

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2084 OF 2019

1. Vivek Dhirubhai Gohel	]	
Aged about 27 years,	]	
Residing at "Mahapuja", 72,	]	
Green City, Main Road,	]	
By pass Road, City Junagadh,	]	
State-Gujarat	]	
	]	
2. Mukesh Jiwrajbhai Kadia	]	
Aged about 54 years, residing at	]	
708, Akshardham Apartment,	]	
Giriraj Main Road, City Junagadh,	]	
State-Gujarat	]	
.	]	.. Petitioners
Vs.		
1. Union of India	]	
represented through Administrator,	]	
Union of Territory of Diu,	]	
Secretariat, Fort Area, Moti Daman,	]	
Daman (U.T.) - 396 220.	]	
	]	
2. The Collector, Diu	]	
Collectorate, Diu,	]	
	]	
3. Enquiry Officer,	]	
City Survey Office,	]	
Diu.	]	.. Respondents

Mr.P.K. Dhakepalkar, Senior Advocate a/w. Mr.Akshay Patil, Mr.Ajit Kenjale, Mr.Sohil Gulabani, Mr.Suraj Bansode, Ms.Chaitali Jadhav I/b Mehul Shah, Advocates for petitioners.

Mr.S.S. Deshmukh, Advocate for respondents.

**CORAM : B.R. GAVAI &
N.J. JAMADAR, JJ.**

DATE : 6th MARCH 2019

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith and with the consent of the counsel for the parties, heard finally.
2. The petitioner challenges the order, dated 18th July 2018, vide which, the respondent No.2-Collector has directed the respondent No.3 to review the confirmation order passed by respondent No.3 on 7th March 2013.
3. It is contended by Shri Dhakepalkar, the learned senior counsel for the petitioners that the perusal of Section 193 of the Goa, Daman and Diu Land Revenue Code, 1968 would reveal that the Collector would not have the powers to review the order since the power to review the order, has to be exercised by the authority, who has passed the original order. Shri Dhakepalkar submitted that since the original order dated 7th March 2013 has been passed by the respondent No.3, it is only respondent No.3, who can review the said order and that too within a period of ninety days from the date of the order which is sought to be reviewed.
4. Shri Dhakepalkar further submitted that, in any case, prior to passing the said order by respondent No.3, no notice was given to the petitioners and as such on this ground also the impugned order is not sustainable in law.

5. Shri Deshmukh, the learned counsel appearing for the respondents, on the contrary, submitted that the petitioners have already participated in the proceedings between the parties at Daman and as such they cannot be heard to say that the impugned proceedings are not sustainable in law. The petition challenging the order dated 18th July 2018 has been filed by the petitioners on 5th February 2019. As such, participation in the proceedings by the petitioners is subject to outcome of the present petition.

6. We do not propose to go, at this stage, into the merits of the contention of the petitioners that the Collector will have no jurisdiction to review the order passed by the Subordinate Officer, inasmuch as, we find that the petition deserves to be allowed since the act of the respondent No.2 is in violation of principles of natural justice.

7. It is more than settled position of law that any order which has the result of having adverse consequences on a party, has to be preceded by the principles of natural justice, unless by explicit provisions or by necessary implication of the statute excludes the operation of the principles of natural justice.

8. At this stage, Shri Deshmukh states that the respondents have no objection for granting hearing to the petitioners.

9. In that view of the matter, we are inclined to allow the petition. Hence, the petition is allowed. The impugned order dated 18th July 2018 is quashed and set aside. The matter be remitted back to the respondent No.2-Collector. If the Collector proposes to pass any order adverse to the interest of the petitioners, the same shall be done only after giving an opportunity of hearing to the petitioners. It is further made clear that in the event the Collector proposes to reopen the issue, all contentions available to the petitioners are kept open.

10. Rule is made absolute in the above terms.

[N.J. JAMADAR, J.]

[B.R. GAVAI, J.]