

**GUJARAT HIGH COURT**

**Hon'ble Judges:R.D.Kothari, J.**

Rahulkumar Srivastava Managing Director Of The Kaira Distr Versus Ashokkumar  
Mansukhlal Parmar Deputy Mamlatdar (Election)

SPECIAL CRIMINAL APPLICATION No. 2407 of 2010 ; \*J.Date :- JULY 31, 2015

- [GUJARAT PANCHAYATS ACT, 1993](#) Section - [50](#), [44](#)
- [CODE OF CRIMINAL PROCEDURE, 1973](#) Section - [155](#), [154](#)
- [CONSTITUTION OF INDIA](#) Article - [226](#)
- [MOTOR VEHICLES ACT, 1988](#) Section - [2\(47\)](#)

**Constitution of India - Art. 226 - Gujarat Panchayats Act, 1993 - S. 44, 50 - Motor Vehicles Act, 1988 - S. 2(47) - Code of Criminal Procedure, 1973 - S. 154, 155 - requisitioning of vehicle for election purposes - non-compliance of requisition - complaint registered - petition for quashing the complaint - held, exercise of power u/S. 44 of the Act by the authority to requisition the premises, vehicle etc., is not limited to actual owner or to the person who is in actual possession - authority may issue requisition who is deemed to be owner or to even one who is deemed to be in possession - such deeming provisions confers fairly wide power on the authority to secure the vehicle etc. - such technical plea by itself cannot frustrate the powers conferred upon authority - vehicle in question in the present case would not fall within meaning of "transport vehicle" even if one goes by dictionary meaning and not rely on meaning stated in Motor Vehicles Act - S. 160 of the Representation of People Act, authorized the authority to requisitioned the vehicle - material in the present case is insufficient record of finding about the mala fide and whether there is colourable exercise of power or not - even then, from the material, record exercise of power is improper and it was uncalled for - if this point would have been agitated by the parties by filing detailed affidavits, what appears in the circumstances of the case is it would have been difficult for the State Government to defend the allegations of oblique motive and mala fide - vehicle for which order of requisition passed by authority is apparently quite mismatch with the vehicle for which powers to requisition are conferred upon authority - further, registering complaint u/S. 154 of Cr.P.C. for offence for which complaint u/S. 155 of Cr.P.C., is highly improper - registering of criminal complaint, impugned notice and order passed by authority quashed and set aside - petition allowed.**

**Imp.Para:** [ [5](#) ] [ [10](#) ] [ [11](#) ] [ [12](#) ]

**Cases Referred to :**

1. Anirban Ghosh V/s. Dist. Election Officer & Anr., 2006 4 CHN 207
2. Express Newspapers Pvt. Ltd. & Ors., V/s. Union Of India & Ors., AIR 1986 SC 872
3. General Assembly Of Free Church Of Scotland V/s. Overtown, 1904 AC 515
4. Pratap Singh V/s. State Of Punjab, AIR 1964 SC 72

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5. S. Pratap Singh V/s. State Of Punjab, 1964 4 SCR 733
6. Short V/s. Poole Corporation, 1926 1 Ch 66

**Equivalent Citation(s):**

2016 (2) GLR 1469 : 2015 JX(Guj) 1627

**JUDGMENT :-**

**1** The case is some what interesting although the facts are not unique or unusual. In later part of 2010, general elections of Taluka Panchayat in the District of Anand was scheduled. The Collector, Anand had sent a letter to the petitioner for requisitioning his vehicle for election purpose. The petitioner herein is the Managing Director of Amul Dairy. The Collector, had passed an order on 11.10.2012 for requisitioning the vehicle of the Chairman, Amul Dairy, Anand. The said order was forwarded to the present petitioner. The order directs the petitioner to produce the vehicle with driver on the same day i.e. on 11.10.2010 at 5:00 p.m. It also states that if the vehicle is not in working condition, the same shall be produced after getting it repaired. The petitioner replied to the Collector on the same day expressing inability to submit the vehicle as the vehicle is provided to the Chairman for attending the office. On 14.10.2010, the Collector had addressed a letter wherein the petitioner's attention was drawn to consequence of noncompliance of requisition namely it would attract Section 50 of the Gujarat Panchayat Act (hereinafter referred to as the "Act"). It was also pointed out that Section 50 of the Act provides for one year imprisonment and/or fine. The said letter also directs the petitioner to submit the vehicle forthwith. The vehicle was not supplied despite the reminder. Noncompliance of the requisition made has led the Deputy Mamlatdar to file the present complaint. The complaint was registered as II C.R. No. 3323 of 2010 at Anand Station Chowky Police Station. The petitioner prays to quash the said complaint.

**2** Heard the learned advocates for the respective parties.

**3** Learned senior advocate Shri K.S. Nanavati for the petitioner after briefly referring to the facts of the case has mainly raised three points;

(1) The authority cannot requisitioned the vehicle of a person who is neither the owner nor in possession of the vehicle. Therefore, requisition made herein is not legal, as petitioner neither owns nor possess the vehicle.

(2) Offence under Section 50 of the Act is noncognizable offence therefore filing of complaint under Section 154 of the Code of Criminal Procedure is not legal and proper. The complaint is to be filed under Section 155 of the Code of Criminal Procedure. That the police can proceed only after obtaining the order from the Magistrate since it is complaint for commission of noncognizable offence.

(3) That the exercise of discretion by the Collector is unreasonable and improper. Therefore alleged noncompliance of requisition does not attract Section 50 of the Act.

**4** Opposing this submission, learned APP Mr. Jani has submitted that the submissions of the learned advocate for the petitioner gives an impression that in noncognizable offence, the Police cannot register the complaint. Drawing attention to Section 155(1) of the Code of Criminal Procedure, it was pointed out that it very much provides for recording information of commission of noncognizable offence. After recording such information, the Police would

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take steps to obtain the order of Magistrate. In the present case, immediately on lodging of the compliant, the petitioner has approached this Court and thereafter has obtained interim relief, because of which the Police could not proceed to obtain the order from the Magistrate. It was also pointed out that the compliant is registered as IIC. R., and therefore, also, it cannot be said that the complaint is registered as if it is cognizable offence. It was submitted that the plea raised by the petitioner in this regard is only exaggeration. It was also submitted that other pleas raised also does not call for interference of this Court.

#### 4.1. I may consider the rival submissions

5 Section 44 of the Act deals with "Requisitioning of premises, vehicles etc., for the election purpose. Subsection 2 of Section 44 of the Act says that the person who is deemed to be owner or in possession of the property, shall be served with requisition. The submission of the petitioner in this regard is based on the fact that the petitioner is Managing Director and the vehicle in question is in possession of the Chairman and, therefore, the petitioner is not in possession of the said vehicle. As to the ownership of this vehicle, relying on R.C. Book, it was submitted that the vehicle is registered in the name of Kaira District Cooperative Milk Producers' Society. Thus, the petitioner is neither the owner nor in possession of the vehicle and, therefore, initiation of proceedings is bad. This submission in the circumstances of the case is too broad submission to accept. It may be bear in mind that exercise of power under Section 44 of the Act by the authority to requisition the premises, vehicle etc., is not limited to actual owner or to the person who is in actual possession. It may happened that the authority may not be aware about the actual ownership of the vehicle or actual ownership may be in dispute the dispute may be sham or genuine. Similarly, by accident or otherwise the vehicle may be at the relevant time possessed by some other person or third party. The authority may issue requisition who is deemed to be owner or to even one who is deemed to be in possession. Such deeming provisions confers fairly wide power on the authority to secure the vehicle etc. Such technical plea, without more, by itself cannot frustrate the powers conferred upon the authority.

5.1. As to the defect in registering the complaint, learned APP Shri Jani has rightly submitted that the Police are not precluded from registering the information received by it about noncognizable offence. This cannot be disputed. But the submission that before the Police can obtain orders from the Chief Judicial Magistrate, Court, the petitioner in the present case has approached this Court and the proceedings are stayed and, therefore, there is noncompliance of Section 155 (1) of Code of Criminal Procedure is difficult to accept. The complaint is lodged on 28.10.2010. Then the present petition appears to have been filed on 30.11.2010. Interim relief was granted by this Court by order dated 09.02.2011. That being so, it cannot be said that because of the interim relief granted by this Court, the Police could not proceed in this regard. As to the defect or irregularity in lodging the complaint, bare perusal of the compliant filed herein (Annexure" I") would show that the compliant is filed in printed form. The form clearly shows that it is meant for registering the complaint under Section 154 of Code of Criminal Procedure i.e. for registering cognizable offence. In fact, the form says so. It may be stated that at the time of hearing, learned APP Shri Jani on instructions from the responsible Police Official from the concerned Police Station present in the Court has submitted that the said Police Station has no other form or register to register the information of the noncognizable offence. In other words, for all and every kind of the information and complaint, this common form/register is used. Such specific reply is more than surprising. The submission of learned APP Shri

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Jani that the offence is registered as IIC. R., as distinct from offence registered as IC. R., for cases of cognizable offences and, therefore, no serious irregularity is to say the least is not way of complying statutory requirement. Registering a complaint as IIC. R., by using the form of IC. R., is highly improper. In any case, there must be separate form and/or register for registering noncognizable offence. In a given case, use of form i.e. registering it as cognizable offence may give room to the Police to abuse or misuse the power. Going by general reputation of Police it is highly unlikely that the Police armed with complaint which is registered in dubious manner would not abuse their powers. I do not agree with the submission that it is only irregularity and it is formal defect. The defect that has clear potential to disguise noncognizable offence as cognizable offence cannot be dismissed as formal defect. Issue needs immediate attention of higher authority in Home Ministry if this position prevails throughout the State. It may also be noted that, registering complaint in the registered kept for registration of noncognizable offence would also in the interest of department as it would work as a check on exercise of powers of Police. Registering of complaint in the present case is highly irregular and not proper. The submission of learned APP Shri Jani, in this regard is difficult to accept.

**6** Now, the last submission namely exercise of power by the Collector is bad and unreasonable.

6.1. In oft quoted case of *Express Newspapers Pvt. Ltd. & Ors., v. Union of India & Ors.*, (AIR 1986 SC 872), it was held :

"118. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh v. State of Punjab*, (1964) 4 SCR 733: (AIR 1964 SC 733). A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown*, 1904 AC 515, 'that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred. It was said by Warrington, C. J. in *Short v. Poole Corporation*, (1926) 1 Ch 66 that:

"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative." (para 18).

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6.1.1. The Court therein had referred other English cases and had observed that all these cases were cited with approval in Pratap Singh s case (supra).

**7** The following principles emerges from the above.

- (1) Exercise of power by the authority may be in good faith or in bad faith.
- (2) If powers are not exercised with bona fide, it comes very close to fraud on power.
- (3) What is fraud on power ? If powers are exercised by taking into account the extraneous matters or by ignoring the relevant matters or such exercise of powers are in breach of of law, then in all these instances exercise of power may be with good intention such exercise is fraud on power
- (4) One of the mode to measure nature of exercise of power is to consider the intention of authority. Intention may be very good, but its exercise may be in breach of law. It is also fraud on power.
- (5) Exercise of powers for improper motive i.e. to satisfy private or personal grudge or for showing vengeance, then it is fraud on power.
- (6) if the authority that has power is motivated by personal animosity qua those who are directly affected by such exercise, then such exercise of power can be considered as exercised for improper motive.
- (7) Use of power for foreign purpose i.e. the use of power for the purpose other than the one for which the powers are conferred, such exercise of power would be mala fide use of power.

**8** In the case of Express Newspapers (supra), the petitioner had challenged the validity of notice issued by Central Government. It was ".....notice of reentry upon forfeiture of lease granted by the Central Government....." Pursuant to the notice, the petitioner were also threatened for demolition of Express buildings situated at Bahadur Shah Zafar Marg, New Delhi. One of the main contention of the petitioner was, notice issued is mala fide. The Court had allowed the petition and the notice issued by the authority was quashed and set aside.

**9** Pratap Singh v. State of Punjab AIR 1964 SC 72, which was relied on in Express Newspapers case (supra), the Apex Court has observed,

" .....if the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court. In such an event, the fact that the authority concerned denies the charge of mala fides or asserts the absence of oblique motives or of its having taken into consideration, improper or irrelevant matter does not preclude the Court from enquiring into the truth of the allegations made against the authority and affording appropriate reliefs to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out.....". (emphasis supplied).

**10** In the present case, purported exercise of power is under Section 44 of the Gujarat Panchayat Act, 1961. It reads as thus :

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"Section 44. Requisitioning of premises, vehicles etc., for election purposes.

(1) If it appears to an official authorized by the State Government in this behalf (for conduct of elections under this Act) (hereinafter referred to as "the requisitioning authority") that in connection with an election under this Act,

(a) any premises are need or are likely to be needed for the being used as polling station or for the storage of ballot boxes after a poll has been taken, or

(b) any vehicle, vessel or animal is needed or likely to be needed for the purpose of ballot boxes to or from any polling station or transport of members of the police force for maintaining order during the conduct of such election. the requisitioning authority may by order in writing requisition such premises, or as the case may be, such vehicle, vessel or animal and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning. Provided that no vehicle, vessel or animal which is being lawfully used by a candidate or his agent for any purpose connected with the election of such candidate shall be requisitioned under this subsection, until, the completion of the poll at such election.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the requisitioning authority to be the owner or person in possession of the property, and such order shall be served in the manner prescribed by rules made by the State Government under this Act, on the person to whom it is addressed.

(3) Wherever any property is requisitioned under subsection (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that subsection.

(4) In this section (a) "premises" means any land, building or part of a building and includes a hut, shed or other structure or any part thereof; (b) "vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise."

10.1. Bare reading of this provision would show that the legislature has taken care to place check and control, while conferring power on the authorities to requisition vehicle etc. The authorities can requisitioned the vehicle etc., only "...for the performance of any duty in connection with election..." Further, the authority is not supposed to exercise power under this provision for all and every kind of vehicle. The nature of vehicle is specified. Powers are conferred to requisition transport vehicle. The transport vehicle is defined in Section 2(47) of the Motor Vehicles Act, 1988. It says : "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle". The vehicle in question in the present case would not fall within meaning of "transport vehicle" even if one goes by dictionary meaning and not rely on meaning stated in Motor Vehicles Act.

10.2. In this regard, the learned advocate for the petitioner has rightly drawn attention to the case of Anirban Ghosh v. Dist. Election Officer & Anr., reported in 2006 (4) CHN 207. In the identical situation, the question arose in that case under Representation of People Act, 1951. Section 160 of the Representation of People Act, authorized the authority to requisitioned the vehicle. One of the question in that case

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was Does the Representation of the People Act, 1951 authorise indiscriminate requisitioning of vehicles ? In the course of discussion, observing that the matter can be looked at in another way it has observed :

"24. Anyone contemplating to hire a car would naturally look for contract marriage or a cab owned by a transport operator. No one in his senses would think of gaining access to a motor car or omnibus meant for personal use of the owner nor would he insists upon using the same for no better reason than that he is prepared to pay the hiring charges. This is precisely what the respondents have or have been seeking to do. Such an act is irrational and arbitrary and is patently opposed to Article 14 of the Constitution of India. The issue is answered accordingly."

**11** The petitioner herein has sought draft amendment and the same was allowed. Therein, the petitioner has prayed to quash the notice issued in this case also on the ground that it is " suffering from colourable exercise of power, suffering from legal mala fide...." No reply to this by the State Government. The material in the present case is insufficient record of finding about the mala fide and whether there is colourable exercise of power or not. Even then, from the material record, it can certainly be said that exercise of power is improper and it was uncalled for. It can also be said that if this point would have been agitated by the parties by filing detailed affidavits, what appears in the circumstances of the case is it would have been difficult for the State Government to defend the allegations of oblique motive and mala fide.

**12** The petition is allowed. The vehicle for which the order of requisition passed by the authority is apparently quite mismatch with the vehicle for which powers to requisition are conferred upon the authority. Further, registering the complaint under Section 154 of Code of Criminal Procedure for the offence for which complaint under Section 155 of Cr. P.C., is to be recorded is also highly improper and submission in this regard of the learned senior counsel Shri K.S. Nanavati is to be accepted. The Notice issued by the authority dated 11.10.2010 and the order passed on 14.10.2010 and registering of criminal complaint pursuant to that i.e. IIC. R. No. 3324 of 2010 before Anand Police Station are hereby quashed and set aside. Rule is made absolute to the above extent.

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2016 (2) GLR 1334

**GUJARAT HIGH COURT**

**Hon'ble Judges:C.L.Soni, J.**

Mccain Foods India Private Limited Versus State Of Gujarat

SPECIAL CIVIL APPLICATION No. 16790 of 2014 ; \*J.Date :- JULY 06, 2015

- [BOMBAY TENANCY AND AGRICULTURAL LANDS ACT, 1948](#) Section - [63AA](#)
- [BOMBAY LAND REVENUE CODE, 1879](#) Section - [65B](#)
- [BOMBAY PREVENTION OF FRAGMENTATION AND CONSOLIDATION OF HOLDINGS ACT, 1947](#) Section - [31](#)
- [CONSTITUTION OF INDIA](#) Article - [226](#), [227](#)

**Gujarat Tenancy and Agricultural Lands Act, 1948 - S. 63AA - Bombay Land Revenue Code, 1879 - S. 65B - Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 - S. 31 - Constitution of India - Art. 226, 227 - respondent No. 2 Collector ordered to file the application preferred by petitioner u/S. 63AA of the Gujarat Tenancy Act on the ground that the land was entered in revenue record as Block as per Block Consolidation Scheme, and such block of the land is divided without permission of the competent authority, which amounted to breach of provisions of S. 31 of the Prevention of Fragmentation Act and therefore, there was no clear title to the land of petitioner - respondent No. 3 Prant Officer declared the sale of the land invalid as made in breach of Fragmentation Act and without permission of the competent authority - petition - held, petitioner once acquired interest in the land in question as back as in the year 2005 and having got one order in its favour made by Collector on 18.4.2009 for conversion of the land from new tenure to old tenure, it was incumbent upon Prant Officer to afford opportunity to petitioner before making impugned order - Court further finds that since the order dated 9.11.2011 was made prior to the declaration made by Prant Officer about invalidity of the sale transaction took place between original owner and 'M' same also needs to be quashed to be reconsidered after Prant Officer decides the matter afresh after hearing petitioner - matter remitted to respondent No. 3 Prant Officer for deciding it afresh after giving full opportunities to petitioner - petition partly allowed.**

**Imp.Para:** [ [10](#) ] [ [11](#) ] [ [12](#) ]

Equivalent Citation(s):

2016 (2) GLR 1334 : 2015 JX(Guj) 514

**JUDGMENT :-**

1 Draft Amendment is granted. To be carried out forthwith.

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**2** Additional Affidavit-in-Reply of the respondent No.3 tendered by learned Assistant Government Pleader Mr. Raval is taken on record.

**3** With consent of the learned advocates for the parties, the matter is taken up for final hearing and disposal. Hence, RULE. Learned Assistant Government Pleader Mr. Raval waives service of Rule for the respondents.

**4** By the present petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the order dated 9.11.2011 and 6.8.2014 passed by the respondent No.2 and respondent No.3 respectively.

**5** By the order dated 9.11.2011, respondent No.2- Collector ordered to file the application preferred by the petitioner under Section 63AA of the Gujarat Tenancy and Agricultural Lands Act, 1948 ('the Act') on the ground that the land bearing Survey No.377 of village Baliyasan, District Mehsana, was entered in the revenue record as Block as per Block Consolidation Scheme, and such block of the land is divided without permission of the competent authority, which amounted to breach of provisions of Section 31 of the Prevention of Fragmentation Act and therefore, there was no clear title to the land of the petitioner.

**6** By the order dated 6.8.2014, the respondent No.3 Prant Officer declared the sale of the land from Block No.377 admeasuring 8751 Sq. Mtrs. invalid as made in breach of Fragmentation Act and without permission of the competent authority.

**7** The case of the petitioner is that the petitioner purchased the land in question vide sale deed dated 22.7.2005 for bonafide industrial purpose from Desai Maganbhai Lilabhai. After the purchase, the petitioner applied to the Collector for conversion of the land from new tenure to old tenure for non-agriculture industrial purpose. The Collector by order dated 18.4.2009 granted permission on certain conditions. However, by order dated 9.11.2011, the Collector refused to grant permission under Section 63AA of the Act to the petitioner on the ground that there was breach of the provision of Section 31 of the Fragmentation Act and thus, title of the land was not clear. The respondent No.3- Prant Officer then made order dated 6.8.2014 holding the transaction between predecessor in title of the petitioner and the original owner, named Shri Thakor Pradhanji Becharji, to be invalid on the ground that the land of Block No.377 was registered in the revenue record as Block as per Block Consolidation and sale of the part of such land was in breach of the provision of the Fragmentation Act and without permission of the competent authority.

**8** Learned senior advocate Mr. K.S. Nanavati appearing for Nanavati Associates submitted that neither at the time when the order dated 9.11.2011 was made by the Collector nor at the time when the order dated 6.8.2014 was made by the respondent No.3 Prant Officer, the petitioner was heard. Mr. Nanavati submitted that the petitioner when purchased the land in 2005, it purchased with clear title and based on such title, the Collector passed order giving permission for conversion of the land from new tenure to old tenure on different conditions. Mr. Nanavati submitted that when the order dated 9.11.2011 was passed, there was no order declaring the sale transaction in favour of its predecessor in title to be in breach of the Fragmentation Act and thus, title of the petitioner in respect of the land in question was clear. Mr. Nanavati submitted that when subsequently, order dated 6.8.2014 was made by the Prant Officer, the right, title and interest of the petitioner in the land in question was ignored inasmuch as not only the Collector had full knowledge about the right, title and interest of the petitioner involved in the land in question but even the Prant Officer was in knowledge about

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such interest of the petitioner when the impugned order dated 6.8.2014 was made as the sale in favour of the petitioner for the land admeasuring 8751 Sq. Mtrs. from Block No.377 is found to have been noted in the order. Mr. Nanavati submitted that in spite of the fact that the petitioner had acquired interest in the land in question as back as in the year 2005, still when the impugned order dated 6.8.2014 was made by the Prant Officer, the petitioner was not heard nor was given any opportunity to represent its case. Mr. Nanavati submitted that only predecessor in title of the petitioner was issued notice of hearing, however, since had lost interest in the land in question on account of the sale made by him in favour of the petitioner, he did not remain present before the Prant Officer and considering his absence, the order was made. Mr. Nanavati submitted that since the petitioner is affected by the impugned orders, they are required to be quashed as passed in breach of principles of natural justice.

**9** As against the above arguments, learned Assistant Government Pleader Mr. Raval submitted that on account of clear breach of the provision of Fragmentation Act, the Collector rightly refused to grant permission under Section 63AA of the Act and the Prant Officer rightly held the sale transaction made in favour of the predecessor in title of the petitioner as invalid. Mr. Raval submitted that when the sale between Thakor Pradhanji Becharji- original owner and Desai Maganbhai Lilabhai from whom the petitioner purchased the land was found to be invalid in the eye of law, the petitioner who is successor in title, could not make any grievance about giving of no hearing to it, especially when his predecessor in title was issued notice for affording hearing to him but, he chose not to remain present.

**10** Having hearing learned advocates for the parties, it appears that there is no dispute on the fact, which could be noticed from the order dated 18.4.2009 passed by the Collector, that the Collector granted permission for conversion of the land in question with other land of the petitioner from new tenure to old tenure for non-agriculture industrial purpose on certain conditions, including the condition of getting permission under Section 65(B) of the Land Revenue Code for use of the land for industrial purpose. It appears that thereafter the Collector made one of the impugned orders, i.e. dated 9.11.2011, refusing to accept the request of the petitioner to grant permission under Section 63AA of the Act on the ground that though the land bearing Survey No.377 was entered in register as Block as per Block Consolidation Scheme still without permission of the competent authority for transfer of the land, as per Entry No.1387, block was divided which was in breach of Section 31 of the Fragmentation Act, and thus title of the petitioner was not clear. It does not appear from the said order that the petitioner was ever heard. Be that as it may, when this order was made, there was no order from any competent authority declaring the sale transaction for the land admeasuring 8751 Sq. Mtrs. from Block No.377 as invalid, being in breach of the provisions of the Fragmentation Act. But, thereafter, by the impugned order dated 6.8.2014 at Annexure-A, which appears to have been made by issuing notice only to the original owner of the land of Block No.377 and the predecessor in title of the petitioner, named Desai Maganbhai Lilabhai, it was declared that sale of the land admeasuring 8751 Sq. Mtrs. in favour of Desai Maganbhai Lilabhai was in contravention of the provisions of Fragmentation Act and without permission of the competent authority. In this very order, it is found observed that as per Entry No.1790, the petitioner has purchased land admeasuring 8751 Sq. Mtrs. from Block No.377 for bonafide industrial purpose. From such observation in the order of the Prant Officer and in view of the order of the Collector dated 18.4.2009, it appears that not only the Collector but the Prant Officer had knowledge about petitioner having acquired interest in the land bearing Block No.377 to the extent of the land admeasuring 8751 Sq. Mtrs. In fact, from the order dated 6.8.2014, it appears that only in respect of the land purchased by the

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petitioner, sale entered between the predecessor in title of the petitioner and the original owner is held to be in breach of the provisions of the Fragmentation Act. However, though the Collector and the Prant officer had full knowledge about right, title and interest acquired by the petitioner in the land in question, notice of hearing was sent only to the predecessor in title of the petitioner who would obviously have lost interest in the land after selling it in favour of the petitioner. The petitioner once acquired interest in the land in question as back as in the year 2005 and having got one order in its favour made by the Collector on 18.4.2009 for conversion of the land from new tenure to old tenure, it was incumbent upon the Prant Officer to afford opportunity to the petitioner before making impugned order dated 6.8.2014 as the petitioner could be said to be a party directly affected by the impugned order.

**11** Though learned senior advocate Mr. Nanavati has raised many fold contentions and though the Affidavit tendered by learned Assistant Government Pleader would present many grounds opposing the petition, the Court is however of the view that the impugned order dated 6.8.2014 passed by the respondent No.3 Prant Officer could be interfered with and set aside only on the ground of non- observance of the principle of natural justice. The Court further finds that since the order dated 9.11.2011 was made prior to the declaration made by the Prant Officer about invalidity of the sale transaction took place between the original owner Thakor Pradhanji Becharji and Desai Maganbhai Lilabhai, same also needs to be quashed to be reconsidered after the Prant officer decides the matter afresh after hearing the petitioner.

**12** For the reasons stated above, the petition is partly allowed. Impugned order dated 6.8.2014 passed by Prant Officer is quashed and set aside and the matter is remitted to respondent No.3 Prant Officer for deciding it afresh after giving full opportunities to the petitioner. The impugned order dated 9.11.2011 passed by the Collector is also quashed. However, it will be open to the Collector to reconsider the matter after the Prant Officer finally decides the matter afresh after giving full opportunities to the petitioner.

**13** It is clarified that the Court has not gone into the other contentions/ grounds raised either in the petition or in the affidavit-in- reply filed by the respondent No.3. It is left open to the petitioner to raise all contentions available under law before the Prant Officer when the matter is taken up for fresh decision by the Prant Officer.

Rule is made absolute to the aforesaid extent.

Direct Service is permitted.

Shri K. S. Nanavati  
Sr. Advocate