

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 20840 of 2019****With****CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021
In R/SPECIAL CIVIL APPLICATION NO. 20840 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 20839 of 2019**=====

HARSHIL A SHAH

Versus

STATE OF GUJARAT

=====

Appearance:

MR SP MAJMUDAR(3456) for the Petitioner(s) No. 1,2,3,4,5

RUSHABH H MUNSHAW(8958) for the Petitioner(s) No. 1,2,3,4,5

MR MTM HAKIM with MR MOHMEDSAIF HAKIM(5394) for the

Respondent(s) No. 5,6

MR MEET THAKKER with MS MEGHA JANI(1028) for the Respondent(s) No.

4

MS JYOTI BHATT, AGP for the Respondent(s) No. 1,2,3

=====**CORAM: HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI****Date : 11/10/2023****ORAL ORDER**

1. The captioned writ-applications referred above are self-same arising out of the identical issue being aggrieved by the orders passed by the competent authority under the provisions of the Gujarat Prohibition of Transfer of Immovable Property and Provisions for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 (hereinafter referred to as 'the Act' for short). The Special Civil Application No.20840

of 2019 is treated as lead matter with the consent of the learned advocates appearing for the respective parties and order passed in the said writ-application shall govern the Special Civil Application No.20839 of 2019.

2. By way of these writ-applications filed under Article 226 of the Constitution of India the writ-applicants have prayed for the following reliefs :-

“(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or directions quashing and setting aside impugned order dated 20.06.2019 passed by respondent no.3 herein, in Application No.AVIT/VASHI / 7286/2018 (at ANNEXURE-U herein), and may further be pleased to quash and set aside any and every consequential action of the respondents herein pursuant to the impugned order dated 20.06.2019 passed by respondent no. 3 herein, in Application No.AVIT/VASHI/7286/2018 (at ANNEXURE-U herein) ;

(B) During the pendency and final disposal of the present petition, YOUR LORDSHIPS may be pleased to stay further operation, implementation and execution of order dated 20.06.2019 passed by respondent no. 3 herein, in Application No. AVIT/VASHI/ 7286/2018 (at ANNEXURE-U herein), and

may further be pleased to direct the respondent nos.4 to 6 herein to maintain status-quo qua the land bearing plot no.13 situated on Revenue Survey No. 399, and 400, situated at Tandalja, Vadodara;

(C) Pass any such other and/or further orders that be thought just and proper, in the facts and circumstances of the present case;”

3. Heard Mr. Rushabh H. Munshaw, the learned advocate appearing for the writ-applicants, Mr. Meet Thakkar, the learned advocate appearing for Ms. Megha Jani, the learned advocate appearing for the respondent No.4 and Mr. M. T. M. Hakim, the learned advocate appearing for Mr. Mohmedsaif Hakim, the learned advocate appearing for the respondents No.5 and 6.

4. The writ-applicants herein have challenged the impugned order dated 20.6.2019 passed by the respondent No.3 herein in Application No.AVIT/VASHI/7286/2018 preferred by the respondent No.4 whereby the respondent No.3 allowed the said application preferred by the respondent No.2 seeking

permission to sell the land of Plot No.13 situated on land bearing Survey Nos.399 and 400, Tandalja, Vadodara admeasuring 470 Sq.Mtrs., to the respondents No.5 and 6.

5. It is the case of the writ-applicants that the said permission has been granted by the respondent No.3 herein under the provisions of Section 5 of the Gujarat Prohibition of Transfer of Immovable Property and Provisions for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 (hereinafter referred to as 'the Act' for short). The order dated 20.6.2019 is contrary to the provisions of Section 5 of the Act. That the order has been passed by the respondent No.3 herein on the basis of the opinion of the Additional Police Commissioner, Vadodara as well as of the Mamlatdar, Vadodara.

5.1 It is also the case of the writ-applicants that the aforesaid opinions were given by the competent authorities on the basis of faulty panchkyas prepared by the Talati on the basis of

incorrect statements made by several persons during the inquiry conducted by the respondent No.3 herein. That the order impugned has been passed by the respondent No.3 herein on the basis of faulty inquiry. The writ-applicants herein are neighbours and had raised objections against the permission of the inquiry conducted by the respondent – Collector. In view thereof, the writ-applicants here have approached this Court by filing the present writ-applications.

6. The impugned order passed by the respondent No.3 dated 20.6.2019 which is duly produced at Annexure-U reads thus:-

“No.Savit/vashi/7286/2018 Date.20/06/2019

Deputy Collector, Office of Vadodara City

Narmada Bhavan, C Block, 6th floor, Jail road, Vadodara

Phone No.2434402

Read:-

- 1. Application dated 31/12/2018 of the applicant Shrimati Gitaben Amit Goradiya and evidence produced therewith.*
- 2. Provisions of Disturbed Areas Act, 1991 to restrict transfer of immovable property from Disturbed Areas of Gujarat and protect tenants to vacate rented properties from*

those areas.

3. *Letter No./RTS/Vashi/1465/2011 dated 30/06/2011 of the Collector, Vadodara.*
4. *Notification No.GHM/2014/121/M/STP/112014/1448/H-1 dated 30/09/2014 of the Revenue Department, State of Gujarat.*
5. *Opinion of Mamlatdar, Vadodara City (West), vide Letter No.MAG/vashi/182/19 dated 14/03/2019.*
6. *Opinion of Assistant Commissioner of Police, Vadodara City, vide Letter No.G/CP/vi.sha./2260/19 dated 01/06/2019.*

//Order//

Vide application mentioned in Preamble-(1), the applicant Shrimati Gitaben Amit Goradiya, residing at 12, Kesarbaug Society, Vasna road, Vadodara has sought permission of this Office in view of Section-5(1) of Disturbed Areas Act declared under Notification at Serial No.(4). With mutual consent of both vendor and vendee of immovable property, the facts have been produced by various affidavits to execute sale deed at prevalent market rate without any type of intimidation. Considering the evidence produced with application submitted by the applicant, as Property Transfer transaction is between Hindu-Muslim, the same was sent to Mamlatdar, Vadodara city and Police Commissioner, Vadodara for site inspection thereof. Vide opinion of Mamlatdar, Vadodara City at Serial No.(5) and opinion of Assistant Commissioner of Police, Vadodara City at Serial No.(6)

regarding transfer of properties, there is no objection regarding transfer of properties. Moreover, upon issuance of Notice to hear transferor and surrounding neighbours, transferors and surrounding neighbours have remained present. On being asked to vendor Shrimati Gitaben Amit Goradiya, she has stated that she has not been threatened for sale of her property and she voluntarily sales her property.

By the virtue of powers vested under the aforesaid Preamble and in accordance with provisions of Disturbed Areas Act, the applicant is allowed to transfer her property to vendee Fesal Fajlani and Zinat Fajlani, residing at Mumbai Central, Mumbai subject to the following conditions.

// Description of Immovable Property//

<i>Sr. No.</i>	<i>Name of Area</i>	<i>Description/ address of the immovable propety</i>	<i>Ward No./City Survey No.</i>	<i>Municipal S.C.No.</i>	<i>Total area</i>
<i>1</i>	<i>Tandalja</i>	<i>Plot No.13</i>	<i>R.S.No.399, 400</i>	<i>--</i>	<i>473 Sq.Mtr.</i>

Conditions:-

- 1. This permission is granted only to register Sale Deed before Sub Registrar to transfer immovable property under Disturbed Areas Act, 1991. Thus, permission is required to be obtained under another Act.*
- 2. If any case regarding the aforesaid property is pending before any Judicial Court and contain tenant rights, the*

permission shall automatically be cancelled.

3. Sale deed is to be registered before Sub-Registrar within period of three months from the date of permission and in that case, deed shall have been registered.

4. Permission regarding transfer of property under other Acts/Rules are to be obtained separately.

5. Stamp duty shall be required to be paid as per prevailing Jantri.

6. In case of Section-73(AA) of Land Revenue Code, deed is to be executed after obtaining separate permission from the Collector, Vadodara.

7. In case of permission holding General Power of Attorney, Sub Registrar concerned shall have to verify General Power of Attorney at the time of registering deed and deed is to be registered thereafter.

8. After obtaining evidence as to whether permission has been obtained from Sub-Registrar regarding revised map / rajachithi regarding sub-plot of divided property than the area mentioned in the original approved map of property to be transferred, Sub-Registrar shall have to carry out procedure to certify registration of deed and entry made by City Survey Department.

sd/-illegible

20/10/19

Deputy Collector, Vadodara city”

7. At this stage, it is apposite to refer Section 5 of the

Gujarat Prohibition of Transfer of Immovable Property and Provisions for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 which reads thus :-

“Section-5 (1) Notwithstanding anything contained in any other law for the time being in force but subject to provisions of sub-section (3), no immovable property situated in a disturbed area shall, during the period of subsistence of the notification issued under sub-section (1) of section 3 declaring such area to be the disturbed area, be transferred except with the previous sanction of the Collector.

(2) Any transfer of immovable property made in contravention of sub section (1) shall be null and void.

(3) (a) Any person intending to transfer immovable property situated in a disturbed area may, within the prescribed period and in the prescribed form, make an application to the Collector for obtaining previous sanction under sub-section (1).

(b) On receipt of such application the Collector shall hold a formal inquiry in the manner provided by the Bombay Land Revenue Code, 1879, and after giving an opportunity to the applicant to be heard and after considering any evidence produced, decide whether the transfer of immovable property is proposed to be made by free consent of the persons intending to be the transferor and the transferee and for a fair

value of the immovable property proposed to be "transferred and accordingly -

- (i) reject the application; or*
- (ii) by an order in writing give previous sanction to the proposed transfer of immovable property.”*

8. At this stage, it is apposite to refer to order dated 9.2.2023 passed in the Misc. Civil Application (for review) No.1 of 2022 in the Special Civil Application No.13041 of 2019, wherein paragraphs-18 to 20 read thus :-

“18. Now coming to the locus of the applicants, the applicants are signatories to panchnamas which confirmed that they were residing in the neighborhood and the sale of the property was with free consent and fair value. The applicants seek recall of this order on the ground that their signatures to the panchnamas were taken without they actually understanding, the repercussions. In order to examine this stand, the Court has orally inquired from the counsel for the State whether the panchas, the applicants had signed the document. It has come on record through the affidavit of the State that a fresh statement was recorded of the applicants. In such statements the applicants have stated that that they do not dispute the signatures but they were compelled to sign such statement. That they were in fact not residing in the neighborhood. In a rejoinder to this, the original petitioners have produced photograph to confirm that the signatories were residing within the

neighborhood.

19. Be that as it may, while discussing the provisions of the law, the Court essentially had set aside the order on the ground that the office of the Deputy Collector while deciding an application had only to consider free consent and fair value. It was specifically observed in the order that the neighbor had no role in this. In paragraph No.15.6 of the judgment the Court has recorded “When the scope of inquiry is that of free consent and fair value, the role of neighbors in the context of such sale becomes irrelevant”.

20. Coming to the locus of the applicants therefore the judgment in the case of SNA Infraprojects Pvt. Ltd. (Supra) needs consideration. Relevant paragraph Nos.5, 5.1, 5.2, 5.3, 6 to 8, 8.1, 10 to 12 read as under:

“5. Before identifying and culling out the issues, it may be pertinent to refer to the civil applications made by 10 applicants with the prayers to be joined as respondents and with the contentions couched in the following terms:

“That, so far as these areas are concerned, the entire Kochhrab village is covered. So far as the present applicants are concerned, they are residents of Kochhrab and more particularly the area known as Moto Rohitvas, Divya Jivan Flats, Nutal Sarvoday Society, Nand Apartments Kochhrab, Raj Apartments Kochhrab and Emran Residency, Kochhrab village. That in the very area, one bungalow known as Bankers' Bungalow was sold to a Muslim gentleman and, therefore, the said bungalow (sic) being falling into disturbed area, no permission was obtained and, therefore, against the alleged sale being without permission, an appeal under the provision is filed before the Secretary, Revenue Department, Gujarat State, Ahmedabad, and the said appeal is pending....

“.....in the past also, the very residents of Mevawala flats had

approached the Hon'ble Speaker of the Gujarat Legislative Assembly and that on 12.7.2010 a letter was written by late Shri Ashok Bhatt, to the Collector recommending that the residents of Mevawala Flats Association where some of the persons are trying to breach the law and trying to sell the flats to Muslim people and, therefore, that should be prevented and no agreement to sell or transfer be registered. That similarly there was a pressure upon Hindus from Muslim community and therefore, one application was also made by Divya Jivan Flats, Kochhrab to the Revenue Department on 18.9.2006 and a reply was given by the Revenue Department on 28.11.2006 and it was stated in the letter by the government that Plot No.851 is falling into the disturbed area and that no permission is given. Similarly, a representation was also made to the Hon'ble Chief Minister with regard to the said Final Plot No.851 of Kochhrab. In that connection, way back in 2006, Deputy Collector had written to the Hon'ble Chief Minister that objections were raised by about more than 1000 people to the effect that if such properties which are falling into the Kochhrab village are sold to Muslim people, then in that case thousands of people would be forced to leave their residents (sic) and compulsorily shift away from the Hindu locality.

“...Similarly, very recently in April 2010, the remaining residents of Mevawala Flats had also made an application to the Police Inspector, Ellisbridge Police Station objecting that the flats are to be sold to S.N.A.Infra Projects Private Ltd., whose Director is Mr.Asim Putawala, a Muslim gentleman and, therefore, the residents of the said flats objected that they would be forced to leave the flats.

“.....That the present applicants are the persons who are residing in different flats in the vicinity of the Kochhrab village and it is certain that if there is any transgression by a single Muslim family or individual, then in that case, all will be forced to leave and the very object of the Act, namely, Disturbed Area Act would be defeated and thus, there is a notification whereby the areas in dispute are covered by the Disturbed Area Notification but by illegitimate practice false and concocted letters are alleged to have been written between the Circle Inspector and the Mamlatdar and under the guise of such concocted correspondences, some flats are already sold and when it is brought to the notice of the government, it is

prevented. That the very present applicants are also equally interested to see that the law in force is obeyed and according to the notification no transfers take place from Hindu people to a Muslim owner and, therefore, to prevent the defeating of the Act, the presence of the present applicants is necessary because they are also similarly situated and affected by this illegal and illegitimate transfers and the authorities have rightly refused and stayed their hands to register the document.”

5.1 The petitioner has, by filing an affidavit-in-reply to the civil applications, stated, inter alia, that:

“3.one of the resident of Divya Jivan Flats (residence of the same flat where the applicant No.2 and 3 are residing as mentioned in cause title), namely, Satyendra Devshankar Shelat, have sold the property in favour of one Rashmikant Mehta vide registered sale deed on 13th march, 2008 bearing registration No.3274 of 2008 without taking prior permission of the Collector as envisaged under section 5 of the Act.

.....Therefore, the attempt on the part of the applicants is deliberate and only with a view to see that through transfer no persons from Muslim community is entered into the area of Kochhrab.

“4.I state and submit that no such application has ever been made by the residents of Mevawala Flats. Apart from the said aspect, the residents of Mevawala Flats have already executed a registered sale deed in favour of respondent No.1 herein and, therefore, the applicants who are nowhere concerned with the property in question have no right to make such a grievance. It is also submitted that all such applications which were given on the name of the residents of Mevawala Flats, their signatures are forged and they have never given application as alleged by the applicant to the Ellisbridge Police Station. Their signatures are forged. It is somebody else who has given such application on the name of the residents of Mevawala Flats and apart from the said aspect, the said application has already been inquired into and thereafter necessary affidavits have been filed by the residents of Mevawala Flats before the City Deputy Collector that they have sold the property in question to respondent No.1 herein on

their own will and volition and, therefore, the present applicants who are nowhere concerned with the same cannot agitate the said grievance.

“5.It is also clear from the aforesaid aspect that the applicants are acting as tool of somebody who has some vested interest in order to see that people from the minority community do not enter into the said area and, therefore, the present application is filed with an oblique motive and not bona fide and in absence of any vested interest in the special civil application, the application is required to be dismissed with exemplary cost.”

5.2 It is clear from the rival contentions in the civil applications that the applicants of the civil applications are residents of other buildings in the neighbourhood of Mevawala Flats and they have been labouring under the misconception that the object of the Act is to prevent entry of the people of other community into the area populated by one community. It is not even alleged in the applications that such people in the neighbourhood have any locus standi or legal right under the Act to protest and prevent transfer of immovable property in the area concerned; and except repeated assertions, it is not established by any reliable document that Mevawala Flats are falling with the “disturbed area”.

5.3 Another attempt of the so-called “Shree Kochrab Ellisbridge Hitrakshak Samity”, by way of public interest litigation, challenging the legality and propriety of the sale deeds alleged to have been executed or purported to be executed against the provisions of the Act, is stated to have failed by rejection on 29.4.2011 of Writ Petition (PIL) No.46 of 2011 by Division Bench of this Court (Coram: Hon'ble the Chief Justice Shri S.J.Mukhopadhaya and J.B.Pardiwala, J.).”

6. The controversy required to be resolved in this litigation can be articulated into two broad issues, viz. (1) whether final plot No.852 of Town Planning Scheme No.3/6 at Kochrab is falling with the “entire area of Kochrab village upto Tagore hall”, which is declared to be 'disturbed area” in the notification dated 29.10.1997 issued under section 3 of the Act ? and (2) whether the impugned communication dated 11.01.2011

addressed to the petitioner by the Sub Registrar, Ahmedabad-4 (Paldi) is legal ? Before addressing the factual and legal issues involved, a few undisputed facts, discussed at the bar, may be noted:

(a) Notification dated 29.10.1997 issued under the Act was preceded by Notification dated 15.2.1993, as amended by Notifications dated 30.10.1993 and 10.10.1994 which specified the period from 01.02.1992 to 31.10.1994 as the substantial period for the purposes of the Act. The relevant entry therein, I.e. Entry No.13, for Ellisbridge area did not include Kochrab village. Thereafter, another Notification dated 29.10.1994 was issued and published in the Gujarat Government Gazette dated 31.10.1994 and it was amended by Notification dated 30.10.1995; and specified the period from 01.11.1994 to 31.10.1997 as the substantial period for the purposes of the Act. By that notification, the “entire area of Kochrab village upto Tagore Hall” falling in Ellisbridge Police Station area was declared to be “disturbed area”. And lastly, by Notification dated 29.10.1997, for the specified period from 01.11.1997 to 31.10.1999, the same area was included in the disturbed areas vide Entry No.21 of the Schedule. That notification appears to have been amended from time to time to extend the period upto 31.10.2012. It stipulated that “all transfers of immovable properties situated in the disturbed areas made during the aforesaid specified period shall be null and void and no immovable property situated in the said disturbed areas shall, during the period of subsistence of this notification, be transferred except with the previous sanction of the Collector concerned.”

(b) At least three sale deeds of flats in Mevawala Flats were registered after taking permission under the Act in the year 1995. Thereafter, there were 11 transactions of sale between the years 2000 to 2010 of which instruments were registered without permission under the Act being sought or required. And recently sale deeds of 19 flats registered during the period from April 2010 to June 2010 were registered without permission under the Act. Thus, it is only after June 2010 that the transactions of sale have fallen foul of the Act.

(c) While the petitioner had submitted the instruments of sale

of various flats in Mevawala Flats from 29.7.2010 to 25.11.2010, there was protest by a Committee, comprising of the applicants in the civil applications made herein, styled as “Shree Kochrab Ellisbridge Hitrakashak Samiti” and representation was submitted by that Committee to the then Hon'ble Speaker of State Legislative Assembly. That representation was forwarded by the then Hon'ble Speaker to the Collector, Ahmedabad with the remark that the Hon'ble Speaker expected the Collector to remain active and protect the citizens residing in or around the sensitive area of Mevawala Flats, so as to stop migration. Pursuant to that and referring to that as well as representations dated 29.6.2010 and 20.7.2010 of the Committee, the City Deputy Collector called upon the sub Registrar to report whether sales of nine flats in Mevawala Flats were registered with permission or without permission under the Act. That letter dated 26.7.2010 of the City Deputy Collector, marked on top as “Important/Today”, was replied by the Sub Registrar on 27.7.2010 with the information that the documents were registered without permission under the Act and that Notification dated 29.10.1994 did not mention Mevawala Flat Association against Entry No.20 for Ellisbridge area. On the other hand, the Circle Officer of Kochrab Chhadwad area, wrote to the City Mamlatdar on 27.7.2010 that Mevawala Flats were not included in the disturbed area of Kochrab village as declared by Notification dated 30.10.2007. Thereafter, the City Deputy Collector wrote on 27.11.2010 to the Sub Registrar that Notification dated 29.10.1997 has declared disturbed areas in which the areas under Ellisbridge Police Station were shown at serial No.21; that residents of Mevawala Flats have made representation about sale deeds being executed without permission of the Collector under the Act; and, therefore, it should be verified through the local police station and city survey office whether the area of Mevawala Flats is included in the disturbed areas and documents shall be registered after permission under the Act being obtained. Pursuant to that letter dated 27.11.2010, Senior Police Inspector of Ellisbridge Police Station appears to have written to the Deputy Collector on 20.12.2010 that, as Kochrab village is included in the notification under the Act and as Mevawala Flats are located in final plot No.852 of Town Planning Scheme No.3/6 of the sim (periphery) of Kochrab village, Mevawala Flats are included in the disturbed area.

(d) It is pursuant to the above procedure and correspondence that the impugned communication dated 11.01.2011 expressly referred to and relied upon the letter of Senior Police Inspector to state that Mevawala Flats were included in the disturbed area and hence prior permission under the Act was required to be obtained for registration of sale deeds.

7. With the above background of facts, it was vehemently argued by learned senior advocate Mr.Y.N.Oza, appearing for the petitioner, that it was only on communal considerations and at the instance of the then Hon'ble Speaker that the sale deeds in favour of the petitioner were illegally withheld by the authorities. It was submitted that Kochrab village was originally a small separate village and the area of Kochrab village proper was always defined and demarcated in successive surveys and the area of Mevawala Flats was never a part of Kochrab village. He further submitted that according to Town Planning Scheme No.3/6 and in the map prepared by D.I.L.R., relied upon by the respondents, the village site of Kochrab was clearly demarcated in different colour and final plot No.852 was far away from the village site, due to which the area of Mevawala Flats could never be meant or understood to be a part of the site of Kochrab village. In fact, beyond the village site of Kochrab, there are in the northern direction, large parcels of land bearing survey Nos.838, 846, 848, 849 and 850, then there is a 40 ft. wide road crossing the area from west to east and further north there are lands bearing survey Nos.851, 852 and 853. Therefore, by no stretch, final plot No.852 could be said to be a part of the area of village Kochrab; and, therefore, the revenue authorities and the Sub Registrar had taken the correct view in not insisting upon prior permission under the Act for all the years from 1995 to 2010. He further submitted that apparently because the Managing Director of petitioner company happened to be a Muslim that objections were raised by obtaining opinion of the Police Inspector. He also submitted that the Town Planning Scheme No.3/6 was approved and enforced since about 40 years, clearly demarcating the village site of Kochrab and hence the authorities could be presumed to be aware about the area of village Kochrab as demarcated in the Town Planning Scheme. As against that, learned Government Pleader, appearing for the respondents, submitted that the Sub Registrar has issued the impugned communication in bona fide exercise of his power to

give to the petitioner an opportunity to obtain prior permission so as to register the documents in accordance with law, rather than refusing to register them for being null and void.

8. Against the above backdrop of facts and contentions, it was seen that the Act was enacted in 1991 to declare certain transfers of immovable properties in disturbed areas of the State to be void and to prohibit temporary transfers of immovable properties in such areas. Section 3 of the Act provides for declaration of certain area to be a “disturbed area” for a specified period, having regard to the intensity and duration of riot or mob-violence and such other factors in any area of the State wherein public order was disturbed for a substantial period. Section 4 of the Act provides that all transfers of immovable property situated in a disturbed area made during the specified period shall be null and void with effect from the date of such transfers and also provides for an application to the Collector, within the prescribed period, for a declaration that the transfer of immovable property was made by free consent of the transferor and transferee and for a fair value. Such application could be rejected after hearing the parties and considering the evidence or the Collector may declare by an order that the transfer was valid. Section 5 of the Act, opening with a non-obstante clause, provides that no immovable property situated in a disturbed area shall, during the period of subsistence of the notification issued under sub section (1) of section 3 declaring such area to be the disturbed area, be transferred except with the previous sanction of the Collector; and any transfer of immovable property made in contravention of sub-section (1) shall be null and void. Section 5 also provides for making an application to the Collector, for holding a formal inquiry, opportunity of hearing and ascertaining whether the transfer of immovable property is proposed to be made by free consent of the transferor and the transferee and for a fair value. The decision of the Collector under section 4 or 5, subject to appeal to the State Government under section 6 and the decision of the State Government on the appeal, shall be final and conclusive and shall not be questioned in any Court, according to section 8. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or purported to be done under the Act, in terms of section 10 of the Act. A bare reading of the preamble and relevant

provisions of the Act would clearly show that restriction on transfer of immovable property is imposed by the Government with the clear intention of, and provision for, ensuring that any transfer of immovable property in a disturbed area is made by free consent of the parties and for a fair value.

8.1 By virtue of section 4 of the Transfer of Property Act, 1882 (“the TP Act”, for short), section 54 of that Act has to be read as supplemental to the Indian Registration Act, 1908. Section 54 of the TP Act defines “Sale” and stipulates that transfer, in case of tangible immovable property of the value of one hundred rupees and upwards, can be made only by a registered instrument. Relevant provisions of the Indian Registration Act, 1908 read as under:

34. Enquiry before registration by registering officer

(1)

(2)

(3) The registering officer shall thereupon-

(a) enquire whether or not such document was executed by the person by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assignee or agent, satisfy himself of the right of such person so to appear.

(4)

(5)

35. Procedure on admission and denial of execution respectively

(1)

(a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

(b) If in the case of any person appearing by a representative, assignee or agent, such representative, assignee or agent admits the execution, or

(c) If the person executing the document is dead, and his representative or assignee appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assignee denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

PROVIDED that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

PROVIDED FURTHER that the State Government may, by notification in the Official Gazette, declare that any Sub Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]

PART XII

OF REFUSAL TO REGISTER

71. Reasons for refusal to register to be recorded

(1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his subdistrict, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions

hereinafter contained, the document is directed to be registered.

72. Appeal to Registrar from orders of Sub Registrar refusing registration on grounds other than denial of execution

(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution

(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assignee or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. Procedure of Registrar on such application:

In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire-

*(a) whether the document has been executed;
(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.”*

Rule 45 of the Gujarat Registration Rules, 1970, made in exercise of the powers conferred by Section 69 of the Registration Act, 1908, reads as under: Rule 45 Certain requirements to be verified before accepting a document for registration-

(1) A registering officer shall, before accepting any document for registration, not concern himself with its validity but see that -

*(a) it is properly stamped;
(b) it is presented within the proper time and in the proper office;
(c) it is presented by a competent person;
(d) if it relates to immovable property, that it is not open to objection under section 21 or 22;
(e) if any document is in a language which he does not understand, the provisions of section 19 are complied with;
(f) any interlineations blanks, erasures or alterations appearing in the document are attested by the signature or initials of the person or persons executing the same as required by section 20;
(g) the deed does not contravene the provisions of Sub Section (1) of Section 5 of the Foreign Exchange Regulation Act, 1947, and
(h) whether sale certificate and prior permission in writing of the authorities concerned are produced before him in original, if the deed relates to transfer of Government built property.*

(2) If on presentation of the document, the fees prescribed under section 78 are not paid demand, the registering office shall refuse to register the document.”

(emphasis added)

10. It is unfortunate that even after more than 60 years of the

operation of the Constitution, not only some of the elite citizenry but State functionaries did not seem to have imbibed the spirit of our Constitution, which by its Preamble itself sought to constitute a secular republic to secure to all its citizens equality of status and opportunity and to promote fraternity, ensuring dignity of the individual. Therefore, no law in India could be so interpreted and applied as to exclude the members of one or the other community from carrying on legitimate business activities and entering into commercial transactions. Contrary to the contentions of the applicants in the civil applications, the intent and purpose of the Act clearly appears to be prevention of migration of residents in minority in one area and taking over of their properties by other communities under coercion in the aftermath of communal disturbances. There is nothing in the Act to suggest that it was intended to divide residents or citizens on communal lines.

11. Therefore, the applications made in the main petitions are found and held to be motivated and misconceived and the impugned communication and the stand of the respondent is found and held to be illegal and inconsistent with the provisions of the Act as well as the relevant provisions of the Indian Registration Act, 1908. The present litigation and delay in registration of the sale deeds in question necessarily entails losses and unnecessary expenditure for the petitioner. The petitions are stated at the bar to have been argued for days on end, at the admission stage, before at least three benches of this Court; and thus considerable public time of the Court is spent on this litigation at the cost of other cases pending since decades.

12. In the facts and for the reasons discussed hereinabove, all the petitions are allowed, and the civil applications are dismissed with cost quantified at Rs.50,000/- with the direction that the sale deeds enumerated in letter dated 18.12.2010 of the petitioner shall be duly processed for registration in accordance with the provisions of the Registration Act, 1908 and returned to the petitioner in accordance with law. The amount of cost, which shall be paid to the petitioner within a period of one month, shall be borne by the respondents in the main petition to the extent of Rs.25,000/- and the remaining cost of Rs.25,000/- shall be paid in equal proportion by the applicants in the civil applications.”

In the case before the Court, certain applicants who were neighbors had filed Civil Applications and the Court found that such applicants who were residents of other buildings in the neighborhood had no locus standi or legal right under the Act to protest and prevent transfer of immovable property in the area concerned. The Civil Applications were dismissed with cost.”

9. At this stage, it is apposite to refer to the order dated 23.8.2023 passed in the Letters Patent Appeal No.1042 of 2023 in the Special Civil Application No.13041 of 2019, wherein paragraphs 4 to 8 read thus :-

“4. A perusal thereof shows that the learned Single Judge has noted that the applicants/appellants herein are signatories to panchnamas which confirmed that they were residing in the neighbourhood and the sale of the property was with free consent and fair value. The claim of the applicants that they were made to sign the panchnamas by misrepresentation and they did not understand the consequence, was repelled by the learned Single Judge, in absence of any material before the Writ Court. The averments in the affidavit of the State on record were further noted wherein the statements of the applicants recorded in the proceedings were brought on record. It was noted that the applicants/appellants did not dispute their signatures, but stated that in fact, they were not residing in the neighbourhood. In rebuttal of the said stand of the appellants, the original petitioners had produced the documents to substantiate that the signatories were residing in the neighbourhood at the relevant point of time.

5. It is further recorded in the judgment impugned that in so far as the consent of the neighbour, when the scope of inquiry before the Deputy Collector was that of free consent and fair value, the role of neighbour in the context of such sale, therefore, became irrelevant. The Deputy Collector who had passed the order dated 30.01.2017 was set aside by the leaned Single Judge in the main

judgment and order dated 09.03.2020 on the ground that the Deputy Collector has travelled beyond the question as to whether the transaction was an outcome of free consent and for fair value. In our considered opinion, the learned Single Judge has rightly noted that even the neighbours in their statements had supported the sale.

6. Taking note of the above findings returned by the learned Single Judge, we raised a pointed query to the learned counsel for the appellants to explain the conduct of the appellants in approaching this Court in the year 2023 seeking for recall of the judgment and order dated 09.03.2020, whereby the order passed by the Deputy Collector in the proceedings for grant of permission for execution of the sale deed, was set aside. We have asked him to explain as to why the appellants did not raise this grievance before the competent authority for a period of more than six years as the consent, admittedly, was given by the appellants on 19.09.2016. No plausible explanation could be offered before us for not approaching the competent authority, seeking for recall of the consent, in the panchnamas/documents signed on 19.09.2016. It is, thus, evident that the appellants herein have indulged in the act of both approbate and reprobate in their stand in the proceedings at different point of time.

7. The learned Single Judge has further noted that the motive of the applicants/appellants is questionable as they have approached this Court after a period of two years from the date the judgment and order dated 09.03.2020 and more than six years after putting signatures on the panchnama/declaration. It is evident that the review application filed by the appellants herein amounts to abuse of process of the Court. It was further noted that during the course of the proceedings in the review application, another application was made by 10 applicants being Civil Application No.1 of 2022, seeking to join as parties claiming them to be neighbours of the transferor on the ground that they are affected by the sale as their shops are adjoining to the property subject matter of sale. It is also noted by the learned Single Judge that after the sale deed was registered, application was moved for renovation of the property, the neighbours who are the applicants in Civil Misc. Application No.1 of 2022 came to this Court to prevent the transferee from undertaking repairs to the dilapidated structures. They also made a complaint to the police in order to stall the repairs/construction being carried out by the transferee. The findings returned in paragraph 21 of the judgment in review are to be reproduced

hereunder:-

“21. The motive of the applicants is questionable. The judgment was delivered on 09.03.2020. The signatures of the applicants - panchas is in context of their signatures made in the year 2016. Two years after the decision they surface before this Court asking for a recall of the order on the ground that they have never signed or that they were coerced into signing. Unfortunately, a suggestion from the Court to the State to examine this, led to a situation where the State machinery has gone ahead and re-examined these panchas in the year 2022-23, in which, they appear to be not disputing their signatures but the circumstances of they being made to sign. Statements have also been recorded of certain other neighbors who have now come forward suggesting that the sale should not have happened as it was creating a situation where the equilibrium was being disturbed. This exercise of the State, through an affidavit is a suggestion of opposing the application, but the intention is seen otherwise. The motive of the applicants has to be seen in light of this development. Unfortunately for the applicants, the apprehension of the Court on such motive appears to be justified by a subsequent application made being Civil Application No.1 of 2022 by ten third party applicants who professed to be neighbors seeking to be joined as parties to the recall application on the ground that they are really affected parties as the shops purchased by the original petitioners is adjoining their shops. It has come on record that the original petitioners after the sale deed was registered pursuant to the directions in the Misc. Civil Application, made an application for renovation so that the property can be occupied. This application of the petitioners was made to the police authorities on 08.10.2021 and it has come on record through the rejoinder filed by the original petitioners that the petitioners are being prevented from undertaking repairs to the dilapidated structure and when they were being prevented by the neighbors they had to complaint to the police. Obviously therefore, this when seen in context of the facts itself is a disturbing factor that a successful purchaser of property in a disturbed area is being hounded and thwarting his attempt to enjoy the fruits of the property which he successfully purchased. Obviously therefore not only does the Review Application, but the application of neighbors for Joining Party need to be dismissed.”

8. From the above noted facts, reflected from the record, which

could not be successfully disputed by the learned counsel for the appellants, we find justification in the order of dismissal of the review application with costs. No interference is called. The Appeal is dismissed being misconceived. The cost imposed by the learned Single Judge is hereby affirmed. The appellants shall deposit the same within a period of four weeks as per the directions of the learned Single Judge failing which adverse consequences will ensue.”

10. Considering the position of law and provisions of the Act as referred above, in the opinion of this Court, the impugned order dated 20.6.2019 passed by the respondent No.3 herein requires no interference and no case is made out to exercise powers under Article 226 of the Constitution of India for the following reasons :-

The properties were of the ownership of the respondents No.4 and 7 :-

- (i) Plot No.11 and 12 of Land Revenue Survey No.399 and 400, City Survey No.590 and 592 admeasuring 470 Sq.Mtrs., each of Taluka : Tandalja, Dist. Vadodara and
- (ii) Plot No.13 of Land Revenue Survey No.399 and 400, City Survey No.590 and 592 admeasuring 473 Sq.Mtrs., of Taluka : Tandalja, Dist. Vadodara.

(A) The respondents intended to purchase the said properties and since the properties were covered under the notification issued under Section 3 of the Disturbed Area Act, the respondent No.4 – original owner and the respondents No.5 and 6 preferred two applications for Plot Nos.11 and 12 and for Plot No.13 respectively under Section 5(2) of the Disturbed Areas Act for prior permission before the respondent No.3 - Deputy Collector, Vadodara City, as delegated authority of the respondent No. 2- Collector, Vadodara.

(B) In due compliance of Rule 4 of the Disturbed Area Rules, along with the said applications, the transferor, i.e ., Respondent No. 4 and the transferees, also submitted their affidavits that the intended transfer is with free consent and for fair value.

(C) The said applications came to be registered as

(i) Case No. AVT/Vashi/7285 of 2018 and

(ii) Case No.AVT/Vashi/7286 of 2018,

(D) Vide letters dated 11.01.2019, the respondent No. 3-

Deputy Collector initiated inquiry and directed the Mamlatdar, Vadodara City (West) and the Police Commissioner, Vadodara City to submit their opinion/report.

(E) In pursuant to the aforesaid, the Mamlatdar, Vadodara City (West) carried out a detailed inquiry and also recorded statements of the transferor, i.e ., the respondent No. 4, the Transferees and respondents No.5 and 6 and other neighbours. The Mamlatdar, Vadodara City (West) also carried out panchkyas of the said property.

(F) Based on the same, vide letter dated 14.03.2019, the Mamlatdar, Vadodara City (West) submitted a report that there is no objection in granting permission under the Disturbed Areas Act.

(G) The Police Commissioner, Vadodara City, also through Police Inspector, Tandalja Police Station carried out detailed inquiry and recorded statements of the transferor, i.e ., the respondent No. 4, the Transferees, i.e ., the respondents No.5 and 6 and other neighbours. Based on the aforesaid, on

01.06.2019, the Police Commissioner, Vadodara also submitted positive report that there is no objection in granting permission under the Disturbed Areas Act.

(H) Based on the aforesaid opinion as referred above, by order dated 20.6.2019 passed in (i) Case No. AVT/Vashi/7285 of 2018 and (ii) Case No.AVT/Vashi/7286 of 2018 the respondent No.3 Dy. Collector, Vadodara granted prior permission under Section 5(2) of the Disturbed Areas Act and permitted the respondent No.4 to sell the aforesaid two properties to the respondents No.5 and 6 herein.

(I) On being granted permission by the respondent No.3, the respondent No.4 executed two Registered Sale Deeds vide Registration No.13315 and 13316 in favour of the respondents No.5 and 6.

(J) After execution of the aforesaid Sale Deeds, some of the neighbours including the writ-applicants herein objected the same on communal ground and preferred representation to the

Collector, Vadodara City.

10.1 The aforesaid objection raised by the writ-applicant herein and some other neighbours resulted in an inquiry initiated by the respondent No.2 Collector and the same culminating into Appeals being MVV/Ashant/Vdd/4 of 2019 and MVV/Ashant/Vdd/5 of 2019 whereby by order dated 25.9.2019 the Principal Secretary, Revenue Department, (Appeals) suspended the application of the order dated 20.6.2019 passed by the respondent No.3. The respondent No.1 also directed to maintain status-quo in all the Government records. The aforesaid order resulted in filing of the Special Civil Application No.17822 of 2019 and the Special Civil Application No.17879 of 2019. Pending the said writ-applications the writ-applicants withdrew the said appeal being MVV/Ashant/Vdd/4 of 2019 filed before the Hon'ble SSRD by them. By order dated 13.12.2019 passed in the Special Civil Application No.17822 of 2019 held that appeal being MVV/Ashant/Vdd/4 of 2019 be withdrawn from the file of the Hon'ble SSRD. The

Appeal being MVV/Ashant/Vdd/5 of 2019 preferred by the respondent No.2 – Dy. Collector, Vadodara held to be not maintainable and ordered to be dismissed from the file of the Hon'ble SSRD by order dated 13.12.2019 passed in the Special Civil Application No.17822 of 2019 and the Special Civil Application No.17879 of 2019. The writ-applicants herein preferred the present writ-application challenging the order dated 20.6.2019 passed by the respondent No.2 – Dy. Collector, Vadodara as delegated authority granting prior permission under Section 5(2) of the Disturbed Areas Act and permitted the respondent No.4 to sell the aforesaid properties to the respondents No.5 and 6.

11. Considering the Scheme of the Disturbed Areas Act, the writ-applicants were not required to be heard and the other consideration as pointed out by the writ-applicants are not germane. Once the sale is held to be bonafide, no interference is called for to exercise extraordinary jurisdiction under Article -226 of the Constitution of India. Sections 4 and 5 of the Act

provide that when the question of either giving post-facto sanction to such sale or a permission to sale is concerned, the Collector is required to consider whether the sale is for a fair consideration and with pre-consent. The object to get into such sale consideration is not to see whether it would create any law and order problem but to decide whether the sale is a distress sale so as to migrate from such an areas by any manner getting away and selling his property for whatever consideration under fear.

12. Having considered the provisions of the Act and position of law as referred above and the facts of the Special Civil Application No.20840 of 2019 and Special Civil Application No.20839 of 2019 the sale in question between the respondents No.4, 5 and 6 and respondents No.4 to 7 respectively is by free will and for a fair consideration of the immovable property to be transferred and after having been granted permission from the competent authority under Section 5 of the Disturbed Areas Act. The same having been subject matter

of challenge in the earlier round of litigation and the writ-applicants herein having challenged the same and having withdrawn the proceedings earlier also the present writ-applications being devoid of merit are required to be dismissed and the same are dismissed. Since the main writ-applications are rejected, the civil application also stands disposed of.

K.K. SAIYED

(VAIBHAVI D. NANAVATI,J)