IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13992 of 2026

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BHUMIKABEN D/O JANAKKUMAR B BRAHMBHATT W/O CHIRAG RAJNDRAKUMAR RAO

Versus

COLLECTOR , AHMEDABAD & ANR.

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Appearance:
MR SUNIL S JOSHI(2925) for the Petitioner(s) No. 1
MR. AMIT M LASHWANI(17434) for the Petitioner(s) No. 1
MR JAY TRIVEDI, AGP for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**

Date : 05/11/2026

ORAL ORDER

1. This petition is filed for the following reliefs:-

"a) YOUR LORDSHIPS be pleased to issue a writ of certiorari or a writ in the nature of mandamus or certiorari or any other appropriate writ, order or direction, quashing and setting aside the order dated 06.08.2026 (Annexure-A) passed by the Collector, Ahmedabad i.e. respondent No.1;

b) YOUR LORDSHIPS Be pleased to issue a writ of mandamus or certiorari or writ in the nature of mandamus or certiorari, declaring that the permission sought for by the petitioner vide application dated 02./07.04.2026 (Annexure) for N.A. use of her agricultural land, is deemed to have been granted in view of proviso to Section 65(1) of the Code;

c) Pending admission, hearing and final disposal of the captioned petition, YOUR LORDSHIPS be pleased to stay the execution, implementation and operation of the order dated 06.08.2026 (Annexure-A) passed by the Collector, Ahmedabad i.e. respondent No.1;

d) Pending admission, hearing and final disposal of the captioned petition, in view of the deeming fiction getting attracted in the case of petitioner as per proviso to Section 65(1) of the Code, be pleased to direct the Respondent authorities not to take any coercive steps in case the petitioner uses the said land for non agricultural purpose, which was applied for by the petitioner;

e) Be pleased to grant any other and further relief in the facts and circumstances of the matter."

2. Heard Mr.Joshi, learned advocate appearing for the petitioner, and Mr.Jay Trivedi, learned AGP for the State.

3. It is submitted by Mr.Joshi, learned advocate for the petitioner that earlier the order passed by the Collector rejecting the application filed under Section 65 of the Bombay Land Revenue Code on the ground of not having the permission under Section 63 was challenged before this Court by filing a writ petition being Special Civil Application No. 3097 of 2025. It is submitted that this Court *vide* order dated 2nd March, 2026 has allowed the petition directing the present petitioner to file a fresh application under Section 65 of the Gujarat Land Revenue Code with a direction that the same shall be decided within a statutory period by taking into consideration the ratio laid down in the case of **Tusharbhai Harjibhai Ghelani v. State of Gujarat**, reported in **(2019) 4 GLR 2578**. It is submitted that thereafter fresh application was filed by the present petitioner on 07.04.2026, which is acknowledged by the authority on 11.04.2026, and despite the directions were issued to decide it in a statutory period, that is within 90 days, no such decision was taken upto 06.08.2026. It

is submitted that, again on the same ground, without considering the directions issued by this Court, the application came to be rejected with an observation that the State authorities are in process of filing the Letters Patent Appeal. It is submitted that though the order is dated 2nd March 2026, till date no such Letters Patent Appeal has been filed, and the application was rejected whereby the petitioner was sent from pillar to post again and again. It is submitted that in that background the impugned order is required to be quashed by imposing the exemplary cost to the Collector for not following the orders and directions issued by this Court.

4. Mr.Jay Trivedi, learned AGP has submitted that, at the relevant point of time, the State was under the process of filing Letters Patent Appeal, therefore, such orders were passed by the Collector, Ahmedabad. It is submitted that, as on date, no such Letters Patent Appeal has been filed before this Court challenging the order dated 2nd March, 2026. However, it is submitted that if the petitioner would again be relegated to the Collector with a direction to file fresh application under Section 65 of the Gujarat Land Revenue Code, then same would be considered in accordance with the Circular dated 07.10.2026 issued by the Revenue Department. In that background, it is submitted not to pass any further order.

5. Considering the submissions made by learned advocates and the factual matrix of the case, it appears that previously the application filed by the present petitioner under Section 65 of the Code on 19.12.2024 came to be rejected on 11.02.2025.

The reasons stated for rejection of the application are as under:

> *"With respect to the above subject, it is to inform you that your application for non-agricultural use permission dated 19.12.2024 was accepted for processing.*
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> *After scrutiny of the said application, your application is currently filed for the following reasons. You can re-apply after fulfilling the following reasons/subjects, as per the rules.*
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> *Upon scrutiny of the record of the land in question, it is filed for the following reasons:*
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> *(1) As per the details of the negative opinion of the Mamlatdar and ALT, Shri Saraswati Smriti Kheti Sahakari Mandali Ltd. has been entered as the occupier as per entry No.7408. Later it has been divided as per Entry Nos.7730, 8051. In which transactions, the approval is not obtained as per Section 63 of the Tenancy Act, as per the opinion, permission cannot be granted under the Tenancy Act.*
> *(2) As per the details of the negative opinion of the Collector (Land Reforms) and the appeal, present applicant has been entered vide entry No.17271 dated 18/010/24 by way of sale transaction. From the details submitted (Entry No.5400 of S.No.1994 of Kheda, Matar, Traj), it is not clear that he is a farmer.*
> *(3) As aforesaid, by sale entry No.7408, Shri Saraswati Smriti Kheti Sahakari Mandali Ltd. has been entered as the occupier. Thereafter, the division and name change of the society has been done as per the details of Entry Nos.7730, 8051 and 9221. It is informed that, in the said sale transactions, it appears that no approval as per Section 63 of the Tenancy Act has been obtained, therefore, there is no opinion to grant permission under the Tenancy Act."*

6. Challenging the same, writ petition came to be filed before this Court being Special Civil Application No.3097 of

2025, wherein by allowing the petition, this Court has observed as under:-

> *"8. Having heard learned advocates appearing for the respective parties, upon perusal of the impugned order passed by the respondent no. 1 dated 11.02.2025, the petitioner's application for N.A. use under Section 65 of the Code as stated herein-above is rejected mainly on the ground that it is not clear whether the erstwhile cooperative society had taken permission under Section 63 of the Tenancy Act before the purchase of the said land as well as no such permission was obtained by the said society at the time of division and in view thereof, based on the negative online opinion by the Mamlatdar and Krushi Panch the permission for N.A. use as prayed for could not be granted.*
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> *9. It emerges from the record that and upon submission made by Mr. Parikh, learned AGP that no proceedings are ever initiated by the respondent authority qua the erstwhile co-operative society under the Tenancy Act.*
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> *10. In the facts of the present case, in light of the ratio laid down in Tushar Ghelani (Supra), the impugned order passed by the respondent authority is unsustainable in the eye of law having been passed on the grounds distinct from powers provided under Section 65 of the Code wherein, the respondent no. 1 in exercise of such powers is required to summarily inquire whether the applicant is occupying the land in question and whether using the said land for agricultural purpose.*
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> *10.1 It is apposite to refer to the decision rendered in the case of **Tusharbhai Harjibhai Ghelani versus State of Gujarat** reported in **(2019) 4 GLR 2578,** paragraph nos. 35 to 44 of which reads thus:*
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> > *"35. Section 65 of the Code, referred to above, on its plain reading, do not provide for any scope of raising objection by any party who is yet to establish*

its right in his favour over the land in question. In other words, the proceedings under section 65 of the Code is not an adversary proceeding at all.

36. In section 65 of the Code, referred to above, two words are of pivotal importance; (i) "occupant" and (ii) "holding". Section 3(12) defines the term "holding". It reads as under;

"3(12):-"holding":-"holding" means a portion of land held by a holder"

37. Section 3(16) defines the term "occupant". It reads under; "3(16):-"occupant"; "occupant means a holder in actual possession of unalienated land, other than a tenant; provided that where the holder in actual possession is tenant the landlord or superior landlord, as the case may be, shall be deemed to be the occupant."

38. Thus, the plain reading of section 65 makes it clear that for the purpose of grant of N.A. Permission, the first thing the Collector should look into is whether the applicant, seeking N.A. Permission, is an occupant of the land which is being assessed or held for the purpose of agriculture. For the purpose of ascertaining this, the Collector is expected to look into the revenue records. The name of the applicant in the revenue records would prima facie go to show or rather indicate that he is the occupant of the land. The second step in the process would be to ascertain whether such land is being assessed or held for the purpose of agriculture.

39. Section 65 of the Code provides for the uses to which an occupant of land for the purpose of agriculture may put his land to. If the occupant of the land wishes to use the land for purposes other than the agriculture or agriculture-related activities, he is required to make an application to the Collector for permission to do so. It may be

noted that the key-word in Section 65 is the occupant of the land. It is sufficient for the purposes of Section 65, that the person applying for NA Permission is an occupant of the land. It is nowhere stated in the said provision that the applicant should have title or ownership over the land for which NA Permission is sought. The legislature, in its wisdom, has thought it fit that it should suffice if an occupant of the land applies for NA Permission. It is not necessary that such person has to prove his title to the land before he makes an application. The present case is on a far better footing. Not only are the petitioners occupants of the land, they are also the owners thereof, by a legal and valid registered Sale Deed. The said sale deed may be a subject matter of challenge before the Civil Court but the fact remains that the Civil Court has not yet passed any decree cancelling the same or declaring it to be illegal or obtained by fraud.

40. Thus, it transpires that, no power is available to the Collector under Section 65 of the Code to examine or conclude regarding the title of the writ applicants over the land in question. A bare reading of the said provision makes it clear that it only provides for the uses to which an occupant of land for agricultural purposes, may put his land to. The provision further lays down the procedure to be followed for making an application for NA Permission by the occupier and the manner in which it is to be processed by the Competent Authority. Nowhere is it contemplated in Section 65 that the Collector is empowered to undertake an inquiry into the title of the occupier.

41. A perusal of the impugned order dated 19th November, 2014 passed by the Collector makes it clear that the reason for the rejection of the application of the writ applicants is that their title to the land in question is defective on the ground that two civil suits are pending.

> *42. In State of Gujarat v. Patel Raghav Natha, (1969)2 SCC 187, the Supreme Court has clearly held as below "14. We are also of the opinion that the Commissioner should not have gone into question of title. It seems to us that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent Court and not decide the question of title himself against the occupant."*
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> *43. This was also a case where the NA Permission under the provisions of Section 65 of the Code was in issue. The above principles of law therefore, squarely apply to the present case.*
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> *44. Considering the provisions of Section 65 of the Code as well as the above pronouncement of law by the Supreme Court, this Court cannot but arrive at the inevitable conclusion that the denial of NA Permission to the writ applicants under the garb of a purportedly defective title over the land in question amounts to a transgression of the limits of jurisdiction vested in the second respondent under the Code. The impugned order is, therefore, one without jurisdiction. For such reason also the plea of alternative remedy should fail."*

11. In the facts of the present case, the respondent no.1 having exercised powers contrary to those provided under Section 65 of the Code as discussed herein-above and the ratio laid down in the case of Tushar Ghelani (Supra) as referred to herein-above, the impugned order passed by respondent no. 1 - Collector dated 11.02.2025 is quashed and set aside.

12. The petitioner herein to prefer a fresh application seeking N.A. use permission under Section 65 of the Gujarat Land Revenue Code, 1879, which is directed to be decided within the statutory period taking into consideration the ratio laid down in case of Tushar

Ghelani (Supra).

13. With the aforesaid directions, the present petition stands allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent.
Direct service is permitted."

7. As pursuant to the directions issued by this Court in the above order, again the petitioner had moved to the Collector by filing the application on 07.04.2026, which was again rejected on the same ground, which is reproduced hereinbelow:-

"At the end of scrutiny of the said application, your application is currently filed for the following reasons. You can re-apply after fulfilling the following reasons/subjects, as per the rules.

1) Due to negative opinion of ALT.
2) Due to negative opinion of DCLR.

A detailed explanation of the above reasons,

(1) In view of the negative opinion of the Mamlatdar and ALT and the Collector (Land Reforms), as the transfers made with regard to entries nos.7408, 7730, 8051, 9221 and 14431 are against the specified provisions, and a negative opinion is given for grant of permission under the Tenancy Act. Further, if necessary, guidance should be sought from the Government to ensure that order dated 02.03.2026 of Honourable Gujarat High Court is not violated, otherwise action has to be taken to file an Letters Patent Appeal against the decision dated 02.03.2026 of the Honourable Gujarat High Court. (2) Upon checking online at IRCMS, it appears that RTS/AHMEDABAD/ 146/2026 is pending at the SDM (WEST) office. (3) Since a proposal has to be made to the Government regarding whether to file an Letters Patent Appeal against the judgment of the Honourable Gujarat High Court dated 02.03.2026."

8. It is also required to be noted herein that, in addition to the application, the representation is also made by the present petitioner on 02.04.2026, drawing the attention of the Collector with regard to the orders and directions issued by this Court in above writ petition. Ignoring all the directions and considering himself above the law, the Collector has passed an order on the same line which was earlier quashed by this Court in the writ petition beyond the statutory period of 90 days, though direction was issued to decide the same within statutory period. The Collector, while passing the impugned order, has observed that government is in process of filing the Letters Patent Appeal, however, as on date, though more than seven months are passed, no such Letters Patent Appeal has been filed.

9. This is not the first instance where the Collector has acted as a superpower authority and considering himself as a person, who can act according to his own whims and wish. The litigants are relegated to same authorities under the expectation that the wisdom would prevail to the Collector and they would act in accordance with law. In the opinion of this Court, every person is required to respect and obey the orders of the Court with due dignity for the institution. The Government Departments are no exception to it. The department or instrumentalities of the State must act expeditiously as per the orders of the Court, and if such orders postulate any schedule, then it must be adhered to. Whenever some of the obstructions or difficulties in compliance with the

orders of the Court are there, then it is expected from the Government departments or its functionaries to approach the Court promptly by taking appropriate recourse available under the law. Where the Government departments neither obeys the order nor approach to the Court in time, then only possible inference in law is that such party disobeys the order of the Court. In other words, intentionally not carrying out the order of the Court. Flagrant violation of the Court's order would reflect the attitude of the officer concerned to undermine the authority of the Courts, its dignity and the administration of justice. In the case on hand, the Court is drawing such inference against the officer, viz. the Collector.

10. To defend the action of the Collector, reliance is placed on the Circular dated 17.10.2026 and it is submitted that again the party may be relegated to the Collector. The circular dated 07.10.2026 issued by the Revenue Department, is subsequent to the decision rendered by the Collector. However, in the said Circular also no any law has been enacted and only directions were issued to the authorities to act in accordance with the guidelines and the law laid down by this Court as well as by the Apex Court.

11. Even otherwise also, when Section 65 provides only to consider the occupancy and nature of the land at the time of deciding the application for NA use permission, there was no requirement to go beyond such aspect. More particularly, when the earlier order which is passed on same line is quashed with a direction to decide it again in view of the decision rendered in the case of **Tusharbhai Harjibhai Ghelani** (supra).

12. In the opinion of this Court, the hardship which is caused to the litigants is required to be compensated by Collector himself from his own pocket. Considering the same, the petition is disposed of with following direction:-

(i) The impugned order dated 06.08.2026 passed by Collector, Ahmedabad, in Application No.30717202606329 is hereby quashed.

(ii) The application of the petitioner dated 11.04.2026 is restored to its original file with a direction to decide the same as per the decision rendered by this Court in Special Civil Application No.3097 of 2025 within statutory period.

(ii) The cost of the litigation, which is quantified at Rs.1,00,000/- shall be deposited before the registry of this Court, within a period of one month, by the Collector from his own salary, and if the Collector fails to deposit such amount, then State authority shall deposit the same and recover it from the salary of the Collector. The amount deposited shall be disbursed in favour of the petitioner after due verification by way of an electronic mode.

13. With above directions, present petition is allowed.

(M. K. THAKKER,J)

R.S. MALEK

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: RIYAZMIYA SABIRMIYA MALEK(HC00180), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 06/11/2026 17:47:37