

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2576 OF 2021**

Rajan Rameshchandra Desai and others ... Petitioners

Versus

The Collector, Daman and others ... Respondents

WITH**WRIT PETITION (ST) NO. 12026 OF 2021**

Powerband Industries Pvt. Ltd. ... Petitioner

Versus

The Administrator, Union Territory of Dadra and
Nagar Haveli and Daman and Diu Daman and others ... Respondents

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Dr. Birendera Saraf, Senior Advocate alongwith Mr. Jay Sanklecha, Mr. Neerav Merchant and Mr. Niket Mehta instructed by Majmudar & Partners for the Petitioners.

Mr. Virag Tulzapurkar, Senior Advocate alongwith Mr. Kingshuk Banerjee and Mr. Ritvik Kulkarni instructed by Khaitan and Co. for the Petitioners in WP-2596-2021.

Mr. Hiten S. Venegaonkar for Respondent Nos.1 and 2.

Mr. N.P. Shimpi for Respondent No.3.

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CORAM : S.J. KATHAWALLA AND**MILIND N. JADHAV, JJ.****DATED : AUGUST 13, 2021.****P.C. :-**

1. Heard the Learned Advocates appearing for the parties and the following order is passed :

(i) The captioned Writ Petition No. 2576 of 2021 has been filed, *inter alia*, for the

following reliefs:

“[...]

(a) that this Hon’ble Court be pleased to declare Rule A2(4) of the Regional Plan of Daman, 1989 as being ultra-vires the Goa, Daman and Diu Town and Country Planning Act 1974;

(b) that this Hon’ble Court be pleased to direct the Second Respondent to produce the order bearing number COL/DMN/LND/SD/HC/-II/5390 dated 3/09-10-1996 issued by the Assistant Secretary (Revenue), Daman (1996 Order) or any other order the Second Respondent may have issued in relation to the subject matter of this Petition and, to the extent such order mandates the transfer of title to any immovable property, issue a writ of certiorari or any other writ, order of direction under Article 226, quashing and setting aside the 1996 Order, to the extent it mandates the transfer of title to immovable property, as being patently illegal and arbitrary;

(c) that this Hon’ble Court be pleased to direct the First Respondent to produce the Impugned February 1997 Letter and after examining the validity thereof, issue a writ of certiorari or any other writ, order of direction under Article 226, quashing and setting aside the same;

(d) that this Hon’ble Court be pleased to issue a writ of certiorari or any other writ, order or direction under Article 226, quashing and setting aside the Impugned March 1997 Order (Exhibit T at page 267), as being patently illegal and arbitrary;

(e) that this Hon’ble Court be pleased to declare that the Impugned Release Deed (Exhibit D at page 169) is arbitrary, even otherwise illegal, non-est, void ab-initio, and does not constitute a valid transfer of the Subject Plot to the Government/Daman PWD;

(f) that this Hon’ble Court be pleased to issue a writ of certiorari or any other writ, order or direction under Article 226, quashing and setting aside the Impugned Notice (Exhibit O at page 191) as being patently illegal and arbitrary, and made without any application of mind;

- (g) that this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, order of direction under Article 226, quashing and setting aside the Impugned 2017 Order (Exhibit N at page 190) as being patently illegal, arbitrary, and made without any application of mind;
- (h) that this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, order or direction under Article 226, quashing and setting aside the Impugned 2020 Order (Exhibit R at page 224) as being patently illegal, arbitrary, and made without any application of mind;
- (i) that this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, order of direction under Article 226, quashing and setting aside the Impugned Mutation Entry (Exhibit M at page 189) and direct the name of Powerband to be recorded as the owner of the plot bearing survey number 354/3 (admeasuring 2220 square meters) at Village Kachigam, Nani Daman, Daman (UT), 396 210; [...]"

(ii) The captioned Writ Petition (L) No. 12026 of 2021 has been filed, *inter alia*, for the following reliefs:

"[...]

- a) That this Hon'ble Court be pleased to issue a writ of certiorari, or any other appropriate writ, order or direction under Article 226 of Constitution of India, calling for the records of the papers and proceedings of the Revision Appeal No.1/2020, and upon receiving the same and after considering the legality and propriety thereof, be please to quash and/or set aside the following:
 - (i) the Notice dated 11th October, 2017 [Ex. O] issued by Respondent No. 2;
 - (ii) the Order dated 27th October, 2017 [Ex. P] passed by Respondent No. 2;
 - (iii) the Order dated 3rd November 2020 [Ex. R] passed by Respondent No. 1.
- b) That this Hon'ble Court be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondents by itself and/or through their

servants, agents and/or officers to cancel the mutation of the Relevant Plots made pursuant to the Impugned Order dated 27th October, 2017.”

(iii) The following Notice and Orders are hereby quashed and set aside:

(a) The Impugned Notice dated 11 October 2017 (Exhibit O to Writ Petition No. 2576 of 2021), which is also annexed as Exhibit O to Writ Petition (L) No. 12026 of 2021; (hereinafter referred to as the ”Impugned Notice”)

(b) The Impugned Order dated 27 October 2017 (Exhibit N to Writ Petition No. 2576 of 2021), which is also annexed as Exhibit P to Writ Petition (L) No. 12026 of 2021; and

(c) The Impugned Order dated 3 November 2020 (Exhibit R to Writ Petition No. 2576 of 2021), which is also annexed as Exhibit R to Writ Petition (L) No. 12026 of 2021 (The Impugned Orders at Paragraph 3 (ii) and (iii) above hereinafter collectively referred to as the “Impugned Orders”).

(iv) The matter and all issues raised in these two petitions, i.e. Writ Petition No. 2576 of 2021 and Writ Petition (L) No. 12026 of 2021, are remanded to the First Respondent in Writ Petition No. 2576 of 2021 (i.e. Second Respondent in Writ Petition (L) No. 12026 of 2021) (the “Collector”) for a fresh hearing and determination on merits on all the issues raised in the two petitions, uninfluenced by

the Impugned Notice and Impugned Orders.

(v) The Petitioners in both captioned petitions shall be respectively given adequate advance proper notice and thereafter shall be respectively heard by the Collector before any order is passed.

(vi) In the event of any order adverse to the Petitioners in the captioned Petitions is passed by the Collector, any such order of the Collector will not be given effect to for a period of 4 (four) weeks from the date of communication of the relevant order passed by the Collector.

(vii) All issues, rights, and contentions of all parties are kept open.

(viii) The ad-interim order dated 13 July 2021 passed by this Hon'ble Court in the captioned Petitions shall also continue to operate for the period mentioned at Clause (vi) hereinabove.

(ix) Parties have agreed that no reason may be given in support of this order. The statement is accepted. In view of the above order, both the above Writ Petitions stand disposed off.

(MILIND N. JADHAV, J.)

(S.J. KATHAWALLA, J.)

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