IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLICATION (FOR REVIEW) NO. 1 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 13041 of 2019
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 13041 of 2019

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FARHAN TASADDUKHUSAIN BARODAWALA
Versus
ONALI EZAZUDDIN DHOLKAWALA

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Appearance:
MR JAYRAJ CHAUHAN, ADVOCATE for MR. ALKESH N SHAH(3749) for the PETITIONER(s) No.
for the RESPONDENT(s) No.
MR MOHMEDSAIF HAKIM(5394) for the RESPONDENT(s) No.

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 09/02/2023
CAV IA ORDER

1. This Misc. Civil Application has been filed to recall or review the judgment and order dated 09.03.2020 passed in Special Civil Application No.13041 of 2019 and order dated 23.12.2020 passed in Misc. Civil Application (For Direction) No.1 of 2020 in the aforesaid petition.

2. Special Civil Application No.13041 of 2019 was filed by one Onali Ezazuddin Dholkawala challenging the order of the Deputy Collector, Vadodara dated 30.01.2017 confirmed by the Secretary, Revenue Department on 13.06.2018. By these

orders, the petitioner's permission for purchase of property in predominantly Hindu area was rejected on the ground that such sale was likely to affect the balance in the majority Hindu / Minority Muslims and could develop into law and order problem.

3. After setting out the facts as stated in the petition and based on the arguments advanced for the parties that is the petitioners and the State counsel, the petition was allowed. The Court opined that what is to be seen is whether the sale was for a fair consideration and with free consent. The consideration on whether it would create a law and order problem and disturb the equilibrium was misconceived.

4. Appreciating the provisions of the Gujarat Prohibition of Transfer of Immovable Property and provisions of Tenants from Eviction from Premises in Disturbed Areas Act, 1981 (for short, hereinafter referred to as `the Disturbed Areas Act'), the Court found that the petitioners - transferee and the sellers - transferor had entered into a sale deed and before it

could be registered, application seeking previous permission was necessary under the provisions of the Disturbed Areas Act. Paragraph Nos.2.2 to 2.3, 3 and 4 of the judgment dated 09.03.2020 passed in Special Civil Application No.13041 of 2019 which is sought to be recalled, read as under:

> "2.2 It is the case of the petitioners that the intended sellers wanted to transfer the property in favour of the petitioners. They therefore executed sale deed. Such sale deed was presented before the Sub-Registrar for registration. It was at that point of time that the parties noticed that since the area in which the property is situated is declared as "disturbed area", prior permission of the Deputy Collector under the Disturbed Areas Act was necessary.
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> 2.3 Accordingly, the petitioners preferred an application under Section 5(3)(c) of the Disturbed Areas Act to the Deputy Collector, Vadodara. The application so made is at page 26 of the paper-book of the petition. Such an application was made in the prescribed format. Under Rule 4(1) of the Rules under the Disturbed Areas Act, the application was made accompanied by the sellers statement, the sellers' affidavit and the purchasers' statement and the affidavit of the purchasers. The statements and the affidavit made both by the sellers and the purchasers respectively unequivocally stated that the sale of property

was with free consent and the consideration of a fair value. This was so made as it was a requisite according to the petitioners, under Section 5 of the Disturbed Areas Act.

3. It appears that on the applications being made, by a letter dated 01/06.08.2016, the Deputy Collector, Vadodara, addressed a letter to the Police Commissioner of City of Vadodara. By the aforesaid letter, a focused inquiry was sought to be made at the hands of the Police Commissioner on the following points:

(I) Whether the sale in question is with free consent?

(II) Is there a likelihood of a law and order problem in future ?

(III) Is the sale likely to affect the balance in the majority Hindu/minority Muslim strength ?

(IV) Is the sale likely to affect the neighborhood ?

A report was called for.

4. The Police Commissioner, Vadodara, vide letter dated 09.08.2016 requested the Deputy Commissioner of Police, Vadodara, to make inquiry and submit the report. A report was accordingly submitted by the Assistant Police Commissioner on 09.08.2016. On 19.09.2016, the Talati and the Circle Officer recorded the statements of the transferor, transferee and the people from the

neighborhood."

5. As prescribed in the procedure with the application for previous permission the affidavit of the petitioner and the seller was annexed to the application in the prescribed format and panchnamas were drawn by the neighborhood occupants. Two panchnamas were drawn. Both these panchnamas confirmed through the signatures of the panchas registering their consent to such sale. However, since the police report opined that such a transfer would create a law and order problem as a sale through a Muslim by Hindu would result in polarization, it was opined that the application should not be granted.

6. Appreciating the legal position, the Court opined that this was foreign to the concept of the decision making process as what was only important was whether it was not a distress sale and the property was sold for a fair value with free consent.

7. After the final judgment, since the Sub Registrar was not

completing the registration procedure *qua* the sale deed the petitioners were constrained to move Misc. Application No.1/2020 with a prayer that the Sub Registrar be directed to complete the registration of the sale deed dated 22.04.2016. The application was heard from time to time and the directions of the judgment were complied with and the document was registered vide order dated 15.12.2020. The learned advocate for the petitioner sought permission to withdraw the application which was disposed of.

8. It appears 3 years after the order, the signatory to the panchnamas one each of the two separate panchnamas who had otherwise supported the sale approached the Division Bench challenging the judgment and order dated 09.03.2020. The appeal was withdrawn with a liberty to file review.

9. Mr. Jayraj Chauhan, learned counsel appearing with Mr. Alkesh N. Shah, learned advocate for the applicant would make the following submissions:

* Mr. Chauhan would submit that the declarations of the owners and the purchasers were dated 14.04.2016 and 15.04.2016. The sale deed was executed on 22.04.2016. The permission to sell is sought after the execution of the sale deed on 01.08.2016. Reading section 5 of the Disturbed Areas Act, it was the submission of Mr. Chauhan that in accordance with the provisions thereof it was necessary for the parties to obtain previous sanction of the Collector. In the petition, no date of the sale deed was mentioned and neither the judgment records the fact that the sanction was sought after the execution of the sale deed. There was no previous sanction and therefore the permission so obtained was prohibited under the law.

* Mr. Chauhan would submit that even in the MCA (For Direction), it was for the first time factually pointed out to the Court by expressly stating the date of the sale deed. He would read out the memo the MCA (For Direction) filed by the petitioner.

* Mr. Chauhan would therefore submit that the judgment and order dated 09.03.2020 was obtained by fraud inasmuch as what was sought to be projected by the petitioners was that a previous sanction is prayed for, whereas, the sale deed was already executed before the application for permission was filed on 01.08.2016, four months after the sale deed dated 22.04.2016.

* Mr. Chauhan would further submit that there were certain factual errors in the judgment inasmuch as the Court at more than one places has had factually stated that the sale was to a Hindu of a shop which was predominantly in the area of Muslim population whereas the correct fact was that it was a shop of Hindu sold to a Muslim in a Hindu dominated area.

* Mr. Chauhan would further submit that the provisions of the Disturbed Areas Act also provided that in case there is likelihood of polarization of the person belonging to a community causing disturbance in demo-graphical equilibrium

of the persons belonging to the different communities residing in the area, the application could be rejected. No fault can therefore be found with the orders impugned in the petition.

* Mr. Chauhan would further submit that the applicants who were panchas were never neighbors and they dispute their signatures. They had signed on the panchnamas by coercion and therefore it was evident that the order / judgment was obtained by fraud.

* Mr. Chauhan would further place on record notifications issued under the Disturbed Areas Act in support of his submission that it was not in dispute that the property in area and the police station attached to it were covered under the notification under the Act.

* In support of these submissions, Mr. Chauhan would rely on the decision in the case of **Board of Control for Cricket in India v. Netaji Cricket Club** reported in **2005(4) SCC, 741.** Relying on paragraph Nos.88 to 93 thereof, it was

his submission that when there was a mistake in the order it would constitute sufficient reason to recall the order. The fact that no previous sanction actually was obtained in light of the sale deed being of an earlier date than the application for permission and since the Collector does not have power to grant "*post facto* permission" the permission was void and, therefore the judgment ought to be recalled.

* Mr. Chauhan also relied on the following decisions:

(a) Orissa Public Service Commission v. Rupashree Chowdhary reported in 2011(8) SCC 108.

(b) Mansukhlal Vithaldas Chauhan v. State of Gujarat reported in 1997(7) SCC, 622

(c) Sant Lal Gupta v. Modern Coop. Housing Society Limited reported in 2010(13) SCC, 336 &

(d) Hamza Haji v. State of Kerala reported in 2006(7) SCC, 416.

* In short, it was his submission that since the judgment and order was obtained by wrong presentation of facts and on a misconstruction of law it needed to be recalled.

10. Mr. MTM Hakim, learned counsel appearing for the original

petitioners – respondent Nos.1 and 2 in the application would extensively read the order of which recall is prayed for and submit that there was no misconception of the fact that the Court was aware that the sale deed was executed. The Court has recorded such execution and it was the case of the petitioners that when presented before the Sub Registrar for Registration, the authority refused to register the sale without the permission of the Collector under the provisions of the Disturbed Areas Act. Mr. Hakim would read out the relevant paras of the decision in support thereof.

* Mr. Hakim would further submit based on the documents produced before this Court and reading the averments in the petition that but for the known fact that the sale had already been undertaken which is evident from the statement of the petitioners - purchasers and of the sellers in the application for permission, there is no misconception of fact or wrong presentation. It is a recognized practice before the authorities that the sale deed when entered into and

presented to the Sub Registrar for Registration, the registration would not be granted and the document not released till the permission of the Collector under the Disturbed Areas Act is obtained. Across the bar, he tendered communications dated 12.04.2022 and 20.06.2022 indicating that the Additional Registrar of Stamps had given instructions that henceforth, no documents be accepted for registration without the parties obtaining previous permission.

* Mr. Hakim would therefore submit that the petitioners have not committed any fraud nor did the Court be misled to take a view other than the one it did take in the facts of the case.

* Mr. Hakim would further submit that in fact the document was presented for registration on 22.04.2016 and but for the MCA (For Direction) the document could not have been registered on 15.12.2020. The registration and the date thereof is the date when the document is said to be executed. In support of his submission, Mr. Hakim would rely on a

decision in the case of **Ghanshyam Sarda v. Shashikant Jha, Director of M/s. J.K. Jute Mills Company Limited** reported in **2017 (1) SCC, 599**. There was therefore previous sanction obtained.

* Mr. Hakim would further submit that the applicants who were panchas of two different panchnamas have no locus to prefer this application for recall as they were not legally necessary parties in the proceedings for grant of permission. In fact, the Court in its judgment had categorically observed that the neighbors have no role to play in the transaction.

* Mr. Hakim would submit that on the affidavit filed by the State and the documents annexed thereto the panchas do not dispute their signature but have now subsequently disputed their consent. This is a motivated exercise and even the action of the State in taking statements of neighbors in addition to these panchas shows that anyhow the order of this Court should not see its enforcement.

* Mr. Hakim would further submit that while deciding the issue, the Court had relied on a decision in the case of **SNA Infraprojects Pvt. Ltd. v. Sub Registrar reported in 2011(3) GLH, 15**, where the Court had very categorically held in the facts of that case that the Civil Application filed by the neighbors was misconceived and deserves to be dismissed with costs. The present application also therefore should meet the same fate.

* Mr. Hakim would also submit that the application filed by the neighbors i.e. Civil Application No.2 of 2022 for Joining Party is also an application which is a motivated application.

11. Ms. Dharitri Pancholi, learned Assistant Government Pleader for the respondent - State would submit that the State has only pursuant to the oral directions of the Court undertaken the exercise of recording statements of the panchas who have said that they were constrained to sign the panchnamas as neighbors. Subsequently some other statements of the

neighborhood were obtained which indicated that the neighbors had expressed reservations against the transaction of the sale of the property in question.

12. Having heard learned advocates for the respective parties, the question that needs to be considered is, do the judgment and order dated 09.03.2020 and the order dated 23.12.2020 deserve a recall. The first limb of the argument of the learned counsel for the applicants seeking recall is that there are several mistakes in the order inasmuch as, factual errors have been made in description of the community in context of the transaction of sale. It is the case of the applicants that the shop was of Hindu which was sold to a Muslim in a Hindu community area whereas, in paragraph Nos.5 and 6 of the judgment the Court has mentioned that it was a sale to a Hindu.

13. The order when read in its entirety indicates that in paragraph No.15.2 it is specifically recorded **"since the sale was for a property which belonged to Hindu and was being**

purchased by the petitioner - `a Muslim, since it was in the disturbed area, such an application was made.' Singular error in isolation of the entire order could not make the order so vulnerable legally so as to call for a recall of the order. It is a minor mistake of an inconsequential import.

14. Coming to the argument of the learned counsel for the applicants that the order was obtained by fraud by not disclosing the fact that the application for permission was made on 01.08.2016 whereas the sale deed was of 22.04.2016, there was no previous permission sought for as stipulated under the provisions of section 5 of the Act. To this, it is to note that the submission of the learned counsel of the petitioners at the point of argument was that the sale was already done. It was his case that the sale deed was executed and when it was presented before the Sub Registrar for registration, it was at that point of time that the parties noticed that since the area in which the property is situated is declared as `disturbed area,' prior permission of the Deputy Collector

was necessary. Paragraph No.2.2 of the judgment notes that fact so also paragraph Nos.5 and 6. It therefore cannot be accepted that the judgment that was pronounced in the facts was obtained by fraud.

15. The Court examined the provisions of the Disturbed Areas Act in light of the challenge to the rejection on the ground that it would create a law and order problem. Recording the appreciation of facts, the Court opined that what was necessary in the scope of inquiry that the Deputy Collector had to undertake was whether the property in question was sold on a fair value and with free consent. It is in this context that the statements of the seller and the purchasers were recorded. Both these statements were annexed to the petition and both the parties that is the purchasers and sellers confirmed that the transaction of sale was in accordance with the jantri rates. Therefore to contend that there was no sale deed and that fact was not disclosed is misconceived. There was no suppression of fact nor a false suggestion and the concept of previous

permission was discussed in light of the fact that the authorities had refused to register the sale deed without permission being produced under the provisions of the Disturbed Areas Act. It was not a case where the learned counsel for the petitioners had misrepresented elementary facts so as to obtain an order.

16. Mr. MTM Hakim, learned counsel for the respondents / original petitioners has, across the bar tendered communications by the office of the Sub Registrar which indicate that instructions have been issued to the registering authorities to henceforth not accept sale deeds for registration unless permission under the Act are accompanying the sale deed. Obviously therefore, in the facts of the case it was evident that the sale deed was executed and when it was presented for registration did the question of permission crop up.

17. Even otherwise as pointed out by Shri Hakim in the decision in the case of **Ghanshyam Sarda (Supra)** it is only when the

instrument is registered does the document effectuate transfer of interest in favour of the transferee. It has been vehemently contended by and on behalf of the applicants that looking to the objection reasons of the Act and especially the aspect of polarization of communities which tend to disturb the demographic equilibrium was not relevant at the time of the transaction as the amendment was not enforced. Therefore, on the aforesaid premises what is evident is that there was no case made out that the petitioners had attempted to mislead the Court. It may amount to non-disclosure of a fact which was not intentional.

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:
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> "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....
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> ".....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 s 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 sub-district, 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

(l) 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.

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 on 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.

22. In view of above, the application for Review being Misc. Civil Application No.1 of 2022 is dismissed with cost of

Rs.25,000/- (Rupees Twenty Five Thousand Only). Civil Application No.2 of 2022 for joining party is also dismissed with cost of **Rs.25,000/- (Rupees Twenty Five Thousand Only)**. The cost shall be deposited before the Gujarat State Legal Services Authority within a period of *four weeks* from the date of receipt of copy of this order.

23. The original records have been handed over to the Ms. Dharitri Pancholi, learned Assistant Government Pleader which Ms. Dharitri Pancholi has handed over to the Officer of the Deputy Collector, Vadodara City, Vadodara.

(BIREN VAISHNAV, J)

VATSAL