about 15,778 sq.mtrs. of land encroached by it.

29. Initially, a Special Civil Application No.4883 of 2025 was filed challenging the order dated 04.04.2025 in *Dabaan Case No.5 of 2023*, which was disposed of vide judgment and order dated 15.04.2025 granting liberty to the petitioner to avail alternative remedy.

30. Two separate revision applications were filed before the Gujarat Revenue Tribunal (GRT) challenging the orders passed in the *Dabaan* and *Sharatbhang* proceedings. Both the appeals have been dismissed by separate orders of even date, i.e. 18.07.2025, confirming the orders passed by the City Deputy Collector (West), Ahmedabad.

31. The learned Single Judge has dismissed the writ petition challenging the proceedings in the *Sharatbhang Case No.7 of 2023* by holding that from the material on record, it emerges that the primary focus of the petitioner in the said petition is on 4860 sq.mtrs. of land, which is forming part of the water body, i.e. Sabarmati River (*Sabarmati Nadi*). Such lands cannot be regularized. As per own contention of the petitioner therein, the petitioner has applied for regularization of the said pieces of the land in the year 2023, which itself indicates that the exercise undertaken by the petitioner to cure the breach of conditions is an effort to overreach the process of law. No direction, as such, can be given to the authorities as regularization of encroachment on the land of water body (*Nadi* area) is impermissible, in view of the decision of the Apex Court in **Writ Petition (Civil)**

No.295 of 2022 (Dated 13.11.2024), wherein direction has been issued to preserve and restore all water bodies in the entire country.

32. Another writ petition, namely Special Civil Application No.11610 of 2025 filed against the order passed in *Dabaan Case No.5 of 2023* has been dismissed noticing that the said proceedings have been initiated by the State invoking Section 61 of the Code on the ground of encroachment of 15,778 sq.mtrs. area in addition to the allotted / regularized area of 33,980 sq.mtrs. The measurement sheet dated 31.07.2023 (produced at page No.353 of the paper-book of the said petition) was prepared between 21.07.2023 and 26.07.2023, making reference points of all the areas surrounding the survey No.282/A/paiki. The aforesaid measurement was carried out by using D.G.P.S, i.e. Differential Global Positioning System, which shows that the petitioner is in encroachment of 15,778 sq.mtrs. of the land belonging to the State Government.

33. The challenge to the measurement sheet dated 31.07.2023 was upturned by the Writ Court noticing that the orders, subject matter of challenge therein, had been passed following the principles of natural justice and taking into consideration the documents on record. Moreover, the petitioner has failed to show any legal right of occupying the lands in question. Summary eviction proceedings under Section 61 of the Code, as such, requires no interference.

IV. APPELLANT'S / PETITIONER'S CASE.

A. LETTERS PATENT APPEAL NO.108 of 2026: Submissions of Mr.Mihir Thakore, the learned Senior Counsel for the appellant:-

34. It is the case of the petitioner that both the proceedings for *Sharatbhang* and *Dabaan* were initiated simultaneously just to obtain the petitioner's land by hook or crook, under any circumstances, and the entire proceedings being premediated are grossly arbitrary.

35. Mr.Mihir Thakore, the learned Senior Counsel for the petitioner referring to the communications dated 03.06.2021, 25.01.2022, 26.09.2023 and 29.09.2023 exchanged between AUDA and the Collector; the City Deputy Collector and the Mamlatdar vehemently argued that the entire proceedings initiated by the Mamlatdar with the notice dated 06.10.2023 under Section 79A of the Code suffers from legal *mala fide*, inasmuch as, in a preplanned manner, the Ashram's land is being taken away for the purpose of developing a sports enclave for Commonwealth / Olympics 2036, along with other surrounding lands in the area. The communication by AUDA dated 03.06.2021 for including the Ashram's land as available land suggesting initiation of *Sharatbhang* proceedings by the State, on the allegations of unauthorized constructions, is a clear indication of what had been transpired for initiation of the proceedings under Section 79A for forfeiture of the Ashram's land, where constructions are existing for more than 26 years.

36. The special purpose vehicle by the name of Gujarat Olympics Infrastructure and Planning Corporation Ltd. (GOLYMPIC) has been incorporated for development of the Sardar Vallabhbhai Patel Sports Enclave (SVP Enclave). The Urban Housing and Urban Development Department of the State has issued an order dated 11.09.2023 for formation of a committee comprising of the officers of Ahmedabad Municipal Corporation, AUDA, Collector and other officers of AUDA for finalization of land parcels for SVP Sports Enclave.

37. A bare reading of all the aforesaid communications demonstrate the extraneous factors played in their minds to initiate action for forfeiture of the Ashram's land. The show cause notice dated 06.10.2023 itself suffers from arbitrariness guided by irrelevant considerations leading to passing of an order, which in turn suffers from the vice of legality. Reliance is placed on the decision of the Apex Court in the case of **Siemens Ltd. v. State of Maharashtra, [(2006) 12 SCC 33]** and **Oryx Fisheries (P) Ltd. v. Union of India, [(2010) 13 SCC 427]** to substantiate the submissions of the proceedings being arbitrary and guided by wholly extraneous and irrelevant considerations.

38. It is vehemently submitted that in the communication dated 03.06.2021, when AUDA proposed reservation over the petitioner's land with the noting that the same is required to be forfeited on the ground of breach of conditions, no proceedings were pending against the petitioner nor any notice had been issued alleging the breach of the conditions. The petitioner was served with the notice dated 31.08.2023

from the office of the City Mamlatdar, Sabarmati, Ahmedabad under Section 61 of the Code calling upon him to show cause as to why penalty be not levied and possession be not taken with respect to the area admeasuring (i) 6489 sq.mtrs. from survey No.282/A/paiki (ii) 3585 sq.mtrs. from *gamtal*; and (iii) 6104 sq.mtrs from *Sabarmati Nadi*.

39. The said notice has been issued purportedly on the basis of the measurement sheet dated 31.07.2023 prepared by the DILR on the instructions of the Collector, Ahmedabad. The survey for preparing measurement sheet was conducted behind the back of the petitioner, inasmuch as, the petitioner was never notified in advance of any measurement exercise to be conducted by the DILR.

40. It was further argued that the measurement sheet is grossly erroneous, inasmuch as, the *Sim Rekha*, which was shown to be passing from *Banjaara Vaas* in all the earlier layouts (of 1998, 2008 and 2013), has been shifted. The measurement sheet of the year 2023, has been prepared in the *mala fide* premediated exercise, where respondent authorities had made up their mind even before the issuance of the show cause notice to forfeit the land of the petitioner and the entire exercise conducted thereafter, was aimed to justify the alleged breach.

41. The submission is that the present is a case, where the respondent authorities first reached at a definite conclusion about alleged breach and that the land of the petitioner was to be forfeited and, as such, the subsequent

proceedings undertaken by them became an empty ritual and idle formality. The judicial scrutiny in the decision of the quasi-judicial authority, therefore, would require an inquiry as to whether while acting in exercise of its statutory power, such authority has acted fairly and with open mind, for initiating the proceedings under Section 79A of the Code initiated in *Sharatbhang Case No.7 of 2023*. Even Section 61 of the Code for *Dabaan Case No.5 of 2023* initiated against the petitioner declaring it as an unauthorized occupant / encroacher, are initiated in the same manner. The bias of the respondent authorities, which was latent in the show cause notices became patent in the orders of the cancellation of the allotment of the land granted to the petitioner between the years 1980 to 1997 for forfeiture of the land and eviction from the lands legally occupied by the petitioner - trust, terming it as an encroacher or unauthorized encroacher arbitrarily.

42. It was argued that the entire proceedings in both the cases under Sections 61 and 79A are, thus, vitiated by the bias, which can be clearly discerned from the communications exchanged between the respondents from 03.09.2021 to 29.09.2023 (as noted hereinbefore), inasmuch as, the alleged breach and encroachments had been prejudged at the stage of the show cause notice itself.

43. Placing reliance on the decision of the Apex Court in **Oryx Fisheries (P) Ltd.(supra)**, it was argued by the learned Senior Counsel that justice is rooted in confidence and must be the goal of quasi-judicial authorities while exercising its jurisdiction as to inspire confidence in the minds

of those subjected to its jurisdiction. Such authorities must act with utmost fairness which must be manifested in its order itself. It is settled that the principle that "*justice must not only be done but it must imminently appear to be done as well*" is equally applicable to the quasi-judicial proceeding.

44. The orders passed by the quasi-judicial authorities, if bereft of reasons, or are guided by extraneous or irrelevant considerations, cannot stand the test of judicial scrutiny with the standards of the mind of a man of ordinary prudence. A case where the quasi-judicial authorities acted in a manner where the alleged guilt has been prejudged at the stage of initiation of the proceedings itself before issuance of the show cause notices itself, would lead to an unescapable conclusion that there exists a real danger of bias and any action taken thereafter would have to be quashed. The submission is that the present case squarely falls within the ratio of bias and action taken with prejudged mind propounded by the Apex Court in **Oryx Fisheries (P) Ltd. (supra)**. The same principles can be discerned from the decision in **Siemens Ltd. (supra)**.

45. The entire proceedings are vitiated, as such, and both the orders forfeiting the Ashram's land are liable to be quashed on this ground alone.

46. Elaborating further, it was argued from another angle that this is a case where the factual aspects starting from the letter of AUDA dated 03.06.2021, formation of Committee by the State Government by the order dated 11.09.2023,

information in the brochure for the Sardar Vallabhbhai Patel Sports Enclave (SVP Enclave) for future planning of Commonwealth Games / Olympics games, a project of Gujarat Olympics Infrastructure Planning Corporation Ltd. (GOLYMPIC), (a special purpose vehicle), and subsequent actions taken together, sequentially are the reflection of actual reasons guiding the respondent authorities to initiate action for forfeiture of the Ashram's land, which is for the development of SVP Enclave for Olympic games' 2036 for which India is pitching with the organizers.

47. It was argued by the learned Senior Counsel for the petitioner that there is no kind of allegations of personal *mala fides* against anyone, but it is a case of legal *mala fide* as the premeditated action of the respondent authorities would fall within the meaning of an action taken with the oblique and indirect object, in complete disregard of law and rights of the parties as well as without any lawful excuse. It was argued that malice is attributed to the State as its actions are wrongful and willful without any reasonable or probable cause. They are a deliberate act not only in complete disregard of law but also in disregard of the rights of the petitioner.

48. In support of these submissions, reliance was placed upon the decisions of the Apex Court in **State of A.P. v. Goverdhanlal Pitti, [(2003) 4 SCC 739]**, **Kalabharati Advertising v. Hemant Vimalnath Narichania, [(2010) 9 SCC 437]** and **G. Jayalal v. Union of India, [(2013) 7 SCC 150]**.

49. The submission, thus, is that the show cause notice dated 31.08.2023 issued by the City Mamlatdar, Sabarmati, Ahmedabad under Section 61 of the Code calling upon the petitioner to show cause as to why action be not initiated due to alleged illegal encroachment on the Government lands, with the proposed action to impose penalty and removal of possession, and the orders passed in furtherance thereof, are all liable to be quashed suffering from bias and legal *mala fide*. On the same ground, the action initiated with the show cause notice dated 06.10.2023 under Section 79A of the Code on the ground that the petitioner has breached the condition Nos.3, 6 and 7 in respect of the allotment order dated 30.04.1980 and condition No.2 of the allotment orders dated 23.07.1992 and 16.12.1997, leading to forfeiture of the petitioner's land for summary eviction, are all liable to be quashed, outrightly.

50. In furtherance thereof, it is vehemently argued by Mr.Mihir Thakore, the learned Senior Counsel for the petitioner that the petitioner came to know from reliable sources that in a meeting of the higher officials held in December' 2024 for the purposes of developing a sports complex for Olympics' 2036, a plan was prepared for taking the Ashram's land and other surrounding lands and then to initiate summary proceedings under Section 79A, in a premeditated exercise to grab the petitioner's land on the allegation that no maps and / or construction permission are produced on record and the constructions existed on the spot are illegal and that the petitioner Trust indulged in profiteering by sale of Ayurvedic medicines.

51. The submission is that the lands, subject matter of proceedings in *Sharatbhang Case No.7 of 2023* are the lands allotted to the petitioner Trust by the competent authority in the years 1980 to 1997. The petitioner Trust has been registered under the Bombay Trust Act' 1950 and its objectives are charitable in nature. The lands in question have been used for educational and spiritual activities. Amongst its various activities, the petitioner is running a *Gurukul*, distributes spiritual literature to bring spiritual awareness among the public without charging any money, medical services at the clinic are being provided free of cost to the beneficiaries and the medicines are given to the ailing beneficiaries by the doctors themselves at a very nominal rates. The school fee of the *Gurukul* and schools run by the Trust are very nominal at the rates sanctioned by Fee Regulatory Committee. The fee collected is being utilized for providing facilities and infrastructure to the students. All educational and ancillary facilities in the schools / *Gurukul* are for the benefits of the children at a very nominal rates.

52. The primary objective behind all activities of the Ashram (Trust) is not driven by profits, but is charitable in nature. The dominant purpose is to offer services for the betterment and benefit to its large number of beneficiaries. All spiritual and educational activities of the Trust, thus, would qualify its charitable activities and cannot be considered as profit oriented activities.

53. It was argued that the summary proceedings of eviction under Section 79-A of the Code could not have been conducted on the allegations of the Trust having been indulged in profiteering or profit making activities, inasmuch as, any action on such allegation would require a full-fledged inquiry into the audited financial statements of the petitioner Trust, which are regularly being produced before the Charity Commissioner.

54. The land in question is in use of the petitioner Trust over 45 years and the activities in accordance with the objectives of the trust are being carried out over the same, which are beneficial to a large section of the society, who are beneficiaries of the Trust. The breach in the condition of allotment as also the proceedings for summary eviction from the lands in question on the basis of DILR Report of the year 2023, where no finding of fact could have been recorded, are all liable to be set aside.

55. The submission is that the petitioner was given the lands in question in the order of grants passed by the State in accordance with the provisions of the Land Revenue Code, itself. Any action of the State under Section 79A in a summary trial bereft of any evidence in the matter of grant of land, in view of the above submissions, cannot be sustained. The entire proceedings of eviction under Section 79A on the ground of breach of conditions in *Sharatbhang Case No.7 of 2023* is, thus, liable to be quashed.

56. On the scope of Section 79A of the Code, it was vehemently argued by Mr.Thakore that Section 79A is a summary eviction procedure conferring power in the hands of the competent authority for eviction of any person unauthorizedly occupying or wrongfully in possession of any land, to which he is not entitled to the use or occupation or which he ceased to be entitled by reasons of any of the provisions of the Revenue Code. However, for declaring any person unauthorizedly occupying or wrongfully in possession of any land, there has to be an inquiry, wherein opportunity of hearing is to be provided to the concerned person, who is in occupation. For initiation of the eviction proceedings under Section 79 of the Code, it is incumbent that the conditions of the said provisions are attracted, as found in Clauses (a) and (b) of the said Section.

57. The Clause (a) of Section 79 provides for eviction of a person, who is in use or occupation of any land to which he is not entitled to or has ceased to be entitled to under any of the provisions of the code. The second condition, as contained in Clause (b) of Section 79, refers to transfer of any land in violation of certain provisions of the Code, mentioned therein.

58. The power conferred upon the Collector for summary eviction of any person terming him as unauthorized occupant or being in illegal use of occupation being guided by the provisions of Section 79 of the Code, would require an inquiry and adjudication about the status of the user or the occupant of the said land.

59. In the instant case, there cannot be a dispute that the lands in question, subject matter of *Sharatbhang Case No.7 of 2023*, are the lands allotted to the petitioner by the competent authority as early as in the years 1980, 1992 and 1997. With the allotments, the petitioner has been conferred with the new tenure rights in the lands and became its proprietor. There is no cancellation or revocation of allotment. No proceedings, whatsoever, has been initiated against the petitioner prior to issuance of the show cause notice under Section 79A for summary eviction. The petitioner cannot be held an unauthorized occupant or being in wrongful possession of the land, which was of its proprietorship.

60. It was further argued that the petitioner got the occupation of the lands in question in the year 1989 after first allotment order and the constructions were raised from the year 1997 onwards. There are two regularization orders of 1992 and 1997, which further demonstrate that the State Government itself regularized the occupation of the petitioner, which was termed initially being without the permission of the Collector. The pieces of lands comprising total area of 39,094 sq.mtrs. have been duly allotted to the petitioners and are in its use and occupation being the lawful proprietor of the lands. The eviction of the petitioner from 33,980 sq.mtrs on the premise of being unauthorized occupant or in wrongful possession of the allotted land, is wholly arbitrary, *mala fide* and illegal exercise of power on the part of the respondents.

61. It was vehemently argued that eviction of a proprietor or a person who has been put in possession of any State land after a valid grant, can only be permissible in a substantive proceedings, which may be conducted for cancellation of allotment on the allegation of breach of condition, wherein opportunity to lead evidence is to be afforded. There is absolutely no evidence on record to forfeit the petitioner's land by summary eviction and the respondent proceeded on the mere allegations of breach of condition.

62. Elaborating further, it was submitted by the learned Senior Counsel for the petitioner that the grant and use of any land belonging to the State is guided by the provision of Sections 60 to 82, as contained in Chapter VI of the Gujarat Land Revenue Code' 1879.

63. Section 60 provides for a written permission of Mamlatdar required to be taken previously from entering upon the occupation of any unoccupied land, which has been alienated. Eviction proceedings for unauthorized occupation of any land set apart for any special purpose, or any unoccupied land which has not been alienated, can be initiated under Section 61.

64. Section 62 confers power upon the Collector, subject to the rules made, to require the payment of a price for an alienated land or to sell the same by auction, before permission to occupy is given under Section 60.

65. Section 68 entitles the occupant to the use and occupation of his land for the period of tenure, which may be limited or unlimited or in perpetuity, on payment of amounts determined under the provisions of the Act and the Rules made thereunder, and on the fulfillment of any terms or conditions lawfully annexed to his tenure.

66. Section 65(1) provides that any occupant of alienated land is entitled to put his lands to use for the purposes of agriculture and make any other improvements thereon for such purposes. However, if an occupant wishes to apply his land to any other purpose, other than for agricultural use, i.e. different non-agricultural purposes, he may apply to the Collector for his permission. On receipt of such application, the Collector may, after due inquiry, either grant or refuse permission applied for. Under the deeming provisions contained in the proviso to sub-section (1) of Section 65, if the Collector failed to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted.

67. Section 79A contained in the same chapter, however, provides for summary eviction of an unauthorized occupant or a person in wrongful possession of alienated land (granted under Section 60) or unalienated land, in his wrongful use and occupation.

68. The contention is that so far as the petitioner is concerned, such regularization orders were passed in the year 1992 and 1997 for *Nadi area, gamtal area* and certain portion

of lands in survey No.287/A/paiki. In the initial allotment order dated 30.04.1980 (amended on 26.03.1981), a total area of 6281 sq.mtrs (4860 sq.mtrs) from survey No.282/A/paiki and 1401 sq.mtrs. of *gamtal land* was granted to the petitioner Trust for charitable purposes, for social and educational purposes on the conditions mentioned therein. The allotment order categorically records that the grant of revenue free land in perpetuity was for the purposes specified in Rule 32 read with Rule 36(1) of the Gujarat Land Revenue Rules' 1972 made under the Revenue Code, for the conditions mentioned therein. The allegations in the eviction notice was of breach of condition Nos.3, 6 and 7 of the allotment letter dated 30.04.1980, which reads as under:-

“

Annex- 'B' Colly

નં. સીબી/વતન/રે.ફી/૫૫૭૦
જીલ્લા કલેક્ટરની કચેરી,
અમદાવાદ, તા.૩૦-૪-૧૯૮૦

વંચાણમાં લીધાં:-

- (૧) સરકારશ્રીના મહેસુલ વિભાગની યાદી ક્રમાંક:એલ.આર.એફ.૨૨૭૬-૯૩૭૫૯-ગ, તા.૯-૪-૮૦
- (૨) કલેક્ટરશ્રી, અમદાવાદના હુકમ ક્રમાંક:સીબી/એલએનડી/ક, તા. -૪-૧૯૮૦

હુકમ:-

મોજે મોટેરા, તા.જી. ગાંધીનગરના સ.નં.૨૮૨/અ પેકીની એ. ૧-૨૦ ગું. જમીન મંદીર તથા આશ્રમ માટે શ્રી સંત આશારામ આશ્રમ ટ્રસ્ટીને જમીન મંજૂર કરવાના સરખા ક્રમાંકના તારીખ ૨૪-૧૦-૭૮ ના સરકારી હુકમો રદ કરીને હવે ૬૨૬૧ ચો.મી. ખુદી જમીન કે જેના મહેસુલ માફીની કિંમત રૂ. ૩૦૦૫૨-૮૫ પૈસા થાય છે. તે જમીન શ્રી સંત આશારામ આશ્રમને આશ્રમ શાળા સહિતની સામાજિક અને શૈક્ષણિક પ્રવૃત્તિઓ માટે જમીન મહેસુલ નિયમોની કલમ-૩૨ હેઠળ માફીથી જમીન મહેસુલ નિયમોના નિયમ ૩૬/૧

માં જણાવેલી શરતોને આધીન તથા નીચે જણાવેલ વધારાની શરતોએ જમીન આપવા સરકારશ્રીના મહેસુલ વિભાગની યાદી ક્રમાંક: એલ.આર.એફ. ૨૨૭૬-૯૩૭૫૯-ગ, તા. ૯-૪-૮૦ થી મંજૂરી આપવામાં આવેલ છે.

ઉપરોક્ત સંજોગોમાં મોજે મોટેરા, તા.જી.ગાંધીનગરના સ.નં.૨૮૨/એ પેકી ૬૨૬૧ ચો.મીટર સરકારી ખુદી જમીન કે જેની કિંમત રૂ. ૩૦૦૫૨-૮૦ પૈસા થાય છે તે જમીન શ્રી સંત આશારામ આશ્રમ ટ્રસ્ટની આશ્રમશાળા સહિતની સામાજિક અને શૈક્ષણિક પ્રવૃત્તિઓ માટે જમીન મહેસુલ નિયમોની કલમ-૩૨ હેઠળ મહેસુલ માફીથી જમીન મહેસુલ નિયમોના નિયમ-૩૬/૧ માં જણાવેલ શરતોને આધીન તથા નીચે જણાવેલ વધારાની શરતોને આપવા હુકમ કરવામાં આવે છે.

શરતો:-

- (૧) જમીનનો કબજો સોંપવામાં આવે ત્યારથી છ માસમાં શરૂ કરીને બે વર્ષની મુદતમાં બાંધકામ પુરૂ કરવાનું રહેશે.
- (૨) આશ્રમશાળા કોઈપણ જ્ઞાતિ કે ધર્મના ભેદભાવ વિના દરેક માટે ખુદી રાખવી પડશે.
- (૩) બાંધકામના નકશા કલેક્ટરશ્રી પાસે મંજૂર કરાવવા પડશે અને તેમાં કલેક્ટરશ્રીની અગાઉથી મંજૂરી મેળવ્યા સિવાય ફેરફાર કે વધારો થઈ શકશે નહીં.
- (૪) બાંધકામ રાજ્યના રેખા નિયમ અને મકાન બાંધકામ નિયમને આધીન કરવાનું રહેશે.
- (૫) જમીન જે હેતુ માટે આપવામાં આવી છે તે હેતુ માટે જ તેનો ઉપયોગ કરવાનો રહેશે.
- (૬) આ જમીનમાંથી કોઈપણ જાતનો નફો લઈ શકાશે નહીં. તેમજ કોઈપણ નફાકારક ઉપયોગમાં લઈ શકાશે નહીં.
- (૭) જમીનનો ઉપયોગ કરતા પહેલાં ટ્રસ્ટએ મામલતદારશ્રી, ગાંધીનગર પાસેથી નમુના "ક" માં પરવાનગી લેવાની રહેશે.
- (૮) ઉપરોક્ત કોઈપણ શરત કે શરતોનો ભંગ થશે તો જમીન કોઈપણ જાતનું વળતર આપ્યા સિવાય વિના વળતરે સરકાર પરત લેવામાં આવશે.
ગામ દફતરે જરૂરી નોંધ રાખવી, ટ્રસ્ટને જમીનનો કબજો અવાચ્ય કબજો પાવતી રાખી સનંદો તરીકે વેરીફાઈ કરી અને સહી સિક્કો કરવા મોકલવી.

સહી: અશોક ચાવલા,
જીલ્લા કલેક્ટર, અમદાવાદ અને
ગાંધીનગર."

ENGLISH TRANSLATION:-

"

No. CB/Vatan/R.F./5570
Office of the District Collector,
Ahmedabad, Date: 30/04/1980

Read:-

(1) Memorandum of the Government Revenue Department No: LRF 2276-937159-Ga, dated 09/04/1980.

(2) Order of the Collector, Ahmedabad No: CB/LND/Ka, dated/04/1980.

Order:-

In supersession of the Government orders of the even number dated 24/10/1978 regarding granting of the land bearing Survey No. 282/A Paiki, admeasuring Acres 1-20 Gunthas, situated at Moje Motera, Taluka & Dist. Gandhinagar to the Trustee of Shri Sant Asharam Ashram for the purpose of a temple and an Ashram; now vide the Revenue Department Memorandum No: LRF, 2276-93759-Ga, dated 09/04/1980, the approval has been granted to give the open land admeasuring 6261 square meters, the revenue exempted value of which turns out to be Rs. 30052.85, to Shri Sant Asharam Ashram for social and educational activities including an Ashram Shala, with revenue exemption under Rule-32 of the Land Revenue Rules, subject to the conditions mentioned in Rule 36/1 of the Land Revenue Rules and the additional conditions mentioned hereunder.

Under the above circumstances, it is hereby ordered to give the Government open land bearing Survey No. 282/A Paiki, admeasuring 6261 square meters, situated at Moje Motera, Taluka & Dist. Gandhinagar, the value of which is Rs. 30052.80, for the social and educational activities of Shri Sant Asharam Ashram Trust including the Ashram Shala, with revenue exemption under Rule-32 of the Land Revenue Rules, subject to the conditions mentioned in Rule 36/1 of the Land Revenue Rules and the additional conditions mentioned hereunder.

Conditions:-

- (1) Construction must be completed within a time period of two years, starting within six months from the date when the possession of the land is handed over.
- (2) The Ashram Shala must be kept open for everyone without any discrimination of caste or religion.
- (3) Maps and plans for the construction shall be made to be approved by the Collector and that any changes or additions shall not be made therein without obtaining prior permission from the

Collector.

(4) Construction shall have to be made (strictly) in accordance with the layout and building construction rules of the State.

(5) The land shall be used only for the purpose for which it has been granted.

(6) No profit of any kind can be taken from this land, nor can it be put to any profitable use.

(7) Before using the land, the Trust shall have to obtain permission in Form "Ka" from the Mamlatdar, Gandhinagar.

(8) In case of breach of any of the above condition/s, the land shall be retrieved without compensation by the Government without paying any (amount of) compensation.

Necessary entry shall be made in the village records, possession of the land to the Trust (*Illegible*) after retaining the possession receipt and verifying as per the Sanads, it may be sent for the signature and seal.

Signed: Ashok Chawla
District Collector,
Ahmedabad and
Gandhinagar. "

69. The assertions in the show cause notice are that the construction plan was required to be approved and prior permission of the Collector was required to be obtained, but from the record, it does not appear that the plan for the existing constructions were approved or such permission was obtained, condition No.3 of the allotment order, thus, appears to have been breached. Further, as per condition No.6 of the allotment order, the allotted land cannot be put to any profitable use, no profit can be obtained from the said allotted land.

70. The show cause notice contains allegation of breach of condition No.6 with the assertion that at site, it was found that various goods are being sold by the Ashram and profitable activities are being carried out. As regards

condition No.7, the allegations are that no prior permission for such use as per form-'k' from the Mamlatdar, Gandhinagar was taken. The show cause notice further refers to condition No.1 of the regularization order dated 23.07.1992, which stated that the land possessed by the institution (Trust) shall be held as new and impartible tenure and the condition No.2 provided that the Trust shall not carry out any profitable activities other than religious activities on the said land.

71. The regularization order dated 23.07.1992 was passed for a total area of 10,262 sq.mtrs comprising of three lands, namely 2296 sq.mtrs of river (*nadi*), 6000 sq.mtrs of *gamtal land* and 2000 sq.mtrs of survey No.282/A/paiki, on the payments of the amounts calculated at the market price towards penalty from the date of possession till the date of regularization. A total of Rs.98,074.56p was deposited by the applicant Trust towards penalty as is evident from the order itself.

72. Placing the order of regularization dated 23.07.1992 (at page No. '249' of the paper-book of Letters Patent Appeal No.108 of 2026), it was vehemently argued by Mr.Mihir Thakore, the learned Senior Counsel for the petitioner that the total land admeasuring 10,296 sq.mtrs possessed by Sant Shri Asharam Ashram Trust along with the existing construction thereon though without permission, but was regularized as new and impartible tenure, subject to the conditions mentioned therein. This fact itself reveal that not only the occupied land but the constructions thereon had also been regularized under the regularization order dated

23.07.1992, which was passed in accordance with the provisions of the Code in an appropriate proceedings undertaken by the Competent Authority.

73. Similarly, the regularization orders dated 16.12.1997 was passed for 17,423 sq.mtrs. of land, comprising of 592 sq.mtrs. of Sabarmati river land (*nadi paiki*), 5,775 sq.mtrs of *gamtal land (gamtal paiki)* and 11,056 sq.mtrs of land of survey No.282/A/paiki, on a payment of total amount of Rs.7,55,078.50p towards penalty and surcharge for occupation by Sant Shri Asharam Ashram, the petitioner Trust for the purposes of public road and social activities.

74. The submission is that the said regularization order was passed in accordance with the provisions of the Code by the competent authority as a special case, subject to the conditions mentioned therein, which provide that the land possessed by the Trust shall be held subject to new and impartible tenure conditions and no profitable activities other than religious activities shall be carried out over the lands in question. The submission is that the breach of conditions No.1 and 2 of the regularization orders dated 23.07.1992 and 16.12.1992 was alleged in the show cause notice, while calling upon the petitioner to remain present with the competent authority with supporting evidence.

75. It was vehemently argued that the evidence placed before the authorities such as the Development permission dated 28.05.2008 (page no. '293' of Letters Patent Appeal No.108 of 2026) and Building use permission (at page No.

'287' of the said paper-book), clearly demonstrate that AUDA not only granted permission to raise constructions over an area of 2632.59 sq.mtrs of survey No.282/A but also granted Building use permission over the constructions raised on 3954.93 sq.mtrs. of the said plot, namely survey No.282 A. The contention is that the petitioner had applied for development permission over an area of 4860 sq.mtrs. of survey No.283/A/paiki, which was duly granted in the year 2008 and Building use permission over the said construction was accorded in the year 2009 on the application of the petitioner.

76. The facts of the existing constructions having been regularized in the regularization order dated 23.07.1992 and the Development permission granted on 28.05.2008 and the Building use permission dated 04.03.2009, are established by the documents in evidence produced by the petitioner Trust, which show that the existing constructions as on 23.07.1992 were regularized and the construction of *Gurukul*, thereafter, were raised with the due permission of the competent authority, namely Ahmedabad Urban Development Authority.

77. The above evidences have been conveniently ignored by the respondents, City Mamlatdar and City Deputy Collector to hold the petitioner being an unauthorized occupant of the land in question and proceedings to hold that, in violation of conditions of allotment order by taking aid of condition No.14 of the regularization order dated 23.07.1992 that in breach of condition or conditions of regularization, the grant shall stand cancelled and the land including the constructions thereon

shall be taken back by the Government. Similar condition No.16 of the regularization order dated 16.12.1997 and condition No.18 of the allotment order dated 30.04.1980 were invoked to forfeit an area of 33,980 sq.mtrs of land, in the proceedings under Section 79A of the Code on the allegations that no evidence has been submitted by the petitioner to establish that the construction plan over the said area has been approved.

78. It is submitted that the petitioner has already filed 30 regularization applications under the Gujarat Regularization of Unauthorized Development Act, 2022 (for short, "GRUDA") before the Ahmedabad Urban Development Authority in the month of February' 2023. The receipt issued by the Ahmedabad Municipal Corporation are appended at page Nos. '301' to '330' of the paper-book, to submit that these applications were filed in the month of February' 2023 itself before the AUDA / AMC for regularization of development undertaken over the land in question by Sant Shri Asharam Ashram Trust. The submission is that these applications have been rejected mechanically on the basis of the forfeiture order dated 04.04.2025 passed by the City Mamlatdar, without adhering to the procedure of inquiry as to the entitlement to the petitioner to seek such regularization.

79. Moreover, the findings of the Deputy Collector on violation of the conditions of allotment / regularization orders on the ground that the petitioner Trust has indulged in profiteering are bereft of any evidence. It is vehemently argued that both the allegations of the illegal constructions

and the allegations of the profiteering in breach of conditions of allotment / regularization orders, require a full-fledged inquiry in a proper case, wherein allegations could have been proved after giving opportunity to the petitioner to lead oral and documentary evidence.

80. Even in the proceedings under Section 79A in its reply dated 30.11.2023, the petitioner categorically stated that they conduct religious, spiritual, social and educational upliftment activities and various temporary and permanent structures have been constructed as per the requirements. To maintain these services of religious and charitable activities, in order to meet the needs of the visiting devotees and pilgrims, *prasad*, *pooja* materials, religious literature and ayurvedic medicines are distributed at subsidized rates solely with the spirit of service and without any expectation of profit.

81. Furthermore, the audited accounts of the services / charitable activities run by the Trust are regularly submitted to the office of the Charity Commissioner and no objections has ever been raised thereon. The order of the Deputy Collector dated 04.04.2025 has been passed in utter ignorance of the aforesaid evidence and moreover, the inquiry into the allegations of profit making activities could not have been conducted in the summary eviction proceedings under Section 79A of the Code.

82. Placing reliance on the decision of this Court in **State of Gujarat V. Master Silk Mills [Letters Patent Appeal No.992 of 2023]** decided on 24.07.2023] and **Amit Kalyani**

Shah through POA Trilok Kantilal Rawal V. Special Secretary (Appeals) and Ors. [Special Civil Application No.8789 of 2016 decided on 02.03.2020], it was argued that powers conferred under Section 79A cannot be invoked to evict a lessee or a grantee on the allegations of breach of condition without drawing a proper proceedings, wherein determination by appreciation of evidence on the question of fact and law can be made on the dispute of violation of terms and conditions of the lease deed.

83. The submission is that the Division Bench of this Court in **Master Silk Mills (supra)** has categorically held that such an inquiry is not permissible within the scope of Section 79A of the Code and the action of the Collector in summary eviction is usurpation of power, hit by the vice of jurisdiction. Similar view has been taken by the learned Single Judge of this Court in the judgment and order dated 02.03.2020 in **Amit Kalyani Shah (supra)**.

84. It was further argued that the allegations of breach based on which the eviction order has been passed, are not indicated in the show cause notice. The show cause notice was unspecific and vague and hence, the entire proceedings in respect thereto cannot be allowed to be sustained and are liable to be quashed outrightly. Reliance is placed on the decision of the Apex Court in **CCE v. Brindavan Beverages (P) Ltd., [(2007) 5 SCC 388]** to substantiate the same.

85. It was vehemently argued by the learned Senior Counsel for the petitioner that even if it is accepted for a moment without admitting that there exists a case of breach of condition, it is to be considered by this Court that the existing constructions are in use of the petitioner Trust since the year 1997 onwards, AUDA's permission was sought with regard to the constructions raised on the regularized land, which was rejected mechanically due to the eviction order under Section 79A passed by the Deputy Collector.

86. The petitioner's specific case is that it is in possession of 39,094 sq.mtrs of land and no more area is occupied beyond that, which is evident from the DILR measurement report of the year 1998 onwrds. In case of any allegations of breach of condition, even if it is accepted without admitting, it was open for the respondent authorities to levy penalty and regularize the constructions. Such regularization had been done by the State authorities in the past. There is no justification for the State authorities to reject the request for regularization of constructions and not giving opportunity to the petitioner to pay penalty to seek regularization, which is ordinarily and generally granted by the Collector / authorities in cases of any unauthorized constructions.

87. The submission is that the breach of condition proceeding under Section 79A are clearly demonstrated to have been initiated with the premeditated mind to seek vacation of the land in question by summary eviction of the petitioner, because of the sole reason that the land in question was first identified for use of the development of SVP Sports

complex. The State authorities instead of going for acquisition of the lands in question adopted a short-cut mode of summary eviction of a lawful occupant.

88. Reiterating the submissions pertaining to Section 61 of the Revenue Code, it is contended that any unauthorized occupant of a Government land can be asked to pay the penalty, which may be levied as per *Jantri* as may be notified by the State Government and any forfeiture under Section 61, must precede by an opportunity to the landholder to seek regularization of alleged unauthorized occupation / construction.

89. It was, thus, argued that looking from any angle, in the facts of the present case, the proceedings for summary eviction of the petitioner under Section 79A cannot be allowed to be sustained, on the premise of breach of conditions of the allotment / regularization orders.

90. The learned Single Judge has committed an error in dismissing the writ petition, namely Special Civil Application No.11366 of 2025 while simply extracting the orders of the Collector and the Tribunal and holding that the orders having been passed by adhering to the principles of Natural justice, no exception can be taken to the powers of the Collector / Deputy Collector under Section 79A of the Code.

91. Lastly, it was urged that the decision of the State Authorities cannot withstand on the Doctrine of Proportionality, which was required to be kept in mind while

resorting to the drastic power of resumption and forfeiture of land. Moreover, the land in question is subject matter of Town Planning and a layout plan has already been prepared by the Town Planning Authority, which would result in changing the very nature of the allotted land as per the Town Planning Scheme. In the said scenario, conducting breach of condition proceedings at the stage when Town Planning Scheme is underway, cannot withstand the test based on the doctrine of proportionality when the constructions remained in place and being in use of the petitioner for more than 26 years.

92. At the most, the petitioner could have been asked to mend its way, but resorting to the drastic power of resumption and forfeiture would amount to disproportionate action of the respondent, which cannot be sustained in the eye of law, in the facts and circumstances of the present case. Reliance is placed on the decision of the Apex Court in the case of **Teri Oat Estates (P) Ltd. v. UT, Chandigarh, [(2004) 2 SCC 130]** to substantiate the said submission.

B. LETTERS PATENT APPEAL NO.107 OF 2026:-
Submissions of Mr.R.S. Sanjanwala, the Learned Senior Counsel for the Appellant:-

93. Adding to the submissions made by Mr.Mihir Thakore, the learned Senior Counsel about the *mala fide* exercise of powers by the Deputy City Collector in initiating the summary eviction proceedings against the petitioner, Mr.R. S. Sanjanwala, the learned Senior Counsel for the appellant in the connected Letters Patent Appeal No.107 of 2026 (arising

out of the Special Civil Application No.11610 of 2025) made the following submissions.

94. The proceedings under Section 61 of the Code, subject matter of challenge in the aforesaid writ petition were initiated with the notice dated 31.08.2023 issued from the office of the City Mamlatdar, Sabarmati / Executive Magistrate, Sabarmati. The allegations therein was that the petitioner made encroachment on the land of Moje Motera, Taluka Sabarmati, District Ahmedabad bearing survey No.282/A/paiki area 6489 sq.mtrs, old *Gamtal paiki* area 3185 sq.mtrs and Sabarmati River *paiki* area 6104 sq.mtrs.; total admeasuring 15,778 sq.mtrs. The basis of the said notice is the measurement sheet prepared on 31.07.2023 by the DILR on the instructions of the Collector. The contention is that the survey for preparing the measurement sheet was made in the absence of the petitioner and without even notifying the date of measurement.

95. The further submission is that the measurement sheet dated 31.07.2023 is grossly erroneous *inter alia* as the *Sim Rekha*, which is shown to be passing from *Banjara Vaas* in all the earlier layouts of 1998, 2008 and 2023, has been shifted.

96. The petitioner filed its reply dated 10.11.2023 placing correct facts on record and pointed out that the sole reason of finding encroachment is because of shifting of *Sim Rekha* in the 2023 layout prepared by the DILR. It is explained by Mr.Sanjanwala, the learned Senior Counsel for the appellant that the *Sim Rekha* is a line creating demarcation between

the *Gamtal* area and area of survey No.282/A/paiki and Sabarmati Nadi. A comparison of the layout prepared in 1998, 2008 and 2013, which were duly placed on record along with the reply would show that the position of the *Sim Rekha* has not been altered throughout from 1998 to 2013. Even the original allotment of the land had taken place as per the *Sim Rekha* shown in the year 1998 measurement sheet.

97. It is contended that besides that, 4,860 sq.mtrs of land of River *Paiki* granted to the petitioner pursuant to the resolution dated 06.01.1999 has been included in calculating the total area of the alleged encroachment. It is also submitted that the retaining wall was constructed to protect trees and also for security of the children of the Ashram, to avoid a repeat of an unfortunate incident which took place in the year 2008 because of flood.

98. The petitioner, thereafter, submitted a list of documents dated 21.02.2024 *inter alia*, placing on record the permission granted, applications made for regularization and applications made for conducting a fresh layout, etc.

99. By a letter dated 23.02.2024, the petitioner, however, requested the City Surveyor to conduct a fresh measurement for 13,430 sq.mtrs area for *Gamtal* land and 7,748 sq.mtrs for Sabarmati Nadi to decide as to the actual area in possession of the petitioner. Similar request was made to the DILR vide a letter dated 28.02.2024. The City Survey Superintendent refused to conduct the survey stating that it does not fall within his domain.

100. A detailed representation dated 11.03.2024, thereafter, was made to the Deputy Director of Land Records, a superior authority to DILR by the petitioner, pointing out the flaws in the measurement sheet dated 31.07.2023 with the request to conduct the measurement in the presence of the petitioner by taking into consideration the boundaries on site and the layout prepared in 2013. Similar representation was made to the DILR on 11.03.2024 challenging the measurement sheet of 2023.

101. The Deputy Director of Land Records, vide communication dated 13.03.2024, instructed the DILR to conduct necessary measurement in accordance with law, considering the request of the petitioner in the representation dated 11.03.2024.

102. The petitioner also filed an application under RTI Act to obtain the documents concerning the allotment of 4,860 sq.mtrs. of Sabarmati Nadi land, which was responded by the letter dated 18.03.2024 stating that the said land was not granted, inasmuch as, the documents of grant are not available in the office concerned.

103. The DILR, by its letters dated 20.03.2024, responded to the petitioner that no measurement was required to be conducted. By another letter of the same date, i.e. 20.03.2024, the DILR conveyed that the measurement of 2023 was conducted pursuant to the order of the Collector dated 26.06.2023 and the measurement sheet prepared after due verification is found to be correct. The petitioner was asked to make a separate application for measurement.

104. It is contended that at the request of the petitioner, a *paiki* measurement was made by the DILR's office for Survey No.282/A/*paiki* and the measurement sheet dated 21.05.2024 was prepared, wherein *Sim Rekha* is shown to be passing from *Banjaara Vaas* and the petitioner is shown to be in occupation of only 17,916 sq.mtrs of the land.

105. The second, third and fourth replies in the *Dabaan proceedings* under Section 61 of the Code were filed by the petitioner on 27.03.2024, 16.04.2024 and 04.06.2024 raising issue with regard to shifting of the *Sim Rekha*, representations made by the petitioner concerning soil erosion caused by flow of rain water and the damage caused to the trees, with the request to safeguard the construction by preventing soil erosion, which was not paid attention by the Competent authority.

106. The fifth reply to the notice dated 31.08.2023 was filed on 01.08.2024 reiterating his request to conduct fresh measurement by considering earlier requests considering the records of allotment and maps. The sixth and seventh replies were filed on 09.08.2024 and 11.08.2024 and it is stated in the writ petition that the said exhaustive replies along with the necessary documents brought on record, clarified stand of the petitioner that the allegations on encroachment are misconceived in facts and untenable in law.

107. The learned Senior Counsel for the petitioner / appellant, placing the above noted contents of the writ petition, would vehemently argue that the measurement sheet

of 2023 cannot be sustained in view of the earlier layouts prepared in 1998, 2008, 2013 and the last measurement of the year 2024 made by the DILR's Office on the request of the petitioner. A clear discrepancy in the measurement sheet of 2023 regarding the *Sim Rekha* has been pointed out before the Mamlatdar in the replies to the show cause notice and in the proceedings before the City Deputy Collector as well as the Tribunal. However, brushing aside all the material on record, the order impugned for eviction was passed.

108. It was further submitted that the lands in question now form part of the preliminary scheme of Town Planning Scheme No.48 (Motera) sanctioned on 05.09.2024. The petitioner was served with a notice under Section 68 read with Rule 33 of the Rules framed under the Town Planning Act, an order dated 27.02.2025 passed therein. The landholding of the petitioner is now to be seen in the context of the Town Planning Scheme and the demarcation of the survey number, *gamtal* and *nadi* now became irrelevant.

109. In any case, the petitioner is not in occupation of any area outside the boundary of the final plot within the Town Planning Scheme and even as per the plan prepared under the scheme, the green line, which shows the *Sim Rekha* is at the same location, i.e. passing from *Banjaara Vaas*. In general practice, the layout of the Town Planning Scheme is prepared on the basis of the layout which is sent by DILR's office, which would obviously include the boundaries and *Sim Rekha*.

110. With the above, it was vehemently argued that the impugned order dated 04.04.2025 in *Dabaan Case No.5 of 2023* passed by the City Mamlatdar holding that the petitioner has encroached upon the Government land in survey No.282/A/paiki; *Gamtal paiki land* and Sabarmati River *paiki*, total admeasuring 15,778 sq.mtrs., cannot be sustained. The City Mamlatdar, Sabarmati as also the Tribunal have erred in holding that there is no evidence of a formal order for allotment of 4860 sq.mtrs land pursuant to the resolution dated 06.01.1999 and that no proceedings has been preferred by the petitioner to challenge the DILR measurement report dated 31.07.2023.

111. The reasoning given in the order of the Tribunal that the measurement of 2024 was only for survey No.282 paiki, whereas measurement sheet of 2023 was of the entire land including *Gamtal* and *Nadi paiki*, is erroneous, inasmuch as, a specific challenge to the measurement sheet of 2023 by the petitioner has not been addressed. There is absolutely no reasoning as to how and from where the petitioner can be found to have encroached the land admeasuring 15,778 sq.mtrs. The City Mamlatdar as well as the Tribunal had erred in ignoring earlier measurement sheets of 1998, 2008, 2013 and the subsequent measurement sheet of the year 2024.

112. In any case, the entire eviction proceedings having been conducted in a *mala fide* exercise of power as demonstrated in the submissions of Mr.Mihir Thakore, the learned Senior Counsel, the order of summary eviction on the allegations of encroachment cannot be sustained.

113. The submission is that the petitioner has consistently argued that it is in possession of 39,094 sq.mtrs. of land only and no area beyond that. There is no proper identification of the area of alleged encroachment. The unilateral measurement sheet dated 31.07.2023 prepared behind the back of the petitioner cannot be relied to hold that the petitioner has encroached upon the Government land, *gamtal land* and *Nadi paiki land*.

114. Much emphasis repeatedly has been laid to the maps of 1998, 2008, 2013 and 2024 placed on record of the writ petition out of which, the Letters Patent Appeal No.107 of 2026 has arisen.

V. Submissions of Mr.G. H. Virk, the learned Government Pleader for the State respondents.

115. Coming to the response of the Respondent State, we may note that Mr.G. H. Virk, the learned Government Pleader would submit that the communication dated 0306.2021 by AUDA to the Collector are internal administrative communications and any mention therein about the identification of the petitioner's land being hit by breach of conditions cannot be projected as a premeditated exercise by the respondents.

116. By reading of the said communication dated 03.01.2021 by AUDA to the Collector, it was submitted by the learned Government Pleader that the said communication is to be simply read as the request of AUDA to block certain pieces of lands identified for development of the SVP Sports Enclave.

The table appended to it at page No. '432' of the paper-book (of Letters Patent Appeal No.108 of 2026) would indicate that all lands, which are government and gauchar land were identified. However, while identifying the available Government land, it was noticed that an area of 17,916 sq.mtrs of survey No.282/A/paiki is in the possession of the petitioner - trust, i.e. Sant Shri Asharam Ashram, where there exist unauthorized constructions. It was, thus, noted that the said land may be available after Sharatbhang proceedings are conducted in accordance with law.

117. This exercise of identification of available land for the purpose of construction of sports complex cannot be said to be *mala fide* action of the respondent, inasmuch as, it is always open for the respondent authorities to identify such Government lands, which are in unauthorized occupation of private persons or where unauthorized constructions are raised. Such identification is a continuous exercise and any encroachment or unauthorized construction, if identified, can only be removed by adopting due procedure of law. No infirmity can be attached to the legal proceedings conducted against the petitioner, wherein due opportunity of hearing has been granted as is admitted to the petitioner themselves.

118. As regards the order dated 25.01.2022 of the Collector, it is submitted in the previous writ petition, namely Special Civil Application No.17521 of 2024, filed to challenge the said order, no allegation of *mala fide* had been made and once the said writ petition has been disposed of vide judgment and order dated 26.03.2025 and the petitioner had duly

participated in the hearing conducted in both the legal proceedings under Section 79A and Section 61 of the Code, all allegations of *mala fide* or *bona fide* of the respondents, raised for the first time in appeal are liable to be rejected being afterthought.

119. It was vehemently argued by Mr.G. H. Virk, the learned Government Pleader that atleast 22 hearings were afforded to the petitioner asking them to bring all relevant documents on record to demolish the allegations in the show cause notice but no evidence was brought on record to establish that the existing constructions over the new and impartible tenure land were raised with the permission of the Collector.

120. As regards the Development permission dated 28.05.2008 and the Building Use permission dated 04.03.2009 given by the AUDA, it is vehemently argued that the said development permission was applied over an area of 4,860 sq.mtrs of survey No.282/A/paiki, which was never allotted to the petitioner. The assertion with regard to the said constructions having been made with the due permission of the competent authority are liable to be rejected outrightly for the simple reason that for raising construction on a new and impartible tenure land, prior permission of the Collector in accordance with the provisions of Section 65 of the Code was required to be obtained. No such permission has even been applied for.

121. There was, thus, no question of any valid permission with the petitioner for raising constructions, with respect to which 30 regularization applications have been filed under GRUDA in the month of February' 2023. The submission is that the mere fact of moving of such a huge number of applications under GRUDA, itself demonstrates that the petitioner raised extensive constructions over new and impartible tenure land without any due permission of the competent authority as required under the Land Revenue Code.

122. With regard to the submissions of Mr.Sanjanwala, the learned Senior Counsel for the appellant about the measurement sheets of 1998 onwards, the attention of the Court is invited to the stand of the State in the reply affidavit in the writ petition, namely Special Civil Application No.11610 of 2025.

123. As noted hereinbefore, the learned Senior Counsel for the petitioner refers to four measurement sheets prepared in the year 1998, 2008, 2013 and 2024 to substantiate the submissions about the error in the measurement sheet dated 31.07.2023 prepared by the DILR on the instructions of the Collector, which is the basis of the eviction proceedings. It is pointed out that the measurement sheet dated 21.03.1998 is a *paiki / parcel* measurement. Placing the copy of the map appended at page No. '207' of the paper-book of Letters Patent Appeal No.107 of 2026, it is pointed out by the learned Government Pleader that the said measurement was carried out for a particular parcel of land, at the instance of the

petitioner as is evident from the words “કબજા મુજબની માપની ” (land in possession of the petitioner) as noted therein itself. The contention is that it is a measurement full of multiple cancellations, whereby markings initially made have been struck off at two critical places by using strokes “(---/--/--/--)”. This cancellation of lands clearly reflect that the measurement was made in a manner so as to bring it in line with the exact quantum of allotment.

124. With regard to the measurement sheet dated 23-24.09.2008 at page No. ‘235’ of the paper-book (in Letters Patent Appeal No.107 of 2026), it is submitted that the said measurement is a self-concerning measurement, which does not factor the adjoining parcels of land and hence, cannot be relied upon. It is pointed out that the third measurement sheet dated 14.07.2013, at page No. ‘254’ of the paper-book (Letters Patent Appeal No.107 of 2026), does not contain any signature or seal of any government authority to authenticate the same. It is a private measurement carried out by the petitioner, which is liable to be ignored, as such. About the fourth measurement sheet, dated 21.03.2024 at page No. ‘291’ of the paper-book of the aforesaid writ petition, it is submitted that in the legend therein, at page Nos. ‘5’, ‘6’ and ‘7’, it is noted that:-

- અરજદારશ્રી દ્વારા દિવાલ / ફેન્સીંગ ની અંદર ની બાજુ દર્શાવેલ ખાનગી ખુંટ મુજબ ની માપણી કરાવેલ હોય તે મુજબ માપણી કરી ક્ષેત્રફળ ની ગણતરી કરેલ છે”
- "સ્થળે કબજા મુજબ પૈકી માપણી કરતા સર્વેન-૨૮૨/અ પૈકી નો અરજદારશ્રીના કબજા મુજબનું ક્ષેત્રફળ ૧-૭૯-૧૬ ચો મી થાય છે.”
- “જે પૈકી માપણી હોઈ ક્ષેત્રફળ કાયમ કરવા પાત્રનથી.”

English Translation

- The surface area has been computed upon making survey on the basis of the personal measurements shown inside the wall / fencing by the applicant.
- As per the site occupancy, the area, as per the paiki measurement of the occupancy of the applicant at survey No.282/A/paiki is 1-79-16 sq.mtrs as
- As it is "paiki measurement", the area is not liable to be considered / made permanent.

125. The submission, thus, is that all the aforesaid measurement sheets are private measurements carried out at the instance of the petitioner, which only pertain to a particular area or *paiki* identified by the petitioner so as to bring the measurement shown in the map in line with the allotment order and they do not show the correct picture of the possession on the spot, inasmuch as, they do not factor any adjacent / surrounding parcels of lands. Hence, they have rightly been ignored by the City Mamlatdar in the proceeding under Section 61 of the Code holding that the measurement sheet dated 31.07.2023 clearly demonstrates that the petitioner is in illegal possession / occupation of the aforesaid pieces of land of survey No.282/A/paiki, *gamtal* and *nadi paiki* land. As the petitioner was found in illegal possession of the aforesaid land, eviction orders rightly have been passed.

126. Placing the measurement sheet dated 31.07.2023, prepared by the DILR, it was urged that the measurement exercise was carried out under the instructions of the Collector after it was noticed that the petitioner had encroached upon the Government land without any authority

of law. The measurement sheet dated 31.07.2023 is a composite and wholistic measurement carried out by the DILR. It was conducted after an exhaustive preparation and inspection of the entire area in question over the period of six days. It is prepared on a scientific measurement conducted by using D.G.P.S (Differential Global Positioning System), an electronic method to conduct measurement through Satellite, as noted by the learned Single Judge. It is a measurement conducted by creating all reference points and taking into account all the existing on the spot position. The allegations with regard to shifting of *Sim Rekha* in the measurement sheet of 2023 are all bogus, inasmuch as, *Sim Rekha*, which is the boundary line dividing *gamtal area* from *simal area* is clearly shown in the map in the measurement sheet, which if compared with the measurement sheet dated 21.03.2024 prepared by the approved surveyor, at the instance of the petitioner, would show that there is no shifting or change of the same.

127. We may note, at this juncture, that during the course of hearing, the learned Government Pleader has demonstrated before us as to how the instrument for conducting measurement by D.G.P.S (Differential Global Positioning System) Method would function, ruling out any manual flaw in conducting measurement of any area. It was demonstrated by showing the instrument to us and the measurement sheet dated 31.07.2023 that to measure the actual position of the entire area, reference points covering the whole area after manual survey were identified and by placing the instrument

at all reference points one by one, the entire measurement was recorded through satellite images in the instrument, which records all details electronically, without any human intervention.

128. It was contended that there can be absolutely no objection only with regard to the position of the *Sim Rekha* when there is no objection with regard to the position of any other surrounding properties and plots clearly mentioned in the map.

129. It was vehemently urged that in the measurement sheet dated 31.07.2023, the entire area of *gamtal land* by clear lines, has been shown which include adjacent lands in occupation of other persons, such as *Sadashiv Pragya Mandal* and *Bharat Seva Samaaj*. No such details are in the measurement sheets relied by the learned counsel for the petitioner and, moreover, the allegations of shifting of *Sim Rekha* are absolutely vague.

130. Even in the rejoinder affidavit, with regard to the measurement sheet on 31.07.2023, only this much is stated by the petitioner that:-

“i. The measurement sheet dated 31.07.2023 itself mentions "survey no. 282/A. ni paiki maapni sheet". Even the notings in the legend records that a paiki maapni is done for each smaller landholding shown in the sheet. Thus, it stands on the same footing as the other layouts.

ii. Without prejudice to the same, the measurement being a paiki measurement or a composite measurement is immaterial. The type of measurement / survey would not change the location of *Sim Rekha*. *Sim Rekha* is boundary line dividing *Garntal* area from *Simtal* area. The Petitioner's main contention is that the 31.07.2023 measurement changes

the location of the Sim Rekha, which would consequently change the Petitioner's landholding in Survey No.282/A paiki Gamtal and Nadi, respectively. “

131. It is further pointed out on the objection to the measurement sheet dated 31.07.2023 that the DILR sent a communication dated 30.09.2024 replying all objections dated 02.09.2024 of the petitioner clearly stating that there were discrepancies in the measurement sheet of 1998 and 2008 and the measurement sheet of 2013 being the *paiki* measurement sheet, cannot be given undue consideration. With regard to the 2023 measurement sheet prepared by the DILR, which is sought to be challenged herein, it was clarified therein that the said sheet was prepared after taking into consideration of all reference points and the same is a valid measurement depicting the current status of the lands in survey No.282/A/paiki and the surrounding area.

132. It was vehemently argued by Mr.G. H. Virk, the learned Government Pleader that the submission of the learned Senior Counsel of the petitioner that the measurement sheet of 31.07.2023 was prepared behind the back of the petitioner and has been relied by the respondent to pass order of eviction against the petitioner without putting it to him, is clearly belied by the said facts brought on record in the affidavit in reply filed by the respondents. There is no denial in the rejoinder of the petitioner to the said communication dated 30.09.2024 sent by the DILR, which was made during the course of inquiry and much prior to the passing of the impugned order of eviction dated 04.04.2025 by the City Mamlatdar under Section 61 of the Code.

133. Refuting the submissions made by the learned Senior Counsel for the appellant about the inchoate allotment of 4,860 sq.mtrs of land from the Sabarmati River, it is submitted that though there was a proposal of the Revenue Department to allot said land vide resolution dated 06.01.1999, but no order or certificate has been brought on record regarding the allotment of the said piece of land nor any order of regularization of the possession over 4860 sq.mtrs. of the land from the *river paiki* has been placed on record. It is not explained as to how the petitioner could occupy the said piece of land without any formal allotment order or certificate of allotment and delivery of possession thereof by the competent authority.

134. It was, thus, argued that the petitioner is a rank encroacher and the proceedings for eviction, which are undertaken by adopting due process of law, wherein principles of natural justice has been adhered to, cannot be said to suffer from any error of law. No arguments showing any perversity in the orders impugned could be placed before the Court. No jurisdictional error can be said to have been committed by the competent authorities while passing the orders impugned under Section 79A and Section 61 of the Code.

135. There is no equity in favour of the petitioner, inasmuch as, the petitioner is a habitual encroacher. The submission is that in the year 2009, proceedings under Section 61 of the Code was initiated against the petitioner regarding encroachment on 15,451 sq.mtrs of survey

No.282/A/paiki, 547 sq.mtrs with construction over *Sabarmati river (Nadi Paiki)* and 51,101 sq.mtrs of open land forming part of *Sabarmati River (Nadi Paiki)*. By order dated 08.12.2009, the encroached area was ordered to be vacated and possession was to be given to the concerned Circle Officer. The challenge to the said order was upturned by the appellate authority and the petitioner ultimately admitted its guilt and evicted the encroached area. No equity, as such, could be pleaded by the petitioner.

136. Inviting attention of the Court to page No. '470' of the paper-book, which is the measurement sheet of the year 2008, relied by the petitioner, it is pointed out by the learned Government Pleader that a look at the said map would show that there were only five buildings at that time, whereas as per own admission of the petitioner, 30 applications have been filed for regularization of illegal constructions under GRUDA by the petitioner and not a single permission from the Collector to raise construction on the allotted land and for utilization of new and impartible tenure land for non-agricultural purpose has been brought on record. The development permission of the year 2008 and the BU permission of the year 2009 by AUDA for the construction of school unit would not regularize the unauthorized utilization of new and impartible agricultural land granted to the petitioner under the regularization orders of 1992 and 1997. As a result of it, 33,980 sq.mtrs of lands, wherein constructions were raised without permission of the Collector; and which was utilized by the petitioner for non-agricultural

purposes without due permission of the Collector; and wherein activities are being undertaken, which results in profiteering, have been forfeited legally in exercise of power under Section 79A of the Code.

137. In addition to the above, a total area of 15, 778 sq.mtrs. was found to be in unauthorized occupation of the petitioner as per the measurement sheet dated 31.07.2023, with respect to which eviction order has been passed under Section 61 of the Code.

138. Mr.G. H. Virk, the learned Government Pleader has further submitted that the proceedings under Section 79A of the Bombay Land Revenue Code, which has been initiated in breach of the conditions of the original orders of grant, cannot be said to suffer from any error of law. It was submitted that it is always open for the authorities to initiate proceedings for breach of conditions where ever Government land is allotted with certain objections by imposing certain conditions.

139. In such cases, the only requirement is to provide due opportunity of hearing and it is always open for the authorities to pass order for vesting of lands with the Government again, in case breach is found to have been substantiated. In order to substantiate his arguments, Mr.G. H. Virk, the learned Government Pleader has relied upon the following decisions:-

- i. Gujarat State Road Transport Corporation v. Firoze M. Mogal, **[2013 SCC OnLine Guj 8638]**.
- ii. Ayesha Begum Shaikh and Ors. V. The State of

Gujarat and Ors. **[Special Leave Petition (Civil) Diary No. 40275 of 2017 dated 28.01.2019.**

- iii. Ayeshabegam Shaikh v. State of Gujarat **[2016 (0) AIJEL - HC - 236855 dated 09.12.2016.**
- iv. Kanaiyalal Dhansukhlal Sopariwala v. State of Gujarat **[Letters Patent Appeal No.1137 of 2008 dated 07.10.2008].**
- v. Kanaiyalal Dhansukhlal Sopariwala v. State of Gujarat **[Civil Appeal No.2015 of 2009 dated 21.08.2019].**
- vi. Ayeshabegam Shaikh Versus State Of Gujarat **[Letters Patent Appeal No.1295 of 2016 decided on 09.12.2016].**
- vii. Government of Gujarat v. Amraji Motiji Thakor, **[1976 SCC OnLine Guj 13].**
- viii. Sant Shri Asharam Ashram Trust v. The State of Gujarat and Ors. **[Special Civil Application No.17521 of 2024 dated 23.06.2025].**

140. Placing the decision of the Division Bench of this Court dated 07.10.2008 in the case of **Kanaiyalal Dhansukhlal Sopariwala v. State of Gujarat [Letters Patent Appeal No.1137 of 2008]**, it was argued that new tenure lands are subject to certain restrictions as to their use. It is the policy of the State that if any occupant of such a land desires to put it to any alternative use, he is duty bound to approach the Collector of the District, who in exercise of his

power, may grant such permission after the occupant pays a premium as fixed from time to time. The premium that is due to the Government is charged in lieu of waiving the State's interest in a particular new tenure land and permitting the occupant to put it to non-restricted use i.e. old tenure. Similarly, for putting an agricultural land to non-agricultural use, provisions of Section 65 of the Land Revenue Code are attracted, wherein on receipt of any application for conversion of an agricultural land to non-agricultural purposes, the Collector is required to conduct an inquiry and the permission, if granted, would further require payment of certain premium as per the applicable Government orders.

141. In the instant case, admittedly, no such permission has ever been applied for nor has ever been granted. The petitioner, therefore, cannot be permitted to assail the orders of eviction from the grant lands on the premise of the Development permission granted or Building use permission by AUDA for the constructions raised, unauthorizedly.

VI. ARGUMENTS IN REJOINDER OF BOTH SIDES :-

142. In rejoinder, each of the allegations made by Mr.G. H. Virk, the learned Government Pleader are sought to be replied by both Mr.Mihir Thakore and Mr.R. S. Sanjanwala, the learned Senior Counsels for the appellants, which are essentially reiteration of their arguments noted in detail hereinbefore. We, therefore, do not find any reason to burden this judgment with the written submissions given by the learned Senior Counsels in rejoinder.

143. Only this much may be noted, at the cost of repetition, that Mr.Mihir Thakore, the learned Senior Counsel for the appellant would submit that the grant land was allotted by undertaking the proceedings under Section 62 of the Code in accordance with the provisions of Rule 37 read with Rule 32, wherein land may be given free from revenue in perpetuity for any of the purposes specified in Column No. '1' of the table prescribed in Rule 32.

144. Placing Rule 32 of the Gujarat Land Revenue Rules, 1972 (for short, "Rules, 1972"), it is submitted that there are three separate forms specified for grant of a land by the Collector for agricultural purposes. The agreement for such grants is prescribed in Form 'F', which shall be taken from the person intending to become the occupant. Form 'I' shall be added to the agreement if the land is granted on inalienable tenure. For the grant on impartible tenure, form 'F(1)' would be added. And, if the grant is both on impartible and inalienable tenure, Form 'I(1)' shall ordinarily be taken from the person intending to become the occupant.

145. Inviting the attention of the Court to page No. '788' of the paper-book of Letters Patent Appeal No.108 of 2026, it was submitted by Mr.Thakore that the original allotment of the year 1980 was made in a form prescribed under Rule 32(1), wherein 1404 sq.mtrs. of *gamtal* land and 4860 of land in Survey No.282/A/paiki (total 6515 sq.mtrs) was allotted under the orders dated 30.04.1980 passed by the Collector.

146. The learned Senior Counsel would further argue that the land in question was allotted for the purposes of social and educational activities including the Ashram school, inasmuch as, the allotment order dated 30.04.1980 was passed under Rule 32 read with Rule 36(1) of the Rules' 1972 exempting revenue. In addition to the above, by separate orders of the same date dated 30.04.1980, the constructions earlier made by the Ashram over an area of 254 sq.mtrs of land had also been regularized by charging money, which was duly paid. Thus, in total, the petitioner remained in occupation of the total area admeasuring 6515 sq.mtrs. based on the allotment orders dated 30.04.1980, separately for an area of 6261 sq.mtrs. and for regularization of construction over 254 sq.mtrs. of land by collecting amount as per the resolution of the State Government under the report of the Deputy City Mamlatdar.

147. The submission, thus, is that the grant originally has been made by exemption of revenue mentioning in the allotment order itself that the site in question would be used for construction of the school, as per Rule 32 of the Rules' 1972. No exception, as such, can be taken by the respondents about the utilization of the said allotted land.

148. In rebuttal of the said submission, it was submitted by Mr.G. H. Virk, the learned Government Pleader, by placing the order dated 26.07.1981 (at page No. '231' of the paper-book in Letters Patent Appeal No.108 of 2026) that the first correction order dated 26.07.1981 was passed to clarify and make corrections in the allotment order dated 30.04.1980 that

out of total area of 6261 sq.mtrs. of the allotted land, 1401 sq.mtrs. is of open land, whereas land bearing survey No.282/A/paiki admeasuring 4,860 sq.mtrs has been allotted having exemption of revenue value of Rs.30,052.80p for the purposes of social and educational activities including Ashram school as per Rule 32 of the Rules' 1972 as per conditions mentioned in Rule 36(1) of the Rules' 1972. The correction order dated 26.07.1981 further clarifies that the conditions mentioned in the order of allotment dated 30.04.1980 shall remain as it is.

149. Similarly, another order dated 30.04.1980 for regularization of 254 sq.mtrs of land of survey No.282/A/paiki over which constructions have been made by the petitioner was further clarified and corrected vide a separate order dated 26.03.1981, wherein it was clarified that constructed land admeasuring 254 sq.mtrs. shall form part of the total area of 4860 sq.mtrs of survey No.282/A/paiki allotted vide allotment order dated 30.04.1980.

150. It was pointed out to us that initially, an area admeasuring Acre 1 - 20 gunthas of survey No.282/A/paiki was granted to Shri Sant Asharam Ashram Trust for temple and Ashram vide order dated 24.10.1978, but the said order was cancelled. However, in the meantime, the Ashram had raised some constructions over an area of 254 sq.mtrs. on the said land, and as such, the order was passed to grant the said piece of land on deposit of the amount determined therein, with the condition that such land shall be used for activities of the Ashram and the user shall not be changed. The grant

order for 254 sq.mtrs. of Survey No.282/A/paiki and the correction order dated 28.03.1981 thereto are appended at page Nos. '236' and '245' of the paper-book of Letters Patent Appeal No.108 of 2026.

151. The submission, thus, is after the correction of allotment made on 30.04.1980, the total area granted to the petitioner by virtue of the said allotment order remains 6261 sq.mtrs. (1401 sq.mtrs. of *Gamtal land* and 4860 sq.mtrs of land bearing survey No.282/A/paiki).

152. It is vehemently reiterated by the learned Government Pleader that the Collector's permission has never been obtained for raising constructions, which are illegal as per own admission of the petitioner by moving 30 applications under GRUDA for regularization. No indulgence, as such, can be granted to the petitioners. There is no infirmity in the order of the learned Single Judge. The appeal deserves to be dismissed being devoid of merits.

VII. ANALYSIS

A. FACTS CULLED OUT FROM THE RECORD:-

153. To deal with the submissions of the learned counsels for the parties, at the outset, we may cull out the facts reflected from the record, noted in the orders impugned passed by the respondent authorities and also by the learned Single Judge.

I. By the allotment order dated 30.04.1980 (for 6261 sq.mtrs.), regularization orders dated 23.07.1992 (10,296 sq.mtrs) and 16.12.1997 (17,423 sq.mtrs.), in total 33,980 sq.mtrs of land comprising of *Nadi area*, *gamtal area* and Survey No.282/A/paiki was granted to the petitioner.

II. As per the measurement sheet dated 31.07.2023, which was objected by the petitioner before the DILR by letter dated 02.09.2024, the petitioner was found in actual possession of the total land admeasuring 49,758 sq.mtrs.

III. After excluding 33,980 sq.mtrs. grant land to the petitioner, an area admeasuring 15,778 sq.mtrs. was found to be encroached area in illegal possession of the petitioner. The total encroached area may be divided into 6,104 sq.mtrs of *Nadi paiki (Sabarmati river bed land)*, (which, in any case, cannot be regularized), 3185 sq.mtrs *Gamtal land* and 6489 sq.mtrs land comprising of survey No.282/A/paiki.

IV. A bare perusal of the allotment order dated 30.04.1980 passed under Rule 32 of the Rules' 1879 would indicate that the total land admeasuring 6261 sq.mtrs. (1401 sq.mtrs. of *Gamtal land* and 4860 sq.mtrs. of survey No.282/A/paiki) was allotted with the specific conditions that the map of construction shall be approved by the Collector and without prior permission of the Collector, no changes or additions could be made.

The allotment order also contains a condition that in case of breach of any of the conditions of the allotment order, the land could be forfeited by the State Government without paying compensation. There is nothing on record, which would indicate that the map of constructions was / were ever placed before the Collector or approved by him.

V. As regards the regularization orders dated 23.07.1992 for an area admeasuring 10,296 sq.mtrs. (2296 sq.mtrs. of *Nadi paiki*; 6000 sq.mtrs. of *gamtal land*; 2000 sq.mtrs. of survey No.282/A/paiki), it may be noted that the said regularization order was passed to allot land subject to new and impartible conditions.

VI. Similarly, the regularization order dated 16.12.1997 for the total area of 17,423 sq.mtrs (592 sq.mtrs of *Nadi paiki*; 5775 sq.mtrs of *Gamtal land*; and 11,056 sq.mtrs of survey no.282/A/paiki) was with the condition of the land being new and impartible condition.

VII. The regularization order dated 23.07.1992 contains the condition that any change or addition in the construction shall be with the permission of the competent authority. Whereas, the regularization order dated 16.12.1997 contains a condition that the permission for conversion of non-agricultural purposes shall have to be taken from the competent authority.

VIII. The order under Section 79A of forfeiture of land allotted / regularized, passed under the Code categorically records that as per the condition No.3, the map of construction was required to be approved by the Collector and the condition No.7 provided that prior to using the land, the trust was required to take permission as per form 'K' from Mamlatdar, Gandhinagar. No such permission having been applied for or obtained, has been brought on record nor any such permission has been placed before us.

IX. As regards the regularization orders dated 23.07.1992 and 16.12.1997 are concerned, there is a categorical averment in the show cause notice issued under Section 79A of the Code that condition Nos.1 and 2 of both the said orders were violated. Condition No.1 of the said regularization orders categorically states that the land shall be possessed by the trust subject to new and impartible conditions, whereas condition No.2 is that the trust shall not be carry out any profitable activities other than religious activities over the lands, subject matter of allotment.

X. It is categorically recorded in the order of the City Deputy Collector dated 04.04.2025 under Section 79A in *Sharatbhang Case No.7 of 2023* that:-

(i) The petitioner has not produced any documentary evidence to show that permission from the Collector was obtained prior to using the land allotted for educational purposes.

(ii) The petitioner has not produced the accounts regarding the income and expenditure of the Ayurvedic, Homeopathic and Naturopathic clinics and other centers being operated by it for distribution and sale of religious texts, Ayurvedic medicines, etc.

(iii) Though it is contended that the audited accounts of charitable activities run by the trust are regularly submitted to the office of the Charity Commissioner but the petitioner had not produced copies of any of those audited accounts before the City Deputy Collector.

(iv) The evidence on record indicates that unaided private school is being operated over the land in question but the Ashram has not produced any information concerning the number of students admitted in the school, the fees structure, the number of students residing in the hostel or the fee standards for their stay and boarding.

(v) The Mamlatdar report categorically indicates that various items manufactured by the Ashram are being sold on site and the petitioner has been engaged in profitable activities to which, no contrary material had been produced.

XI. As regards 4860 sq.mtrs. of lands of Sabarmati river bed, the record indicates that though there was a resolution of the Revenue Department, Gandhinagar

dated 06.01.1999 but the order of allotment of the said land, if any, passed by the Collector, Gandhinagar has not been produced. The evidence of payment of Rs.2,39,841 on 26.01.1999 in the office of the Collector, as such, would be of no relevance.

XII. Thus, out of total area of encroachment admeasuring 15,778 sq.mtrs, the area of 4860 sq.mtrs allegedly proposed to be allotted on 06.01.1999 cannot be considered to be in occupation of the petitioner under a legal allotment order passed by the competent authority.

XIII. For the remaining area of 15,778 sq.mtrs - 4860 sq.mtrs = 10,918 sq.mtrs, which included 6489 sq.mtrs of survey No.282/A/paiki and 3185 sq.mtrs of *gamtal land* and 6104 sq.mtrs - 4860 sq.mtrs = 1244 sq.mtrs of *Nadi paiki*, nothing has been brought on record, rather the contention is that the petitioner is not in possession of the aforesaid area.

XIV. As regards the development permission of the year 2008 and BU permission of 2009 taken from AUDA, the same has no relevance, inasmuch as, no constructions could have been raised over the grant lands, subject matter of allotment / regularization orders, without seeking permission from the office of the Collector / Mamlatdar.

XV. It may be noted that the petitioner claims to have acquired 4860 sq.mtrs. of *Nadi paiki land* on the basis of the resolution dated 06.01.1999, on payment of money, which cannot be elevated to a valid order of allotment as per the Land Revenue Code.

XVI. There is no dispute about the fact nor any submissions have been made before us that while conducting the proceedings under Section 79A and Section 61 of the Code, due opportunity of hearing has been afforded to the petitioner. The submission, however, is that the replies and explanations submitted by the petitioner along with the documentary evidences have been conveniently brushed aside.

XVII. As noted hereinabove, the petitioner submitted replied and written submissions before the competent authority, which were duly considered and dealt with in the orders impugned.

B. CONCLUSION.

154. In view of the abovenoted facts culled out from the record, at the outset, we may say that no error can be found in the order of the learned Single Judge in holding that in absence of any valid allotment order, the area of 4860 sq.mtrs of *Nadi paiki* is illegally occupied by the petitioner and shall be treated as encroachment over the riverbed land. No exception can be taken to the said opinion of the learned Single Judge in dismissal of the writ petition challenging the order passed in the proceedings under Section 61 of the Code.

155. It is undisputed that the measurement sheet dated 31.07.2023 has been prepared by the DILR on the measurement conducted by D.G.P.S method through satellite, an electronic instrument .

156. Mr.G. H. Virk, the learned Government Pleader has demonstrated from the record that the petitioner raised objections to the measurement sheet dated 31.07.2023 before the DILR by submitting previous measurements conducted on his applications and the said objections were duly replied / rejected by the DILR vide communication dated 31.09.2023, which was not subjected to any further challenge.

157. The submissions of Mr.R. S. Sanjanwala, the learned Senior Counsel for the petitioner before us that the measurement sheet dated 31.07.2023 was prepared behind the back of the petitioner and the same cannot be relied upon as it was never put to the petitioner, stands belied by the said fact. The submission that as the measurement sheet dated 31.07.2023 has not been supplied to the petitioner, as such, the impugned order passed under Section 61 of the Code would suffer from the vice of the principles of Natural justice, is liable to be rejected outrightly being misleading.

158. Apart from the above, the only arguments made by the learned Senior Counsel to confront the findings in the measurement sheet dated 31.07.2023, are based on the measurement sheets of 1998, 2008, 2013 and 2024. As has been demonstrated before us, the said measurement sheets are *paiki measurement* for the specific areas, and the details

therein, as placed before us, clearly show that those measurement sheet were got prepared by the petitioner on its own, bereft of any detail about the surrounding areas. None of these measurement sheets prepared prior to the year 2023 and also the subsequent measurement sheet dated 21.03.2024 got prepared by the petitioner through a Government surveyor, can be made basis to attach any infirmity to the details mentioned in the measurement sheet dated 31.07.2023, The learned Single Judge has rightly recorded that the measurement sheet dated 31.07.2023 cannot be allowed to be assailed on the basis of private measurements carried out by the petitioner with a view to create evidence.

159. We do not find any error in the order of the learned Single Judge in holding that the impugned order under Section 61 of the Code was passed following the principles of natural justice and taking into consideration the documents on record. The petitioner has failed to establish any legal right to occupy the land in question, namely 15,778 sq.mtrs, which was found to have been encroached by it as per the DILR measurement sheet dated 31.07.2023. The opinion drawn by the learned Single Judge that there is no justification to interfere in the concurrent findings of fact returned by the competent authorities in the proceedings under Section 61 of the Code, cannot be said to suffer from any error of law.

160. In the proceedings for encroachment of Government land, that too the land of riverbed, the petitioner cannot seek any indulgence of this Court in the present appeal under Claus 15 of the Letters Patent, when no infirmity is found in the opinion drawn by the learned Single Judge.

161. Coming to the submissions made by Mr.Mihir Thakore, the learned Senior Counsel for the petitioner about the summary proceedings drawn under Section 79A for forfeiture of grant land for breach of conditions of the allotment / regularization orders, suffice it to say that, the provision of Section 79A are contained in Chapter VI of the Land Revenue Code'1879, which deals with the grant, use and relinquishment of any alienated land belonging to the State Government. The order of grant dated 30.04.1980 for Ashram school under Rule 32 of the Rules' 1972, and the regularization orders dated 23.07.1992 and 16.12.1997, have been passed subject to the conditions mentioned therein. In the matter of allotment of Government land, the requirement for the petitioner was to adhere to the conditions of the allotment order.

162. Even if it is accepted for a moment that the total area of 6261 sq.mtrs of land was allotted under the allotment order dated 30.04.1980 for the specific purpose of Ashram school, however, the conditions attached thereto, to seek approval of the map from the Collector and permission from the Mamlatdar for use for constructions, had not been adhered to by the petitioner.

163. A regards the land, subject matter of two regularization orders dated 23.07.1992 and 16.12.1997 are concerned, they were regularized with the new and impartible conditions. The permission for utilization of the said pieces of land, for raising constructions and use for non-agricultural purposes, was required to be taken from the office of the Collector.

164. In the instant case, the petitioner - trust has raised constructions over a substantial piece of lands, subject matter of allotment / regularization orders. The Satellite Map showing the position of the existing constructions and the measurement sheet giving description of the occupation of the total area land by the petitioner dated 31.07.2023 clearly indicate that extensive constructions have been made by the petitioner - trust over the lands in question ignoring the conditions of the allotment / regularization orders with impunity.

165. As per own statement of the petitioner, 30 regularization applications have been filed under GRUDA in the month of February' 2023, which fact itself is the proof that the petitioner raised extensive constructions over the lands in question, even without obtaining permission from the concerned development authority. One of the permissions taken from AUDA in the year 2008 / 2009 is of no benefit to the petitioner for the simple reason that the permission of the Collector before seeking development permission from AUDA has not been obtained.

166. From an exhaustive consideration of the extensive arguments made by the learned Senior Counsel for the petitioner and the material brought on record, it is more than evident that no infirmity can be attached to the proceedings drawn by the respondent authorities under Section 79A of the Code, which empowers the respondents to forfeit the grant land on breach of conditions of allotment.

167. Further, the contention of the learned Senior Counsel for the petitioner is that the breach of condition order pertains to breach of conditions of the allotment / regularization order on the allegations that the subject land has been utilized for profitable activity. The submission is that for the fact that all constructions raised by the petitioner over the allotted / regularized land are being used for spiritual and educational activities, which is the purpose of allotment / regularization of lands, the finding that the trust had indulged in profitable activity by sale of spiritual literature, Ayurvedic medicines and running school on fee paid by the student, is bereft of any evidence.

168. The submission is that a negative burden has been laid upon the petitioner to establish that it has not indulged in any profitable activity whereas there was no evidence to the contrary.

169. Dealing with this submission, suffice is to note that nothing has been brought on record to demolish the findings in the order passed by the City Deputy Collector that no evidence of audited account regarding income and expenditure of the trust allegedly produced regularly in the office of the Charity Commissioner, was placed before the Deputy Collector. No evidence of income and expenditure from the activities of the trust has been produced. The petitioner has not given any details of the income and expenditure of the school run by it by providing information regarding the fee structure, number of students admitted in the school, residing in the boarding, etc. These evidence were

crucial and material to establish the case of the petitioner that the petitioner - trust has not been engaged in any profitable activities and sale of medicines, books, etc, are only a part of non-profitable activities of the trust.

170. In other words, the best evidence in the shape of the account books etc. was in the possession of the petitioner, which could have been produced before the City Deputy Collector to demonstrate that the earning of the trust from various activities was not for profiteering. As the best evidence in the possession of the petitioner has been withheld, adverse inference is to be drawn. No error, as such, can be said to be in the order of the City Deputy Collector in holding that no cogent evidence has been presented to prove that the petitioner is not engaging in profitable activities.

171. Considering the facts and circumstances of the present case, it is evident that the petitioner - trust not only violated the conditions of the orders of allotment / regularization orders of grant of Government land, but also encroached upon a substantial area of open land surrounding the allotted lands, even the land from the riverbed, for its use and illegal occupation over the period of years. The petitioner is found to be a habitual offender, who had earlier encroached on a large area of about 51,101 sq.mtrs of open land forming part of Sabarmati river, which was proved in the eviction proceedings conducted under Section 61 of the Code in the year 2009. Even otherwise, the allegations of breach of conditions of the allotment / regularization orders have been found to be proved by the learned Single Judge as well as by us in view of the discussion made hereinabove.

172. Lastly, on the vehement arguments made by the learned Senior counsel for the appellants on the allegations of *mala fide* and bias with the assertion that the lands in question were identified and included in the proposed available lands for sports complex, based on the communications dated 03.06.2021 of AUDA and the letter dated 25.01.2022 of the Collector, suffice it to say that :-

(i) in the previous petition filed by the petitioner in challenging the order dated 25.01.2022 of the Collector imposing reservation, no such arguments have been made. The judgment and order dated 26.03.2025 passed in Special Civil Application No. 17521 of 2024, simply noted that the communication dated 25.01.2022 of the Collector was merely an inter-departmental communication.

(ii) In any case, the inter-departmental communications dated 03.06.2021 and 25.01.2022 cannot be considered to be the basis of the passing of the order for forfeiture of land under Section 79A of the Code. These communications may be considered merely as a part of the exercise of identification of available land for the purpose of sports complex, wherein the illegal constructions raised by the petitioner over the lands in question were identified and noted.

(iii) We find substance in the submission of Mr. G.H. Virk, learned Government Pleader that if a Government land is allotted to a private person on the terms and conditions of the allotment order, which if violated,

Sharatbhang proceedings can be initiated, at any point of time, as per the conditions of allotment itself, which permits resumption of the Government land in cases of such violations. Identification of such violations is a continuous exercise, however, any encroachment or unauthorized constructions, if identified, can be removed only by adopting due procedure of law.

(iv) In the instant case, as noted hereinabove, no infirmity could be shown in the legality of the proceedings conducted against the petitioner, in the *Sharatbhang* case proceeded under Section 79A, wherein after affording due opportunity of leading evidence and personal hearing granted to the petitioner, the order of forfeiture has been passed. All allegations of *mala fide* or *bona fide* of the respondent authority, vehemently pressed into service by the learned Senior Counsel to assail the judgment impugned are liable to be rejected outrightly.

173. As regards the submissions based on the doctrine of proportionality, the petitioner is found to be a habitual offender, inasmuch as, it had encroached upon a large area of about 51,101 sq. mtrs. of land forming part of river Sabarmati, wherefrom it had been evicted in the proceedings initiated against him in the year 2009, concluded in the year 2013 and had further made encroachment, subject matter of the present proceedings, we, therefore, do not find any good ground to issue a direction to the respondent authorities for regularization of the existing constructions, which are otherwise extensive, even covering the river bed.

174. The repeated conduct of the petitioner, as noted hereinabove, is sufficient to upturn the challenge on the ground that resorting to the drastic power of resumption and forfeiture of land on the part of the respondent was guided by *mala fide* exercise of power and without any authority of law. Accordingly, the submission made by the learned Senior counsel for the petitioner on the doctrine of proportionality also deserves to be rejected.

175. In the said scenario, we do not find it a fit case to grant any indulgence to the petitioner by invoking our discretionary power under Article 226 of the Constitution of India. No equity lies in the favour of the petitioner.

176. In the totality of the facts and circumstances of the present case, none of the prayers made in the two writ petitions can be granted. At the cost of repetition, it is stated that there is no question of regularization of a riverbed land encroached by the petitioner. Any such indulgence would be contrary to the decision of the Apex Court. Even otherwise, no error having been found in the concurrent findings of fact returned by the competent authorities in two proceedings under Section 79A and Section 61 of the Code, separately, wherein principles of natural justice have been duly followed, we cannot attach any infirmity to the order of the learned Single Judge in dismissing both the writ petitions, while refusing to exercise the discretionary jurisdiction of the constitutional court.

177. With the above, both the appeals are dismissed being devoid of merits. No order as to costs. Pending civil applications in the concerned appeals, stand disposed of, accordingly.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

FURTHER ORDER

1. After the judgment was delivered in open Court, Mr. Mihir Thakore and Mr. R. S. Sanjanwala, learned Senior Advocates appearing for the appellants in the connected writ petition would submit that since the appellant is in possession of the lands in question and there exist constructions over the same which are in use as on date in view of the interim order passed by this Court, the effect and operation of this judgment may be stayed for a reasonable period, atleast for four weeks so that the appellant may approach the higher Court.

2. This prayer is vehemently objected by Mr. G. H. Virk, learned Government Pleader by making a statement to the effect that the eviction proceedings have been initiated in the year 2023 and after the adjudication by City Mamlatdar and City Deputy Collector in the year 2023 itself, the petitioners have been able to continue in the illegal occupation of the government land for a period of three years. No more indulgence may be granted to the petitioners.

3. Apart from the above, it is submitted that even otherwise, after final adjudication of the proceedings under Sections 61 and 79 A of the Gujarat Land Revenue Code, the State would be required to issue a notice to the petitioners under Section 202 of

the Land Revenue Code giving them time to hand over the vacant possession of the lands in question, failing which only coercive actions would be initiated.

4. In view of the undertaking given by Mr. G. H. Virk, learned Government Pleader that in the notice to be issued under Section 202 of the Land Revenue Code, a reasonable time would be given to the petitioners to vacate the lands in question and hand over peaceful possession thereof to the competent authority, we do not find any good ground to entertain the prayer for grant of stay of operation of this judgment, as prayed for. The prayer for stay is accordingly, rejected.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

SAHIL S. RANGER