

A PALITANA SUGAR MILLS PVT. LTD. AND ANR.

v

STATE OF GUJARAT AND ORS.

OCTOBER 15, 2004

B [K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

C *Gujarat Agricultural Land Ceiling Act, 1960/Urban Land (Ceiling and Regulation) Act, 1976/Bombay Land Revenue Code, 1879—Bid Land—Exclusion from purview of Agricultural Land Ceiling Act and covered by Urban Land Act—Sale of the land—Revenue mutation in the name of purchaser—Development thereof after sanction of plan except the land reserved for University—Issue regarding coverage of Land under Agricultural Land Ceiling Act or Urban Land Act decided by the Authority, High Court and Supreme Court in favour of the purchaser—After lapse of reservation of land for University order to sanction plan for its development passed by High Court and Supreme Court—Despite payment of all the dues plan not sanctioned—After decision of Supreme Court concerned Authorities issued show cause Notices with regard to disputes already decided and passed orders contrary to the order of Supreme Court on the ground that full facts were not placed before the Court—Land mutated in the name of State—*  
E *Applications for clarification and initiation of contempt proceedings by purchaser—Dismissal of applications by High Court—On appeal, held: The issues reopened by the Authority were already decided by Supreme Court—Such an attempt would amount to contempt of this Court—The issues already covered by earlier proceedings reached finality and hence cannot be*  
F *reopened—Authorities directed to comply with the orders of Supreme Court—Saurashtra Gharkhed Ordinance.*

G *Constitution of India, 1950—Article 141—Precedent—Judgment of Supreme Court—Ignored on the ground that full facts had not been placed before the Court—Held: Such an attempt is perverse and amounts to gross contempt of Court—Contempt of Court.*

H *The land in question comprising of survey No.469/1, 470/1, 471/2, 471/3 and 472, being a Bid Land was excluded from the purview of Gujarat Agricultural Land Ceiling Act, 1960. The land was sold to the appellants. After enforcement of Urban Land (Ceiling and Regulation) Act, 1976, the land*

was covered under that Act. In 1976 Gujarat Agricultural Land Ceiling (Amendment) Act, 1972 came into force amending the original Act so as to bring Bid Land within its purview. Revenue Department thereafter clarified that the land in question would be governed by Urban Land Act and not Agricultural Land Act. Hence the proceedings regarding the sale of the land to the appellant under Agricultural Land Act were dropped. Revision against the order was dismissed finally concluding the proceedings under Agricultural Land Act. Right and title entry No. 1950 was entered in the revenue records in the name of appellants and the same was certified in 1979 finally in view of Notice under Bombay Land Revenue Code, 1879 and no objections were raised against it.

Competent Authorities sanctioned Scheme u/s 21 of Urban Land Act pursuant to which appellants developed the lands except the land in Survey No. 469/1 which was reserved for University. Municipal Corporation filed Writ Petition seeking setting aside of the order sanctioning the scheme and seeking direction to the Authority to decide the proceedings under Agricultural Land Act.

State Government granted no objection in respect of lands in Survey Nos. 470/1 and 471/2, but refused the same in respect of other land except Survey No.469/1. Against the order of refusal of no-objection, appellants filed writ petition wherein appellant was permitted to do construction at its own risk. Appellant made representation to State Government that they were being harassed. State Government asked the appellants that his representation would be considered on unconditional withdrawal of his petitions against the Government. Hence proceedings initiated by appellants were withdrawn. Thereafter, the Authority held that the revenue mutation entry No.1950 was legal and valid, by its order dated 10.7.1992. It was also held that proceedings under Agricultural Land Act would not be in respect of the land.

Appellant filed Writ Petition for declaration that land in Survey No.469/1 reserved for the University was free for development as the reservation had lapsed.

Revenue Authority issued *suo-motu* Notice seeking to revise its order dated 10.7.1992, against which appellants filed another Writ Petition. In the meantime Urban Land Act was repealed and the repealing Act was adopted by the State. High Court quashed the Notice and upheld the order dated 10.7.1992. High Court also dismissed the Writ petition filed by the Municipal

**A** Corporation. It also declared that reservation in respect of the University had lapsed.

**B** Appeal filed by Municipal Corporation before this Court against the order of High Court regarding issue of Urban Land Act and Agricultural Land Act was withdrawn. Appeal against the High Court order in respect of reservation of land in Survey No.469/1 was dismissed by this Court. The appeal against the High Court order in Writ Petition against notice dated 25.1.1996 was dismissed. Review petition filed by State Government in this Court was also dismissed. In contempt petition this Court directed the Authorities to sanction plan of land in survey No.469/1. Municipal Corporation sanctioned lay out plan for the same.

**C** After dismissal of review petition, Deputy Collector again issued Notices under BLR Code for deciding the title of land in Survey No.472 stating therein that Supreme Court had decided the case in favour of the appellants due to lack of full facts. Appellant moved recusal application before Revenue Department requesting to direct the Deputy Collector to recuse himself from hearing of the show cause notices on the ground that he was deponent in review petition before Supreme Court. However, Collector passed orders directing City Mamlatdar to take possession of the lands.

**D** Appellant submitted revised plans in respect of land in Survey No.469/1, which is still pending. Deputy Collector passed order stating that land in Survey No. 472 belonged to State Government. Mamlatdar passed an order under Agricultural Land Act holding that the land in question was excess land under Agricultural Land Act and hence they vested in the State Government. Collector issued Notice for modification of Revenue Entry No.1950 in respect of Survey Nos.469/1, 470/1, 471/2, 471/3 and 472 in the name of State Government. The appeals against the orders before the Revenue Secretary and the Collector are pending.

**E** Appellant filed applications before High Court for clarification and directions and for initiating contempt proceedings against the Collector, Deputy Collector and Mamlatdar. Entry No.1950 was finally modified on the name of State Government without considering the orders passed by High Court and this Court and the pending disputes before High Court.

**F** High Court held that the orders passed by High Court had merged with the order passed by this Court. High Court went into the maintainability of the contempt petition.

**H**

On appeal, this Court passed *interim* order directing the Authorities to sanction plan of Survey No.469/1 and make entries in the revenue records. This order was not complied with by the officers of the State Government.

Disposing of the appeals, the Court

HELD: 1. Most of the issues sought to be raised by the respondents are nothing but raising the same issues all over again which had been raised in the earlier proceedings and were rejected by this Court and would amount to replaying of a recorded cassette. The issues of the alleged violation of VIDI Formula, Bid Land, ALC Act, Saurashtra Gharkhed Ordinance and the alleged lack of title to Survey No. 472 are the issues which had been raised before the High Court and thereafter in this Court in Special Leave Petition and again in Review Petition but did not find favour either with this Court or the High Court. The issues covered by the earlier proceedings and finally decided by the Courts and thus reached finality, cannot be reopened. [576-B-C]

2. Despite appellant No.1 bringing to the notice of the former Collector that the said action on his part of issuing the show cause Notices was in violation of this Court judgment and orders, he brushed aside the same and proceeded to issue various *ex parte* orders in utter contempt of this Court. A written representation requesting him to recuse himself from hearing the show cause Notices on the ground that he had been a party to the earlier proceedings as well as filed affidavits in those proceedings, he refused to recuse himself from hearing the show cause notices and passed various orders on the aforesaid show cause Notices. [577-E-F]

3. The judgments of this Court are binding on all the Authorities under Article 141 of the Constitution of India and it is not open to any Authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues raised in the show cause notices. Such an attempt to belittle the judgments and the orders of this Court is plainly perverse and amounts to gross contempt of this Court. The then Deputy Collector has scant respect for the orders passed by the Apex Court. [577-G, H; 578-A]

4. In so far as Survey No.469/1 is concerned, several Notices were issued by the appellants herein to the Commissioner, Municipal Corporation and the Collector, inviting their attention to the *interim* order passed in the present appeals. The Authorities have not permitted the appellants to carry out the construction on the said land on Survey No.469/1. Identification of

A the land has not also been done as directed by this Court. In the meanwhile, the appellant paid development charges to Area Development Authority for construction of various blocks of Survey No.469/1. With respect to the land, the Authorities have already entered the name of the appellant in the revenue records. Thereafter, the appellant's name was deleted from the said entry pursuant to the order of the Collector and the order of the City Mamlatdar.

B Thereafter when the entry was made pursuant to the *interim* order of this Court, it was incumbent on the City Mamlatdar to not only make the entry of the area of Survey No.469/1 in the revenue records but also to make that entry in the name of the applicant. This has not been done so far. [578-B-F]

C 5. The conduct and behaviour of the Collector, the Commissioner, the Dy. Secretary to Revenue Department and the Deputy Commissioner are improper. In respect of the specific direction issued by this Court in its *interim* order, the Authorities are deliberately not complying with the orders passed by this Court and have prevented the appellants from carrying out the construction on the lands in question for the last four years even though the

D appellants have succeeded in all the petitions before this Court. All the Authorities are directed to comply with the *interim* orders passed by this Court in its letter and spirit. [579-E, F]

6. It is open to the appellants to pursue the appeals which have already been filed by them and it is made clear that the Authority shall consider and decide only the matters which are not covered by and concluded by any of the earlier orders passed by the Authorities, the High Court and of this Court.

E [582-C]

7. As the Authorities have not issued planning permit with reference to Survey No. 469/1, all the respondents/Authorities are directed to consider the application and sanction the plan of Survey No.469/1 and make entries in the revenue records forthwith in accordance with law. [582-D]

F

8. It is open to the respondents to proceed against the appellant with regard to the violation of permission granted to construct the dwelling units on the lands in question after giving Notice and after affording sufficient opportunities to the appellant to put forth their grievance in this regard.

G [582-F]

9. The Collector is directed to grant non agricultural permission in respect of the land comprised in Survey No. 469/1 after collecting the non-agricultural tax applicable at the time when the application was made by the

H applicant. Dispute, if any, with regard to the tax calculated and the rate has to

be agitated separately and collected later. The Commissioner of Municipal Corporation is directed to consider the application for sanction as per the current development control rules and pass order in accordance with law. Respondent Nos.1 and 2 are also directed to collect non-agricultural permission charges and conversion charges for the lands bearing Survey Nos.470/1, 471/2, 471/3 and 472. Respondent Nos. 1 and 2 are further directed to collect non-agricultural permission charges and conversion charges for the land bearing Survey No.469/1 as prevalent on 24.2.2003, which is the date on which the appellants had applied for the grant of non-agricultural permission for the said survey number and on receipt of payment to grant the non-agricultural permission in respect thereof as applied for.

[582-F-H; 583-A-B] C

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6798-6799 of 2004.

From the Judgment and Order dated 23/26.3.2004 and 2/5.4.2004 of the Gujarat High Court in Misc. C. Application No. 2340 and 2341/2003 and in S.C. Application No. 1032 of 1996. D

WITH

C.P. (C) No. 410/2004 in SLP (C) No. 1562/2002, C.P. (C) No. 411/2004 in C.A. No. 5556 of 2001.

Mukul Rohatgi, P.H. Parekh, E.R. Kumar, Sumit Goel, Ms. Sweety Manchanda and H. Ahmadi for M/s. P.H. Parekh and Co., with him for the Appellants. E

C.A. Sundaram, Ms. Hemantika Wahi, Ms. Archana P.Khopde, Urmesh Triwedi and Jatin Zaveri with him for the Respondents. F

The Judgment of the Court was delivered by

**DR. AR. LAKSHMANAN, J.** Leave granted.

The present appeals were filed against the final judgment and order dated 23/26.03.2004 and 02/05.04.2004 passed by the High Court of Gujarat in Misc. Civil Application No. 2340 and 2341 of 2003 and in Special Civil Application No. 1032 of 1996 whereby the High Court dismissed the application filed by the appellants herein. G

This case has a chequered history. Parties to this action are fighting a H

A legal battle in the Court of law from 1971 onwards and still has not reached the finality of the litigation for one reason or the other.

The former Ruler of Bhavnagar was the owner of large extent of lands in the area in question. The subject-matter of this litigation are the lands owned by the former Ruler comprised in survey Nos. 469/1, 470/1, 471/2, 471/3 and 472 Village Vadva aggregating about 952 acres being a Bid Land (a pasture land) was excluded from the purview of Gujarat Agricultural Land Ceiling Act, 1960, (hereinafter referred to as "the ALC Act"). This decision taken by the Collector on 26.03.1971 went through the motion of appeal remand etc. and finally the Gujarat Revenue Tribunal (for short "the GRT") held that the land in question being the bid land was excluded from the purview of the ALC Act and remanded the matter to the Mamlatdar for fixing the ceiling of the other lands of the former Ruler. The review application filed by the State Government was also dismissed by the Tribunal on 15.04.1977. No further appeal was preferred by the State Government against the order of review.

The former Ruler executed a registered sale deed in favour of the appellants herein of the lands in the above survey nos. aggregating about 952 acres. The document was registered by the Collector.

In 1976, the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the ULC Act") came into force in the State of Gujarat and the land in question being situated within the residential zone in the master plan under the Town Planning Act fell within the definition of *vacant land* under the ULC Act. On 01.04.1976, the Gujarat Agricultural Land Ceiling (Amendment) Act, 1972 came into force amending the definition of land so as to include the bid land as well within the definition of land. On a clarification sought by the competent authority and the Under Secretary, Revenue Department and the Additional Collector (ULC Act) informed the said authority that in view of the overriding provisions contained in Section 42 of the ULC Act, the land in question would be governed by the ULC Act and requested the said authority to proceed under the said Act. On a further clarification sought by the competent authority and the Additional Collector, the Revenue Department conveyed to the said authority the opinion of legal department of the State Government that the land in question would be governed by the ULC Act and not by the ALC Act. On receipt of a similar communication from the Revenue Department, the Deputy Collector passed orders to drop the proceedings on the application filed by the former Ruler under Section 8 of the ALC Act for

a declaration that the sale effected by him vide aforementioned sale deed dated 31.03.1971 had not been done in anticipation of or with a view to defeat the provisions of the ALC Act. Thus by proceedings dated 09.11.1979 of the Deputy Collector, the ALC proceedings were concluded. Thereupon the right and title entry No. 1950 was entered in the revenue records in the name of the appellants in respect of the land in question and the same was certified on 15.11.1979. The said entry was certified finally in view of the earlier notice issued under Section 135(d) of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the BLR Code") Code and no objections were raised. On 06.12.1979, the competent authority and the Additional Collector, ULC issued a declaration in exercise of power under Section 21(1) of the ULC Act after verifying the title of the appellant holding that the appellant was entitled to retain the vacant land comprised in all the above survey nos. admeasuring 930 acres and 4 gunthas for the purpose of construction of dwelling units under Section 21 of the ULC Act. Pursuant to the sanction, the appellants have already developed the lands wherein about 7000 dwelling units have already come up. Presently, the appellant is seeking no objection permission and sanction of lay out plan in respect of the land situated in survey No. 469/1 which could not be developed earlier since there existed a reservation on this land for Bhavnagar University.

The Bhavnagar Municipality filed a writ petition being special Civil Appeal No. 941 of 1980 for quashing and setting aside the order dated 06.12.1979 granting exemption to the lands and sanctioning the scheme under Section 21 of the ULC Act and a further direction to the authorities to adjudicate and decide the ALC Act proceedings. The High Court passed an *interim* order in favour of the Municipality restraining the appellants from implementing the scheme. Various affidavits were filed by the competent authority and the Deputy Collector under the ULC Act and the Deputy Collector to the Revenue Department stating that the title of the appellant to the land in question was verified and the same was clear, authentic and valid and the orders passed by the Deputy Collector under the ALC Act and the competent authority under the ULC Act were valid and legal. The High Court, thereafter, vacated the *ad-interim* relief granted earlier to the Municipality and also permitted the appellant herein (respondent No.8 therein) would be at liberty to construct at its own risk and cost without claiming equities. The said order is quoted below:

"Rule. To be heard in the 1st or 2nd week of September, 1980. Having regard to the important questions arising in the petition; the

A matter may be placed before the learned Chief Justice for being assigned to a Division Bench. Mr. Chhatrapati waives notice for R.1 to R.7 Mr. Mehta for R.8 and Mr. A.J. Pandya for R.9, also waive notice of Rule. *Ad-interim* relief vacated on condition that the respondent No.8 will be at liberty to construct at its own risk and costs and the facts of such construction having been raised on the land shall not be a factor in favour of respondent No.8. The above order is made at the request of the learned advocate General who appears for Respondent No.8.

A.M. Ahmadi. J.  
24.7.1980”

C It is submitted that ever since the appellant had raised constructions on the said land and the lands have been fully developed save and except the lands in Survey No. 469/1 which was reserved for Bhavnagar University. On 09.12.1981, the State Government granted no objection permission in respect of the lands in Survey Nos. 470/1 and 471/2 by three separate orders.

D However, the Government refused the no objection permission on the balance three applications for the remaining lands excluding survey No. 469/1. The grounds for refusal were (1) the scheme of exemption was under review by the State Government under Section 34 of the ULC Act and (2) the SCA No. 941 of 1980 filed by the Bhavnagar Municipality was pending before the High Court.

E On 16.02.1982, the High Court passed an order in SCA No. 5059 of 1981 against the order dated 09.12.1981 refusing the non-agricultural permission by the Deputy Collector in regard to the three applications referred to above. The order reads thus:-

F “Rule. To be heard with Spl. C.A.941/80. Petitioner may construct on the land at their own risk and cost but the fact of the such construction will not be pleaded as a circumstance in their favour at the time of final hearing of the matter. Affidavit to be completed by both the sides within 6 weeks from today. To be expedited.”

G The Gujarat Revenue Tribunal by its judgment in Revision Application No. 1723 of 1983 dismissed the Revision Application of the State Government in respect of the ALC Act proceedings. It is to be noticed that this revision was filed by the State Government against the order dated 09.11.1979 and 20.11.1979 whereby the Deputy Collector dropped the proceedings filed by the former Ruler under Section 8 of the ALC Act for declaration that the sale

H

deed dated 31.03.1971 was not effected by him with a view to defeat the ALC Act. The said order thus finally concluded the proceedings under the ALC Act. No further appeal was preferred by the State Government. A

As several notices had been issued by the revenue officials under the Land Revenue Code and other laws in respect of the land in question and the writ proceedings in the High Court and the stay order obtained, the appellant made a representation dated 27.08.1990 to the State Government that they were being harassed by the Officials by multifarious proceedings. On 17.05.1991, the Government of Gujarat took a decision and communicated the same to the appellant. The letter reads thus: B

“No.ULC-2190-MRA-2-69-V-I C

Revenue Department  
Sachivalaya, Gandhinagar  
Dated:17.5.1991

To

The Managing Director,  
Palitana Sugar Mills Pvt. Ltd.,  
C-2, Divya Apartments,  
Mithakhali Garnala,  
Navrangpura,  
Ahmedabad D

Sub: Urban Land (Ceiling and Regulation)  
Act, 1976.

Regarding lands of survey Nos. 469/1,  
470/1, 471/2, 471/3 and 472 of  
Village Vadva Dist: Bhavnagar. F

Sir,

With reference to our letter dated 28.9.1990 addressed to the Hon'ble Chief Minister on the aforesaid subject, I am directed to state that on your producing necessary evidence regarding unconditional withdrawal of the petitions filed against the Government in the Hon'ble High Court of Gujarat with regard to this land, an appropriate decision will be taken on your representation, which please note. G

Yours faithfully,  
Sd N A Shah  
Under Secretary H

A

Revenue Department

Received on : 25.5.1991"

B

This letter is self-explanatory. Accordingly, all the proceedings initiated by the appellant were withdrawn by them. In view of all the writ petitions filed by the appellant being withdrawn, the Deputy Collector on 27.09.1991 issued a notice in Ceiling Case No. 1/83-84 and rule 108(6) of the BLR Code again seeking to revise the right and title entry No 1950 on the grounds detailed herein below, principally contending that the sale by the former Ruler in favour of the appellant of the lands in question vide sale deed dated 31.03.1971 is invalid.

C

- (a) That title of survey No.472 did not vest with the petitioner;
- (b) That the subject lands being bid lands could not transferred;
- (c) That the transfer of the lands to the petitioner was in violation of the Saurashtra Gharkhed Ordinance;

D

- (d) Notice under the BLR code was not issued; and
- (e) On the above mentioned grounds the mutation entry was sought to be cancelled.

E

The Deputy Collector issued another notice seeking to reopen the ALC proceedings which had been closed on the grounds that the Bid Lands were not covered by the ALC Act as it then stood, and that it was the ULC Act which would govern the land in question and not the ALC Act.

F

The Deputy Collector, Bhavnagar in Revision Case No. 1/83-84 after considering the entire issues of the said notice held that ownership of the land in question was of the appellant. It was decided that the revenue mutation entry No. 1950 as recorded in village form no. 6 was legal and valid. It was also decided to withdraw the show cause notice dated 27.9.1991 and to drop all the proceedings commenced under the said notice.

G

By a separate order rendered in Ceiling Appeal No. 4/82-83 under the ALC Act the Deputy Collector confirmed the order of the Mamlatdar dated 16.09.1982 in which it had been, *inter alia*, held that the ALC Act did not apply to the land in question. The Mamlatdar in the said order dated 16.09.1982 had followed the aforementioned order of the GRT dated 03.01.1974, whereby the GRT had held that the land in question was not covered by the ALC Act.

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By the said order dated 16.09.1982, the Mamlatdar, *inter alia*, determined the

ceiling of the other lands of the former Ruler. It was thus held that no proceedings under the ALC Act would lie in respect of the land in question. A

**SURVEY NO. 469/1:**

We shall now come to survey No. 469/1 which could not be developed contemporaneously along with other survey nos. since there existed reservation on this land for Bhavnagar University. B

A Writ petition was filed by the appellant in the High Court being Special Civil Application No. 10108 of 1994, *inter alia*, praying that the reservation of Survey No. 469/1 in favour of Bhavnagar University had lapsed and for a declaration that the land is free for development by the appellant. This writ petition was filed on 10.08.1994. The Collector, Bhavnagar issued a *suo motu* notice on 25.01.1996 seeking to revise the order dated 10.07.1992 rendered in Revision Case No. 1/83-84 which sought to revise the right and title entry No. 1950 on the following grounds: C

- (a) That title to survey no. 472 did not vest with the petitioner; D
- (b) That the subject lands being bid lands could not be transferred;
- (c) That the transfer of the lands to the petitioner was in violation of the Saurashtra Gharkhed ordinance, and
- (d) Notice under the BLR code was not issued. E

It is pertinent to notice that these issues are already covered by the earlier proceedings finally decided in favour of the appellant. Against the above show cause notice, the appellant filed Special Civil Application No. 1032 of 1996 before the High Court wherein the High Court granted *interim* stay against the said show cause notice. The Deputy Secretary, Revenue Department of the State Government filed affidavits in all connected matters stating that the title of the appellant to the land in question is authentic and valid. In the meanwhile, the ULC Act was repealed and the said repealing Act was subsequently adopted by the State Legislature. The High Court, by judgment rendered in Special C.A. No. 1032 of 1996, quashed the notice dated 25.01.1996 of the Collector, seeking to revise the order passed by the Deputy Collector dated 10.07.1992. The High Court, in the said judgment, has observed that it was unfair, unjust and too late in the day for the Collector to raise various issues such as illegal sale of bid land, breach of Saurashtra Gharkhed Ordinance, ALC Act etc. which were closed and decided 3½ years earlier. The order of the Deputy Collector dated 10.07.1992 was upheld by the said judgment H

**A** in which all the issues were concluded.

By a separate judgment pronounced on the same day, the High Court rejected all the contentions raised by the Municipal Corporation in Special Civil Application No. 941 of 1980 relating to sanction of ULC Act scheme and the ALC Act proceedings. By a common judgment, a declaration was given in Special Civil Application No. 10108 of 1994 that the designation of the land bearing Survey No. 469/1 reserved for Bhavnagar University had lapsed. The issue of the ULC Act and the ALC Act was concluded by the said judgment rendered in S.C.A. No 941 of 1980.

**B**

**C** While granting leave, this Court directed *status quo* to be maintained in the SLP filed by the Municipal Corporation against the judgment in SCA No. 941 of 1980. This Court again modified the interim order dated 17.08.2001 directing that it will be open to the appellant herein to construct dwelling units on the lands in accordance with the approved or sanctioned scheme but such construction would be at its own risk and shall not be a factor in its

**D** favour.

This Court also passed an order in Contempt Petition No. 142 of 2002, *inter alia*, directed the authorities to sanction the plan of Survey No. 469/1, make revenue entries in the revenue records and collect the dues related to the said land. Civil Appeal No. 5556 of 2001 was dismissed by this Court as

**E** withdrawn after a detailed hearing. Thus the issue of the ULC Act and the ALC Act raised in the S.C.A. No. 941 of 1980 was finally concluded by the said judgment. On 03.12.2002, this Court dismissed the civil appeals filed against the order of the High Court in SCA No. 10108 of 1994 and batch relating to reservation in Survey No. 469/1 in favour of the Bhavnagar

**F** University. Other SLPs being SLP No. 1561-63 of 2000 filed against the order dated 24.11.2000 in SCA No. 1032 of 1996 were heard and the SLPs were dismissed by a detailed order. Thus, according to the appellant, various issues regarding the right and the title of the lands in question were finally concluded by the said judgment.

**G** Review Petition No.33 of 2003 was filed by the State Government before this Court by raising the following grounds:-

- (a) That title to survey no. 472 did not vest with the petitioner;
- (b) That the subject lands being bid lands could not be transferred;
- (c) That the transfer of the lands to the petitioner was in violation

**H**

of Sec.54 of Saurashtra Gharkhed Ordinance;

(d) Notice under the BLR code was not issued; and

(e) Violation of ALC Act.

According to the appellants, these very same issues are covered by the earlier proceedings and finally decided in favour of the appellants in proceedings dated 27.09.1991, 10.07.1992, 25.01.1996, 24.11.2000, 05.12.2002, 06.03.1987, 10.07.1992 and 14.11.2002 reported in *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors.*, [2003] 2 SCC 111.

The affidavit was filed by Shri Kanti Lal Patel, the Collector of Bhavnagar District (since retired), who was the second petitioner in the review petition as well as in the SLP.

On 21.01.2003, the Bhavnagar Municipality issued an order for sanctioning the lay out plan in respect of R.S. No. 469/1. In the said order, four conditions were stated including obtaining of non-agricultural permission from the Collector.

On 06.02.2003, this Court dismissed the Review Petition No. 33 of 2003 in the following words:

“Delay condoned.

We have carefully gone through the review petition and the connected papers. We do not find any merit in the review petition. The review petition, accordingly, dismissed.”

After the dismissal of the review petition again notice of inquiry was issued by the Deputy Collector under Section 37(2) of the B.L.R. Code for deciding the title of R.S. No. 472 which issue was covered by earlier proceedings finally decided in favour of the appellant. In proceedings dated 27.09.1991, 10.07.1992, 25.01.1996, 24.11.2000, 05.12.2002 and 06.02.2003 the Collector issued 9 show cause notices on 12.05.2003, 13.05.2003, 17.05.2003, 19.05.2003 and 22.05.2003 in regard to the dispute covered by earlier proceedings between the parties and finally decided in favour of the appellant. In the show cause notices, the Collector stated as follows:-

“For taking a decision in that regard, *due to lack of full facts* before the Hon’ble Supreme Court, it was held by the Hon’ble Supreme Court that it does not see any reason to interfere with the judgment of the

**A** Hon'ble High Court rendered in Special Civil Application No. 1032 of 1996 dated 24.11.2000. *On the basis of this judgment, the illegal acts committed by the "Mill" cannot be termed to be legal.* In these circumstances, show cause notice for breach of Section 66 of the Bombay Land Revenue Code, 1879 is hereby issued/given."

**B** The appellant moved recusal application before the Principal Secretary, Revenue Department with a request to direct the Collector to recuse himself from the hearing of the aforementioned show cause notices issued by him. Another reminder was issued on 21.07.2003. The Deputy Secretary wrote a letter to the appellant stating that no administrative directions could be issued to the Revenue Department, to the Collector to state the aforementioned proceedings as he was discharging quasi-judicial functions.

**C** On 29/30.08.2003, the Collector Shri Kantilal Patel (a day prior to retirement) has passed 6 orders against the appellant and directed the City Mamlatdar to take possession of the Lands. The said orders were based on the self same grounds concluded in favour of the appellant. The said grounds are:-

- D**
- (a) Sec 54 of Saurashtra Gharkhed.
  - (b) Bid Land.
  - E** (c) N.A. Permission, Breach the conditions of ULC Act scheme.
  - (d) N.A. conditions breached.
  - (e) N.A. conditions breached.
  - (f) N.A. conditions breached.

**F** According to the appellant, the Collector had passed orders despite recusal application by the appellant on the ground that he was the deponent in review petition No. 33 of 2003 and in another affidavit in C.A. No. 5556 of 2001 before this Court wherein the same allegations made in the show cause notice were obtaining against the appellant.

**G** On 09.09.2003, the appellant submitted its revised plans of Survey No. 469/1 and submitted to the Bhavnagar Municipal Corporation for sanctioning the lay out and building plans in view of the Development Control Rules was revised by the State Government vide notification dated 01.09.2003. Those plans are still pending for sanction. On 11.09.2003, the Deputy Collector

**H** passed an order against the appellant in respect of the land in Survey No.

472 was of the State Government. According to the appellant, this issue is covered by earlier proceedings finally decided in favour of the appellant and referred to in paragraph supra. On 15.09.2003, the Mamlatdar A.L.T passed an order under the ALC Act against the appellant and held that the lands in question were excess land under the ALC Act and, therefore, all lands in question were vest in the State Government. According to the appellant, the ALC Act proceedings were concluded in the earlier proceedings dated 06.03.1987 and 10.07.1992. On 16.09.2003, the Collector issued a notice for modification of Revenue Entry No. 1950 in respect of survey Nos. 469/1, 470/1, 471/2, 471/3 and 472 in the name of the State Government. Though the said right and title entry was confirmed by the Deputy Collector vide order dated 10.07.1992 and the same were upheld by this Court. Against the respective orders of the Collector, the Deputy Collector and the Mamlatdar ALT, the appellant filed appeals before the Revenue Secretary and the Collector of Bhavnagar District respectively. The appeals are pending.

On 27.11.2003, the appellant moved the High Court of Gujarat in Misc. Civil Application No. 2340 of 2003 for clarification and directions and second Misc. Civil Application No. 2341 of 2003 for initiating contempt proceedings against the Collector Kantilal Patel, the Deputy Collector and the Mamlatdar ALT. The right and title Entry No. 1950 was finally modified by the Collector office on the name of State Government in the Revenue Records in respect of all Survey Nos. without considering the orders passed by the High Court and of this Court as well as pending dispute before the High Court for the same and without hearing the objections of the appellant. On 23.03.2004, the High Court held that its order dated 24.11.2000 passed in SCA No. 941 of 1980 had merged with the order of 14.11.2002 passed by this Court in Civil Appeal No. 5556 of 2001 filed by the Bhavnagar Municipal Corporation which was dismissed as withdrawn.

However, after holding so that its order had merged with the aforementioned order of this Court, the High Court instead of staying its hands went into the maintainability of the contempt petition and passed orders thereon.

An *interim* order was passed by this Court on 05.05.2004 directing the authorities to sanction the plan of Survey No. 469/1 and make entries in the revenue records. According to the appellant, this order was not complied with the officers of the State Government.

We heard Mr. Mukul Rohatgi, learned senior counsel ably assisted by

**A** Mr. P.H. Parekh for the appellants and Mr. C.A. Sundaram, learned senior counsel ably assisted by Ms. Hemantika Wahi for the contesting respondents. We also heard other learned counsel for the respective parties. Both the learned counsel invited our attention to the pleadings filed in several volumes, annexures, orders passed by the authorities and the judgments rendered by the Tribunal, High Court and of this Court and made elaborate and lengthy submissions. **B** Mr. Rohatgi, learned senior counsel, submitted that the High Court had no jurisdiction to make an observation as regards the merits of the two applications preferred by the appellants despite it having expressly come to the conclusion that since the order of the High Court had merged with the order of this Court. Such application would lie only before this Court. He **C** would further submit that the High Court was in gross error in dismissing the contempt petition on merits despite having held that the order in respect of which the contempt had been committed had merged with the orders passed by this Court. Having said so, it was wholly beyond the domain of the High Court to comment upon the merits of the contempt petition. The said **D** observation thus made in relation to the contempt petition were made by a Court which on its own analogy was bereft of jurisdiction to proceed as it is well considered that petition for contempt only lies before the Court whose order is violated. Therefore, he contended that the observations made by the High Court as regards the merits of the two applications were without **E** jurisdiction. In the present case, the High Court observed in para 22 as follows:-

“Appropriate remedy of the Petitioners would be to file an application if at all it is maintainable before the Supreme Court.”

**F** Having made the aforesaid observation, it is submitted that the High Court encroached upon the domain of this Court by making observation on the question as to whether the clarification application was maintainable or not.

Mr. Rohatgi submitted that the order of the High Court suffers from infirmities and is thus liable to be set aside on this short ground alone.

**G** Mr. Rohtagi further submitted that having purchased the land by a registered sale deed, the appellants became the owner of the entire extent and that the land not being fit for cultivation was excluded from the purview of the ALC Act. The authorities have also clarified that the land in question would be governed by the ULC Act and not by the ALC Act. Therefore, he **H** contended that the appellant was entitled to retain the entire vacant land

comprising the above survey numbers for the purpose of construction of dwelling units under Section 21 of the ULC Act. So far as Survey No. 469/1 is concerned, the said land could not be developed contemporaneously since there existed a reservation on this land for Bhavnagar University and the Special Civil Application filed by the Bhavnagar University questioning the order dated 6.12.1999 granting exemption to the lands and sanctioning of the Scheme under Section 21 of the ALC Act was also decided in favour of the appellant. The High Court granted liberty to the appellant to construct at its own risk and cost without claiming equities. It was also a matter of record that the land in question have already been fully developed save and except the land in Survey No. 469/1. He would further submit that in view of the cabinet decision of the Government of Gujarat, the appellant was informed to withdraw the pending cases filed by them so that appropriate decision would be taken in respect of the pending disputes by the State Government. It is also a matter of record that the proceedings initiated by the appellant were withdrawn by them. Thereupon again the matter was reopened by the authorities, principally contending that the sale in favour of the appellant of the lands in question is invalid. The matter was agitated by the appellant before the authorities concerned and the authorities have held that the ALC Act did not apply to the lands in question.

He further submitted that the writ petition filed by the appellant in the High Court in SCA No. 10108 of 1994 with regard to the land in Survey No. 469/1 which was reserved for Bhavnagar University since 1965 under the Town Planning Act had lapsed and for further declaration that the land is free for development. The Collector of Bhavnagar issued a *suo motu* notice even though the issues are covered by the earlier proceedings and finally decided by the authorities in favour of the appellant. The *suo motu* notice was challenged by the appellant in the High Court. The High Court quashed the show cause notice dated 25.1.1996 of the Collector seeking to revise the order passed by the Deputy Collector dated 10.7.1992. The High Court also observed that it was unfair, unjust and too late in the day for the Collector to raise various issues such as illegal sale of bid land, breach of Saurashtra Gharkhed Ordinance, ALC Act etc. which were closed and decided three and a half years earlier. It was also submitted that the High Court by a separate judgment rejected all the contentions raised by the Municipal Corporation in Special Civil Application No. 941 of 1980 relating to sanction of ULC Act Scheme and the ALC Act proceedings. The Court also declared that the designation of the land bearing Survey No. 469/1 reserved for Bhavnagar University had lapsed. Thus Mr. Rohtagi submitted that the issue of ULC Act and ALC Act

A was concluded by the above judgment. After referring to the judgment of this Court, Mr. Rohtagi submitted that this Court has already granted permission to the appellant to construct dwelling units on the land in accordance with the approved or sanctioned Scheme but such construction would be at its own risk and shall not be a factor in its favour. This Court also in the contempt proceedings directed the authorities to sanction the plan of Survey No. 469/1 and make revenue entries in the revenue record and collect the dues related to the said land. This Court dismissed the civil appeal preferred by the Municipal Corporation as withdrawn after a detailed hearing.

C Our attention was further invited to the judgment of this Court in the case of *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors.*, (supra) by which this Court dismissed the appeals filed by the Bhavnagar University. Therein the learned counsel appearing for the University contended having regard to the scope and purport of the said Act, the High Court must be held to have erred insofar as it failed to take into consideration that the objects of an integrated, incorporated and interdependent development plan, cannot be fully achieved within a period of ten years and in that view of the matter when steps are taken for revision of the final development plan, the period specified in sub-section (2) of Section 20 of the Gujarat Town Planning and Urban Development Act, 1976 (27 of 1976) would get automatically extended. Learned counsel appearing for the appellant herein who was the respondent therein contended that the right of an owner of the land cannot be kept under suspension for a long time and the period of ten years specified by the legislature must be held to be a reasonable one, and thus by no stretch of imagination only by taking recourse to the provisions of Section 21 of the Act, the period specified therein can be extended. After considering the rival submissions, this Court dismissed the civil appeals filed by the University.

F Thus the proceedings under the above Act has also reached its finality by the judgment of this Court in *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* (supra). The various issues regarding the right and title of the land in question were finally concluded by the judgment. A further review petition filed by the State Government was also dismissed by this Court on 6.2.2003. After the conclusion of all the above proceedings, nine show cause notices were issued by the Collector raising the very same issues but in a different tone and form. Mr. Rohtagi submitted that all the disputes between the appellant and the respondents were finally completed between the parties in view of the cabinet decision of the Government of Gujarat and the subsequent withdrawal of the writ petitions filed by the appellant herein. Therefore, he

would submit that the authorities have no right or jurisdiction to issue show cause notices in regard to the earlier proceedings finally decided in favour of the appellant to which the respondents were also parties. Concluding his arguments, Mr. Rohtagi submitted that the authorities have failed to act on the directions issued by this Court. The appellant moved the High Court for clarification and also initiated contempt proceedings. Mr. Rohtagi also submitted that the authorities must be directed to issue the planning permit for construction of the houses with reference to Survey No. 469/1 immediately and on payment of necessary charges etc.

Mr. C.A. Sundaram, learned senior counsel appearing for the respondents, submitted that the principal issue which directly and substantially arose and which was decided by the High Court in SCA No. 1032 of 1996 was in respect of the validity of mutation entry No. 1950 and that what was finally and conclusively decided by the High Court in its aforesaid judgment was a controversy relating to the validity of mutation entry arising directly and substantially in the writ petition and the observations relating to various other issues/contraventions under other independent legislations were, at the best, collateral and incidental observations made only with a view to hold that after a long lapse of time, the Collector could not have sought to disturb the mutation entry on the strength of the contravention of the provisions of other enactments referred to above. Similarly, the principal issue which arose for the consideration of the High Court in SCA No. 941 of 1980 at the behest of the Bhavnagar Municipality was the legality and validity of the order dated 6.12.1979 passed by the authority concerned sanctioning the weaker section scheme under Section 21 of the ULC Act in favour of the appellant-Company. Ultimately, the High Court while dismissing the writ petition held that the alleged excess land which was allowed to be retained by the appellant-Company for implementing the Scheme for weaker sections under Section 21 of the ULC Act would remain unaffected by the provisions of Section 3 of the ULC Repeal Act and that the possession thereof shall be allowed to be continued with the land owners. Mr. Sundaram further contended that the land admeasuring 76 acres 39 guntas of Survey No. 469/1 is concerned, the same was never part of the aforesaid scheme and that, therefore, the same was never governed by the ULC Act prior to its repeal. Referring to show cause notices, it was submitted that at no point of time, the proceedings for the violation of the provisions of the Vid Formula for illegal sale of the land initiated against the appellant-Company and were ever concluded till the rendition of order dated 29/30.8.2003. Likewise, at no point of time, the proceedings for violation of the provisions of the Saurashtra Gharkhed Tenancy

A Agricultural Ordinance, 1949 had ever been concluded.

Mr. Sundaram, however, conceded that no further action can be taken for disturbing the finality of the mutation entry in view of the judgment of the High Court dated 24.11.2000 in SCA No. 1032 of 1996, which was also a stand taken by the respondent, in their affidavit in reply on behalf of the State. The said statement is placed on record.

In the appeal arising out of Special Leave Petition (C) 8718 of 2004, in regard to the grant of non-agricultural permission or cancellation thereof, it was submitted that the said issue was never the subject matter of either SCA No. 941/1980 or SCA No. 1032/1986 and that, therefore, there was never a question of the said issue reaching any finality. Mr Sundaram further submitted that it was owing to the aforesaid reasons that the fresh proceedings came to be pursued against the appellant-Company and that the proceedings were initiated in view of the breaches committed by the appellant-Company under various enactments. According to Mr. Sundaram, the appellant-Company appeared in response to the aforesaid show cause notices in different sets of proceedings and that in all the aforesaid proceedings, the appellant-Company was duly represented by its advocate and ultimately the said orders have been rendered after affording ample opportunities of being heard and after considering the applicable legal provisions.

On 30.8.2003, an order was passed imposing penalty, conversion tax, non-agricultural assessment, local fund and education cess totalling to the tune of Rs. 5,80,61,510 in respect of 31,48,208 sq. mts. (excluding land of Survey No.472), *inter alia*, on the ground that the aforesaid transfer of open plots in favour of third parties were in violation of the provisions of Registration Act, Bombay Stamps Act, Town Planning Act, Municipal Regulation, Building Regulation etc. and for using land of different survey numbers for non-agricultural purpose without permission. This order was with reference to the show cause notice dated 12.5.2003:

Another order was passed on dated 30.8.2003 deciding show cause notice dated 13.5.2003 issued under Section 67 of BLR Code etc. for breach of conditions of non-agricultural permission granted vide order dated 23.6.1980 in respect of 720 sq. mts. of land of Survey No. 4701/1 and construction is not as per Condition No. 4 or order of non-agricultural permission since the construction has been carried out on the land in question in violation of the lay out plans for the said land as approved by the specified authority.

A  
A separate order was passed on dated 30.8.2003 deciding show cause notice dated 13.5.2003 issued under Section 67 of BLR Code etc. for breach of conditions of non-agricultural permission granted vide order dated 28.10.1980 in respect of 17927.50 sq. mts. of land of Survey Nos. 470/1 and 471/2.

B  
Another order was passed on 30.8.2003 deciding show cause notice dated 13.5.2003 issued under Section 67 of BLR Code etc. for breach of conditions of non-agricultural permission granted vide order dated 27.3.1981 in respect of 78,713 sq. mts. of land of Survey No. 470/1 (Part), 471/2 (Part) and 471(Part).

C  
For the show cause notice dated 17.5.2003, an order was passed on 29/30.8.2003, for illegal sale of Bid land of Survey Nos. 469/1, 470/1, 471/3 and 471/2 admeasuring 880 A.04 Gs. in violation of Bid Formula and that of the provisions of the BLR Code have been contravened and that, therefore, the appellant-Company being in unauthorised occupation and enjoyment of the land was ordered to be summarily evicted.

D  
Another order on the same date was issued under Section 75 of the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance, 1949 for transfer of land of Survey Nos. 469/1, 470/1, 471/3, 471/2 and 472 to non-agricultural in breach of Section 54 and that the appellant-Company has failed to produce any evidence as to whether permission for purchasing the land was obtained or that the appellant-Company is a farmer/agriculturist.

E  
F  
Another order was passed for forfeiture of land bearing Survey Nos. 469/1, 470/1, 471/2, 471/3 and 471/4 admeasuring 832 acres 4 guntas on the ground that on repeal of ULC Act all the lands are governed by the provisions of the Gujarat Agricultural Lands Act, 1960 and that the appellant-Company had admittedly acquired surplus land admeasuring 880 acres and 4 guntas in excess of the prescribed ceiling limit of Vadva Village of Bhavnagar District, which acquisition is required to be declared illegal and the excess land vests in the State Government.

G  
Another order was issued in respect of the land bearing Survey No. 472 admeasuring 101 acres 14 guntas, *inter alia*, on the ground that the land bearing Survey No. 472 since 1949-1955 was never included in Village Form No.6 and was entered as Government land.

H  
The appellant-Company has, therefore, taken up various proceedings against the orders passed by various authorities and during the pendency of

**A** the aforesaid appeals, the appellant-Company filed two miscellaneous civil applications being 2340 of 2003 and 2341 of 2003 before the High Court seeking clarification and also initiating contempt proceedings and against the order of rejection, the appellant have filed the above appeals herein before this Court.

**B** Mr. Sundaram, after narrating all the events, submitted that a plain reading of the judgment, impugned in these special leave petitions, passed by the High Court makes it abundantly clear that the High Court has not gone into the merits of the case of the appellant and both the miscellaneous applications were rejected mainly on the following grounds:

**C** (i) That the application for clarification and directions is not maintainable in law since the same under the guise of seeking clarification, challenge legality and validity of various orders passed by the different authorities under different statutes which are the subject matter of challenge by the appellant before various revisional and appellate authorities;

**D** (ii) That appellants' application for clarification and directions filed before the High Court did not mention as to under which provisions of law the same was filed despite such requirement as per Rule 50 of the Gujarat High Court Rules, 1993;

**E** (iii) That the appellants' application for clarification and directions was admittedly not for rectification of an order or removal of ambiguity and that the appellants have not invoked the inherent power of the High Court for rectification of error or for removal of ambiguity and if inherent powers are not invoked, then there must be some provisions under which the application was filed.

**F** (iv) That the judgment of the High Court in SCA No.941 of 1980 has merged into the order of this Court passed in Civil Application No. 5556/2001 whereas judgment of the High Court rendered in SCA No. 1032/1996 though not merged into the order of this Court, various averments and grounds mentioned in the application for seeking clarification and directions based on two decided petitions are almost common, interconnected and interlinked and that, therefore, the orders passed by this Court dismissing the special leave petition as well as the review petition of the State preferred against the judgment of the High Court in

**G** SCA No. 1032 of 1996 may attract Art. 141 of the Constitution.

**H**

- (v) That the application for contempt is not entertainable since the respondents herein have not committed contempt of Court and the appellants are not entitled to relief of quashment of the orders passed by various authorities in the year 2003 in contempt proceedings more particularly when appellants themselves have approached the High Court for clarification of its judgments rendered in SCA Nos. 941/1980 and 1032/1996.

Mr. Sundaram reiterated that the High Court did not go into the various other contentions raised on behalf of the appellants relating to the merits of the case and that, therefore, it is not correct on the part of the appellants to contend that the High Court has made observations as regards the merits of the applications despite it having expressly come to the conclusion that since the order of the High Court had merged with the order of this Court and that, therefore, any such application would lie only before this Court.

Concluding his arguments, Mr. Sundaram submitted that fresh nine orders passed by various authorities under various legislations in the year 2003 furnished fresh causes of action to the appellants and the same cannot be set aside by entertaining an application which is styled as an application for clarification and directions.

According to Mr. Sundaram, the appellants have committed breaches of various laws with impunity and now under the guise of bar of *res judicata* and under the threat of contempt, want the authorities to desist from taking any action against them. He also denied that the show notice notices and the orders passed thereon are not hit by the principles of *res judicata* and constructive *res judicata* and/or principles analogues to *res judicata* and constructive *res judicata*, as alleged or otherwise.

We have given our anxious consideration to the rival claims to the detailed and elaborate submissions made by the counsel appearing on either side.

This Court, on 5.5.2004, heard these special leave petitions and by an *interim* order directed the District Inspector, Bhavnagar to go at the spot and identify and earmark 76 acres and 39 guntas of land in Survey No. 469/1 in the presence of representative of Bhavnagar Municipal Corporation, Government and the petitioner-Mill, if not already done and further make entries to that effect in the revenue record within four weeks from the date of the said order. This Court further directed the Corporation to sanction the

A lay out plan in another two weeks after the land is identified and dues are paid. It is stated that in spite of several letters and reminders sent by the appellants, the respondents have deliberately failed to comply with the aforesaid *interim* order under the guise of issuing fresh show cause notices. In our opinion, most of the issues which sought to be raised in the counter affidavit of the respondents are nothing but raising the same issues all over again which had been raised in the earlier proceedings and were rejected by this Court and would amount to replaying of a recorded cassette. It cannot be disputed that the issues of the alleged violation of VIDI Formula, Bid Land, ALC Act, Saurashtra Gharkhed Ordinance and the alleged lack of title to Survey No. 472 are the issues which had been raised before the High Court in SCA No. 1032 of 1996 and thereafter in this Court in Special Leave Petition(Civil) No. 1562 of 2002 and again in Review Petition No. 33 of 2003 but did not find favour either with this Court or the High Court. The High Court, after elaborate discussion by its judgment dated 24.11.2000 delivered in Special Civil application No. 1032 of 1996 held, *inter alia*, as under:

D “In the instant case, even if the entire period from the first mutation entry made in the year 1976 up to the conclusion of all litigations pending in the High Court is excluded, we find that the impugned show cause notice issued on 25.1.1996 to revise the order of the Deputy Collector passed on 10.7.1992 being after a period of almost 3 years and 6 months. It is much beyond a reasonable period of one year as has been held by the Division Bench in the case of *Bhagwanji Patel* (supra). As has been narrated above in statements of facts, not only that the Revenue Entry was confirmed but the State Government had sanctioned construction scheme prepared by the petitioner company for construction of dwelling units for weaker sections of the society. The petitioner on that basis spent crores of rupees for development of the land. It is reported that on part of the land some dwelling units have been constructed. It is too late now for the Collector, Bhavnagar to raise an issue that part of the land was Bid Land and the erstwhile ruler of Bhavnagar could not have sold it to the petitioner company and it is not covered in the definition of ‘agriculturist’ under the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance Act, 1949. The petitioner’s grievance is legitimate that attempt to upset the construction scheme by treating the urban land to be an agricultural land after such a long period, is an action highly belated and unjust.”

H

In the special leave petition filed against the aforesaid judgment of the High Court, the very same grounds raised in the counter affidavit under reply had been raised as well as argued before this Court and the same were rejected. The respondents once again raised those issues in Review Petition No. 33 of 2003 filed in this Court. The Review Petition was dismissed by this Court on 6.2.2003. Refusing to concede defeat, the then Collector filed affidavits in this Court and had remained present in this Court issued a series of show cause notices, wherein the orders of this Court was described as under:

“For taking a decision in that *regard due to lack of full facts before this Court, it was held by this Court* that it does not see any reason to interfere with the judgment of this Court rendered in Special Civil Application No. 1032 of 1996 dated 24.11. 2000. *On the basis of this judgment, the illegal acts committed by the “Mill” cannot be termed as legal.* In these circumstances, show cause notice for breach of Section 66 of the Mumbai Land Revenue Code, 1879 is hereby issued/given.”

(Emphasis supplied)

Despite, appellant No.1 bringing to the notice of the former Collector that the said action on his part of issuing the show cause notices was in violation of this Court judgment and order dated 5.12.2002 and 6.2.2003, he brushed aside the same and proceeded to issue various *ex parte* orders in utter contempt of this Court. A written representation requesting him to recuse himself from hearing the show cause notices on the ground that he had been a party to the earlier proceedings as well as filed affidavits in those proceedings, the then Collector refused to recuse himself from hearing the show cause notices and passed various orders dated 29/30.8.2003 on the aforesaid show cause notices.

It is well settled that the judgments of this Court are binding on all the authorities under Article 141 of the Constitution of India and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues raised in the show cause notices. Such an attempt to belittle the judgments and the orders of this Court, to say the least, is plainly perverse and amounts to gross contempt of this Court. We are pained to say that the then Deputy Collector has scant respect for the orders passed by the

**A** Apex Court.

**B** We have perused the various counter affidavits and the various notices issued on different occasions. They are all mere repetition of the stand taken by them in the earlier proceedings before this Court which has been elaborately dealt with in the earlier proceedings. Insofar as Survey No. 469/1 is concerned, several notices were issued by the appellants herein to the Commissioner, Bhavnagar Municipal Corporation and the Collector, Bhavnagar inviting their attention to the order dated 5.5.2004 passed in the present appeals. Several correspondence took place between appellant No.1 and the authorities from 10.5.2004 to 29.6.2004. The authorities have not permitted the appellants to carry out the construction on the said land on Survey No. 469/1. Identification of the land has not also been done as directed by this Court. In the meanwhile, the appellant paid development charges to Bhavnagar Area Development Authority for construction of various blocks of Survey No. 469/1 amounting to Rs.29,618 and development chares for the whole land amounting to Rs. 6 lakhs has already been paid by appellant No.1 on 7.5.2002. The appellants have also paid scrutiny charges for the lay out plan for the whole land bearing Survey No. 469/1 amounting to Rs.3,11,508 and 1,55,754 has already been paid on 13.5.2002 and 12.9.2003 by appellant No.1.

**E** It was also brought to our notice that with respect to the land of Survey No.469/1, the authorities have already entered the name of the appellant in the revenue records on 13.10.2002. Thereafter, the appellant's name was deleted from the said entry pursuant to the order of the Collector dated 29/30.8.2003 and the order of the City Mamlatdar dated 15.9.2003. Thereafter when the entry was made pursuant to the order of this Court dated 5.5.2004, it was incumbent on the City Mamlatdar to not only make the entry of the area of Survey No. 469/1 in the revenue records but also to make that entry in the name of the applicant. This has not been done so far. Learned counsel appearing for the appellant, therefore, submitted that the City Mamlatdar is the guilty of not complying with the order of this Court dated 5.5.2004. On 22.6.2004, the Collector of Bhavnagar District wrote a letter to the Deputy Commissioner, Bhavnagar, Municipal Corporation that as per the four separate orders of the office of the Collector dated 30.8.2003, a total amount of Rs.5,85,93,410 remains to be recovered from the appellant-Company. In reply to the said letter dated 22.6.2004, the appellant wrote to the Collector and the Commissioner stating that the alleged dues of five 5 crores and odd have no reievance to the orders passed by this Court and the demand made is illegal and contrary to the order passed by this Court and that the four orders on

which the reliance was placed were all passed contrary to the order dated 5.5.2004 passed by this Court. A

Further it was submitted that in respect of the land bearing Revenue Survey No. 469/1, all dues have been paid for sanctioning the plan and further the appellant-Company has always been ready to pay the non-agricultural tax for the revenue Survey No. 469/1 but the Collector and the Commissioner have refused to grant any permission even after various reminders sent to them by the appellant-Company. Through this letter, appellant No.1 once again called upon the Collector, the Commissioner, the Deputy Secretary, Revenue Department and other officers of the State Government to forthwith comply with the orders passed by this Court on 5.5.2004. The authorities refused to sanction the plan in view of the pending dues. The appellant informed the Collector, the Commissioner and other authorities that the order was passed by this Court on 5.5.2004 only in respect of Revenue Survey No.469/1 and the dues payable only for the said land. It was also informed that all the dues which were demanded by the authorities in respect of Revenue Survey No. 469/1 aggregating amount of Rs.11,80,607 has already been paid by the appellant and, therefore, call upon them to comply with the order passed by this Court on 5.5.2004. B C D

In our opinion, the conduct and behaviour of the Collector, the Commissioner, the Dy. Secretary to Revenue Department and the Deputy Commissioner are improper and less said is better. In our opinion, in respect of the specific direction issued by this Court on 5.5.2004, the authorities are deliberately not complying with the orders passed by this Court and prevented the appellants from carrying out the construction on the lands in question for the last four years even though the appellants have succeeded in all the petitions before this Court. E F

We, therefore, direct all the authorities to comply with the orders passed by this Court on 5.5.2004 in its letter and spirit. We extend the time for compliance finally by four weeks from the date of the pronouncement of this judgment. Any lapse or delay on the part of the respondents herein will be viewed very seriously. G

From the above discussion by us and of the record would clearly go to show that the following issues are covered by the earlier proceedings and finally decided by the Courts and reached its finality and which cannot be reopened again: H

- A (1) The lands in Survey Nos. 469/1, 470/1, 471/2, 471/3 and 472 aggregating about 952 acres sold in favour of the appellants by the former ruler with the permission of the Collector and registered has become final and conclusive.
- B (2) The lands in question being pasture land (Bid land) and not being fit for cultivation was excluded from the purview of the Gujarat Agricultural Land Ceiling Act, 1960.
- C (3) The Right, Title Entry made in the revenue records in respect of the lands in question in the name of the appellant has become final and conclusive and, therefore, removal of the appellant from any of the Survey Numbers in question is not permissible.
- D (4) The declaration issued by the competent authority and Additional Collector under the ULC Act, in exercise of the power under Section 21(1) of the ULC Act after verifying the title of the appellant in respect of the above survey numbers is final and conclusive.
- E (5) The writ petition filed by the Bhavnagar Municipality for quashing and setting aside the order dated 6.12.1979 granting exemption to the lands and sanctioning the scheme under section 21 of the ULC Act were valid and legal.
- F (6) It is not in dispute that the appellant have raised construction on the lands and the lands have been fully developed, save and except, the lands in Survey No. 469/1.
- G (7) The orders dated 9.11.1979 and 20.11.1979 whereby the Deputy Collector dropped the proceedings filed by the former Ruler under Section 8 of the ALC Act for a declaration that the sale deed dated 31.3.1971 was not effected by him with a view to defeat the ALC Act was rejected by the Tribunal in Revision application by the State Government. In respect of the ALC proceedings, the said order was finally concluded since under the ALC Act no further appeal was preferred by the State Government.
- H (8) This also was not in dispute that pursuant to the cabinet decision of the Gujarat Government, the appellants withdraw all the pending proceedings and, thereafter notices were issued under Rule 108(6) of the Bombay Land Revenue Code seeking to revise the right and title Entry No.1950 principally contending that the sale deed

dated 31.3.1971 was invalid.

A

On the abovementioned grounds, the mutation entry was sought to be cancelled. The Deputy Collector, Bhavnagar held that the ownership of the land in question was of the appellant and a decision was taken that the revenue mutation No. 1950 as recorded in Village Form No.6 was legal and valid which was also decided to withdraw the show cause notice dated 27.7.1991 and to drop all the proceedings commenced under the said notice.

B

(9) The Deputy Collector also confirmed the order of the City Mamlatdar dated 16.9.1962. The reservation of Survey No. 469/1 in favour of the Bhavnagar University had lapsed.

C

(10) The High Court, in its judgment, in SCA No. 1032 of 1996 quashed the notice dated 25.1.1996 of the Collector. The High Court observed that it is unfair for the Collector to raise various issues such as illegal sale of bid land, breach of Saurashtra Gharkhed Ordinance, ALC Act etc. which were closed and decided earlier.

D

(11) The issue of ULC Act and ALC Act was concluded by the judgment of the High Court in SCA No. 941 of 1980.

(12) No further action can be taken for disturbing the finality of the mutation entry in view of the judgment of the High Court rendered on 24.11.2000 in SCA No. 1032 of 1996 and, therefore, there is no question of disturbing the mutation entry on the strength of the contravention of the provisions of other enactments now.

E

(13) Civil appeal No. 5536 of 2001 preferred by the Municipal Corporation was dismissed as withdrawn. Thus the issue of ULC Act and ALC Act raised in the SCA 941 of 1980 was finally concluded by the said judgment.

F

(14) In the judgment in *Bhavnagar University v. Palitana Sugar Mills Ltd.* (supra), this Court decided the dispute between the Bhavnagar University and the appellant with reference to Gujarat Town Planning and Urban Development Act, 1976. The appeal filed by the Bhavnagar University was finally dismissed by this Court.

G

(15) Review petition No. 33 of 2003 was also dismissed by this Court.

Thus it is seen that the various proceedings were initiated again and again by the authorities which have already been concluded by various

H

- A** orders of the Tribunal, the High Court and of this Court. It was fairly conceded by Mr. Sundaram, at the time of arguments, that the matters which are finally concluded and decided by the authorities and by the orders of the High Court and of this Court will not be reopened again and that the matters which have not been raised and decided earlier will alone be persuaded by the respondents. The statement made by Mr. Sundaram is placed on record.

- B**
- It was stated that the appeals have been filed against the orders passed by the authorities with regard to the show cause notices issued. It is open to the appellants to pursue the appeals which have already been filed by them and we make it clear that the authority shall consider and decide only the matters which are not covered by and concluded by any of the earlier orders passed by the authorities, the High Court and of this Court.

- C**
- It has already been noticed by us that the authorities have not issued planning permit with reference to Survey No.469/1. We direct all the respondents/authorities to consider the application and sanction the plan of Survey No. 469/1 and make entries in the revenue records forthwith in accordance with law. This direction shall be complied with by the officers of the State Government within four weeks from the date of this judgment.

- D**
- It is stated by Mr. Sundaram that the appellants have constructed dwelling units on the lands in question not in accordance with the sanctioned scheme under the ULC Act and that the appellants have put up construction contrary to the sanctioned scheme. If so, it is open to the respondents to proceed against the appellant with regard to the violation of permission granted to construct the dwelling units on the lands in question after giving notice and after affording sufficient opportunities to the appellant to put forth their grievance in this regard.

- E**
- In the result, we allow the appeals in part and direct the Collector, Bhavnagar to grant non agricultural permission in respect of the land of about 76 acres 36 guntas comprised in Survey No. 469/1 Bhavnagar District after collecting the non-agricultural tax calculated at the rate of 5% per sq. mt. Applicable at the time when the application was made by the applicant i.e., 24.2.2003 which aggregate to Rs.15,57,540. Dispute, if any, with regard to the tax calculated and the rate has to be agitated separately and collected later. The Commissioner of Bhavnagar Municipal Corporation is directed to consider the application for sanction within four weeks the lay out and building plans as per the current development control rules and pass order in accordance with law.

**F**

**G**

**H**

We also direct respondent Nos. 1 and 2 to collect non-agricultural permission charges and conversion charges for the lands bearing Survey No. 470/1, 471/2, 471/3 and 472 situated at Village Vadva, Bhavnagar as prevalent in the year 1981. **A**

We further direct respondent Nos. 1 and 2 to collect non-agricultural permission charges and conversion charges for the land bearing Survey No. 469/1 as prevalent on 24.2.2003, which is the date on which the appellants had applied for the grant of non-agricultural permission for the said survey number and on receipt of payment to grant the non-agricultural permission in respect thereof as applied for. **B**

For the foregoing reasons, we dispose of the appeals arising out of S.L.P.(C) Nos. 8718-8719/2004. In view of the disposal of the appeals, the Contempt Petition Nos. 410 and 411 of 2004 in Special Leave Petition No. 1562/2002 and Civil Appeal No. 5556 of 2001 are also disposed of accordingly. **C**

K.K.T.

Appeals disposed of.