# Kalpataru Land Surat Pvt Ltd Vs Honourable Gujarat Revenue Tribunal

**Court:** Gujarat High Court

**Date of Decision:** July 5, 2019

**Acts Referred:** Bombay Land Revenue Code, 1879 â€" Section 37(2), 53, 195, 237(2), 211
Gujarat Town Planning And Urban Development Act, 1976 â€" Section 13(2)
Transfer Of Property Act, 1882 â€" Section 54
Indian Registration Act, 1908 â€" Section 17
Bombay Tenancy And Agricultural Lands Act, 1948 â€" Section 2(6), 63, 76
Urban Land (Ceiling And Regulation) Act, 1976 â€" Section 2(1), 2(17), 2(6), 2(17), 2(17)(2), 3,3(aa), 3(1)(aa), 3(1A), 3(1D), 5, 10, 11, 16, 20(2), 33, 38
Gujarat Khar Lands Act, 1963 â€" Section 2(d), 2(h), 9, 10, 14
Bihar Land Reforms (Fixation Of Ceiling Area And Acquisition Of Surplus Land) Act, 1961 â€" Section 2(f)
Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 â€" Section 48
Gujarat Land Revenue Code, 1879 â€" Section 117C(6)
Saurashtra Estates Acquisition Act, 1952 â€" Section 2(1), 2(3), 2(11), 5, 5(2)
Bombay Personal Inam Abolition Act, 1952 â€" Section 5, 7
Gujarat Agricultural Lands Ceiling Act, 1960 â€" Section 3
Gujarat Tenancy And Agricultural Lands Act, 1948 â€" Section 11, 16, 17, 17A, 17B, 18, 19, 20, 26, 27, 28, 29, 30, 41, 63, 64, 64A, 84A, 84B, 84C
Gujarat Town Planning And Urban Development Act, 1976 â€" Section 13(2)
Gujarat Land Revenue Rules, 1972 â€" Rule 75, 75(1)(a), 75(1)(b), 108(6)
Code Of Civil Procedure, 1908 â€" Order 41 Rule 23
Constitution Of India, 1950 â€" Article 226, 227, 291, 366

**Hon'ble Judges:** Harsha Devani, J; Bhargav D. Karia, J

**Bench:** Division Bench

**Advocate:** Wadiaghandy, Mihir H Pathak, Mohmedsaif Hakim, S N Thakkar, Kruti M Shah

## Judgement

1. Perused the note for speaking to minutes.

2. It appears that in paragraph 3 of the judgment and order dated 25.04.2019 passed by this court in the captioned letters patent appeal, due to

inadvertence, reference to the total area of land is stated to be 2840 acres, whereas the same is actually 2814 acres. Hence, in paragraph 3 of the said

judgment and order, the words Ã¢â‚¬Å“out of 2840 acresÃ¢â‚¬â€‹ shall be substituted by the words Ã¢â‚¬Å“out of 2814 acresÃ¢â‚¬â€‹.

3. Moreover, in paragraph 75 of the judgment and order, the date of the order passed by the Deputy Collector, Surat is referred to as 07.07.2000

instead of 07.07.2003. Under the circumstances, in paragraph 75 of the said judgment and order, instead of the words Ã¢â‚¬Å“order dated 07.07.2000Ã¢â‚¬

passed by the Deputy Collector, Surat, the words Ã¢â‚¬Å“order dated 07.07.2003Ã¢â‚¬â€‹ passed by the Deputy Collector, Surat shall be substituted.

4. The note stands disposed of accordingly.

Harsha Devani, J

1. This appeal under clause 15 of the Letters Patent Act calls in question the judgment and order dated 7th August, 2018 passed by the learned Single

Judge in Special Civil Application No.12502 of 2010, whereby the petition filed by the appellant (original petitioner) has been dismissed and the order

passed by the Gujarat Revenue Tribunal in Revision Case No.TEN/BS/104 of 2003 dated 15th May, 2010, is confirmed.

2. The appellant herein filed a writ petition under articles 226 and 227 of the Constitution of India being Special Civil Application No.12502 of 2010,

seeking the following substantive reliefs:

Ã¢â‚¬Å“AA) This HonÃ¢â‚¬â„¢ble Court be pleased to issue a writ of mandamus and/or a Writ in the nature of mandamus and/or any other appropriate Writ,

Order or direction under Article Ã¢â‚¬" 226 to hold and declare that the provisions of Gujarat Agricultural Land Ceiling Act, 1960 has no application on

the subject land and the Respondent authorities may be prohibited from taking any action of any nature whatsoever under the Gujarat Agricultural

Land Ceiling Act, 1960 vis Ã¢â‚¬" a Ã¢â‚¬" vis the land situated at Village Abhava in R.S. No. 506 paiki admeasuring approximately 1603 Acres purchased

by petitioners;

B) This HonÃ¢â‚¬â„¢ble Court be pleased in exercise of its powers under Article 226 and/or and be pleased to issue a writ of certiorari or mandamus or

any other appropriate writ, order or direction, quashing and setting aside the Judgment and Order of the Honourable Gujarat Revenue Tribunal in

Revision Case No. TEN BS 104 of 2003 dated 15th May, 2010 at (Ann. : G-3) in so far as it quashed the order of Ã¢â‚¬Å“the Additional Mamlatdar and

Krishi Panch (Ceiling) dated 18th September, 2000 in Ceiling Case No. 1 of 2000 (Ann. Ã¢â‚¬ËœF')"";

BB) This HonÃ¢â‚¬â„¢ble Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other Writ, Order or direction for

quashing and setting aside the Order of the Respondent No. 1 dated 15th May, 2010 passed in Revision Case No. TEN BS 104 of 2003 and further be

pleased to uphold the Order dated Order dated 18th September, 2000 passed by the Additional Mamlatdar and Krishi Panch (Ceiling) in Ceiling Case

No. 1 of 2000

3. The facts stated briefly are that the appellant is a Private Limited Company registered under the Companies Act and is carrying on business inter

alia as real estate developers. The appellantÃ¢â‚¬â„¢s predecessors-in-title, by six registered sale deeds, purchased about 1673 acres of land out of 2840

acres comprising revenue survey No.506 of village Abhava, taluka Choryasi, District Surat, for valuable consideration from the erstwhile holders. The

said predecessors had acted in representative capacity on behalf of their kith and kin, and for that purpose, the entire holding of 1673 acres was

divided amongst them as recorded in a family arrangement dated 18th August, 1969 on a nominal stamp paper.

3.1 An application came to be made by the predecessors-in-title of the appellant to the Mamlatdar, Surat, for mutating their names in the revenue

records in pursuance of the six registered sale deeds. It appears that pursuant thereto, the Mamlatdar, in Inquiry No.2/1974, initiated proceedings

under section 37(2) of the Bombay Land Revenue Code, 1879 (hereinafter referred to as the Ã¢â‚¬Å“CodeÃ¢â‚¬) and held that the total lands of revenue

survey No.506 of Abhava village being fallow and uncultivable land belonged to the Government under the provisions of the Bombay, Personal Inam

Abolition Act, 1951.

3.2 The said order of the Mamlatdar came to be challenged before the Gujarat Revenue Tribunal (hereinafter referred to as Ã¢â‚¬Å“the TribunalÃ¢â‚¬) in

Appeal No.8 of 1974. The Tribunal, by an order dated 8th April, 1976, held that the predecessors-in-title of the appellant were the lawful holders of

the said lands.

3.3 It is the case of the appellant that the appellantÃ¢â‚¬â„¢s predecessors-in-title, by way of abundant precaution, obtained a clarificatory letter from the

Assistant Collector, Choryasi Prant, to the effect that the total lands are Ã¢â‚¬Å“pot kharabaÃ¢â‚¬ and Ã¢â‚¬Å“khari landÃ¢â‚¬ and, therefore, do not fall within the

purview of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Ã¢â‚¬Å“Tenancy ActÃ¢â‚¬â€¹).

3.4 It is further the case of the appellant that relying upon the categorical observations made by the Tribunal in the order dated 8th April, 1976 as well

as clarificatory letter of the Assistant Collector, Choryasi Prant, the appellant purchased 1603 acres of land out of 2814 acres of land bearing revenue

survey No.506 of Village Abhava, District Surat (hereinafter referred to as Ã¢â‚¬Å“the subject landÃ¢â‚¬), for valuable consideration, by various registered

sale deeds between the years 1985 and 1995 for non-agricultural purposes. The name of the appellant came to be duly mutated in the revenue records

as holder/owner thereof.

3.5 It appears that the subject land was designated as reserved for township under Surat Urban Development AuthorityÃ¢â‚¬â„¢s (SUDAÃ¢â‚¬â„¢s) second

revised draft development plan under section 13(2) of the Gujarat Town Planning and Urban Development Act, 1976. The SUDA by its zoning

certificate dated 22nd March, 1996, issued to the appellant, confirmed that the subject land designated under No.H-21 in the revised development plan

was reserved for township purposes. It is the case of the appellant that between the TribunalÃ¢â‚¬â„¢s order of 1976 and 1985, there were no pending

RTS proceedings in respect of the entire revenue survey No.506 of Village Abhava. It appears that certain other RTS proceedings were undertaken

by different parties; however, the same are not relevant for the present purpose.

3.6 The residents of village Abhava challenged the order dated 8th April, 1976 passed by the Tribunal by way of the writ petition being Special Civil

Application No.1232 of 1987, which came to be dismissed. The second respondent State also filed a writ petition being Special Civil Application

No.4876 of 1992 before this court challenging the order dated 8th April, 1976 passed by the Tribunal, which also came to be dismissed.

3.7 The third respondent - Collector, Surat, in exercise of suo motu powers of revision under rule 108(6) of the Gujarat Land Revenue Rules, 1972,

again cancelled the parent mutation entry No.594 pertaining to 1673 acres, which included the subject land, inter alia, on the grounds of violation of the

provisions of section 54 of the Transfer of Property Act, 1882, section 17 of the Indian Registration Act, 1908, the Hindu Succession Act, 1956 and

sections 2(6) and 63 of the Bombay Tenancy and Agricultural Lands Act, 1948.

3.8 Against the order passed by the Collector, the appellant preferred an appeal before the Secretary, Revenue Department (Appeals), who by an

order dated 29th November, 1996, quashed the order passed by the Collector and remanded the matter for deciding the same afresh.

3.9 By an order dated 5th November, 1997, the Collector, Surat, after hearing the appellant and others, held that mutation entry No.594 and

subsequent mutation entries were in order and also observed therein that the subject land being pot kharaba and uncultivable land, did not attract the

provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as the Ã¢â‚¬Å“Ceiling ActÃ¢â‚¬); and also observed that the subject

land is running under the head of Ã¢â‚¬Å“pot kharabaÃ¢â‚¬ and is not cultivable, and that if the land is reclaimed and a huge expenditure is incurred, it can be

made cultivable and thereafter the provisions of the Gujarat Agricultural Land Ceiling Act can be made applicable. However, the object of the

company is to establish a New Surat Township and the Government has also called for report in respect of Kalpataru and as the object of the

company is to use the land for non-agricultural purpose of township, on condition that the company shall not use the 7/12 record of the land so

purchased for the purpose of becoming an agriculturist and on condition that after getting the plan for New Surat Township sanctioned from the

competent authority, N.A. permission is obtained and on condition that the subject land shall not be used for any purpose other than for township

except with the prior approval of the Collector and on condition that Kalpataru Land Development Pvt. Ltd. obtains any permission that is required to

be taken on the basis of any rules/resolutions/circulars and on condition of complying with all conditions and furnishing a copy thereof to the Deputy

Collector. Accordingly, the Collector, in exercise of powers under rule 108(6) of the Gujarat Land Revenue Rules has ordered the notice to be filed.

3.10 It appears that in exercise of suo motu powers under section 211 of the Bombay Land Revenue Code, the Principal Secretary, Revenue

Department (Appeals), Government of Gujarat, opened Case No.1 of 2002, and by his order dated 13th March, 2002, quashed the order dated 5th

November, 1997 passed by the Collector, Surat on the ground that the appellantÃ¢â‚¬â„¢s predecessors-in-title had evaded payment of stamp duty on the

document of the said family arrangement. By the said order, the Principal Secretary, Revenue Department (Appeals) directed that orders of the State

Government be obtained for regularizing the irregularities in sanctioning mutation entry No.594 and till the proceedings for regularizing mutation entry

No.594 are concluded status quo be maintained qua the subject land.

3.11 It appears that against the above order passed by the Principal Secretary, writ petitions came to be filed before this court. By a common order

dated 8th August, 2007, the writ petition filed by the appellant being Special Civil Application No.8848 of 2002, came to be allowed and the order dated

13th March, 2002 passed by the Special Secretary, Revenue Department (Appeals) came to be set aside and the earlier order of the Collector, Surat

dated 5th November, 1997 came to be restored.

3.12 It is the case of the appellant that inspired by the order dated 5th November, 1997 passed by the Collector, Surat, the appellant requested the

Government for grant of additional 600 acres of fallow land belonging to the Government and adjoining to the subject land towards Village Khajod,

sometime in 1999. By an order dated 24th August, 1999, the Collector, Surat rejected the application of the petitioner (Annexure Ã¢â‚¬Å“NÃ¢â‚¬ to the

petition, page 202/D), stating that the petitioner was already holding 1600 acres of land and that there were no valid grounds for grant of additional

land. A copy of the said order was endorsed to the Mamlatdar and Agriculture Land Tribunal (ALT), Choryasi for the purpose of examining the

provisions of the Ceiling Act in respect of the subject land and taking appropriate action in that regard.

3.13 Pursuant thereto, the fifth respondent/the Mamlatdar and ALT (Ceiling), Surat, issued notice dated 19th January, 2000 to the appellant in Case

No.1 of 2000 calling upon it to produce documentary evidence to show that the lands held by it were exempted under the provisions of the Ceiling Act.

In case the appellant had not obtained any such exemption, the appellant was also called upon to produce the village record of the subject land for the

period 24.1.1971 to 1.4.1976. By an order dated 18th September, 2000, the fifth respondent/Mamlatdar and ALT held that the provisions of the Ceiling

Act were not applicable to the subject land and ordered the notice issued to the appellant to be filed.

3.14 It appears that the Collector, Surat, instructed the fourth respondent/Deputy Collector, Choryasi Prant, to take the order dated 18th September,

2000 in revision. Pursuant thereto, the Deputy Collector issued notice dated 6th February, 2001 to the appellant informing it that the order dated 18th

September, 2000 was being taken in revision by him. By an order dated 7th July, 2003, the Deputy Collector set aside the order dated 18th September,

2000 passed by the Mamlatdar and ALT, holding that as the subject land had not been notified under the Gujarat Khar Lands Act, 1963, no exemption

under section 3(1)(aa) of the Ceiling Act could be granted and that the subject land was required to be considered as agricultural land falling within the

purview of the Ceiling Act.

3.15 Being aggrieved, the appellant made a revision application before the Gujarat Revenue Tribunal on 22nd August, 2003 under section 76 of the

Tenancy Act and under section 38 of the Ceiling Act, which came to be registered as Revision Application No.TEN BS 104/2003. By the impugned

order dated 15th May, 2010, the Tribunal disposed of the revision application by quashing and setting aside the order dated 7th July, 2003 passed by

the Deputy Collector, Surat as well as the order dated 18th September, 2000 passed by the Mamlatdar and ALT, and remanded the matter to the

Mamlatdar by issuing specific directions, reference to which shall be made at an appropriate stage.

3.16 Being aggrieved, the petitioner has approached this court by way of the captioned writ petition seeking the reliefs noted hereinabove. By the

impugned judgment and order dated 7th August, 2018 passed in Special Civil Application No.12502 of 2010, the learned Single Judge dismissed the

petition and upheld the order passed by the Tribunal and further held that the entire transaction viz. execution of Declaration Deed prior to execution

of sale deed by which, land in question is distributed amongst 67 persons in proportion maximum up to 40 acres, creates doubts and appears to be with

a view to avoid the application of Ceiling Act and is a well-planned act. Being aggrieved, the appellant has filed the present letters patent appeal.

4. Mr. Pravin Samdani, learned counsel for the appellant (original petitioner) submitted that this appeal pertains to the lands abutting river Mindola and

the Arabian Sea. During the high tide, the salt water enters the land. After due survey and completion of procedure in accordance with the provisions

of the Code, Durasti Patrak/Kami Jasti Patrak was finalized in respect of survey No.506 along with others. In the said Kami Jasti Patrak, the entire

survey No.506 including the subject land admeasuring 1603 acres or thereabouts was classified as Ã¢â‚¬Å“Khar-no-KharaboÃ¢â‚¬, uncultivable under

category B-1. The Village Form 7/12 extracts in respect of the said lands were prepared and copies were issued from time to time, which indicate the

nature of the lands as Khar lands and the entire area was shown in the column of Pot Kharaba (page 1050). No portion of the subject lands was

shown falling in the column of cultivation and not assessed to revenue.

4.1 It was submitted that the appellant/petitioner, who is a developer by profession, acquired the subject lands for the purpose of development of a

township during the period 1985 Ã¢â‚¬" 1995. Prior to the acquisition, the petitioner undertook due diligence including obtaining of requisite information

from the office of the Collector, who in response to an advocateÃ¢â‚¬â„¢s letter dated 3rd June, 1985 indicated that the subject lands were non-

agricultural and the Gujarat Tenancy and Agricultural Lands Act, 1948 did not apply to the same. It was submitted that in the draft development plan

published in the year 1996 under the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as Ã¢â‚¬Å“the Town Planning

ActÃ¢â‚¬), the subject lands were shown as falling under reservation of Surat Urban Development Authority (SUDA) township and such reservation has

continued in the final sanctioned development plan and in the revision in the draft development plan for the year 2035.

4.2 It was submitted that since the year 1960 till the year 1999, no proceedings were ever initiated under the provisions of the Ceiling Act. On 19th

January, 2000, the fifth respondent, Mamlatdar and ALT issued a show cause notice as to why the proceedings under the Ceiling Act should not be

initiated and after hearing the petitioner, the Mamlatdar and ALT by the order dated 18th September, 2000, discharged the show cause notice. It was

submitted that the order of the Mamlatdar and ALT was taken in suo motu revision by the fourth respondent Ã¢â‚¬" Deputy Collector at the instance of

the third respondent Ã¢â‚¬" Collector, who by his order dated 7th July, 2003, set aside the order passed by the Mamlatdar and ALT, and directed him to

take further steps in the matter. It was submitted that the petitioner challenged the said order before the Tribunal, which by an order dated 11th May,

2010, set aside the order passed by the Mamlatdar and ALT as well as the Deputy Collector, and remanded the matter to the Mamlatdar and ALT, to

decide the following four questions:

(i) Whether there was a dictate given by the third respondent Ã¢â‚¬" Collector to the fifth respondent Ã¢â‚¬" Mamlatdar and ALT in initiating proceedings

under the Ceiling Act against the petitioner?

(ii) Whether the issue of limitation was involved at the time of initiating proceedings under the Ceiling Act against the petitioner?

(iii) Whether the subject land was Ã¢â‚¬Å“khar landÃ¢â‚¬â€‹ or agricultural land?

(iv) If the Ceiling Act is applicable to the subject land, then whether such land is exemptible or not?

4.3 It was submitted that being aggrieved by the order passed by the Tribunal, the petitioner had presented the captioned writ petition before this court,

which came to be dismissed by the impugned judgment and order dated 7th August, 2018, wherein the learned Single Judge has travelled beyond the

scope of the proceedings before him and has made unwarranted observations with regard to the transactions in respect of the subject land.

4.4 According to the learned counsel, the main question of law that arises for determination in this appeal is, Ã¢â‚¬Å“Whether the land which is called

Ã¢â‚¬Å“khar-no-kharaboÃ¢â‚¬ (uncultivable B-1 category) and is put in its entirety in the column of Ã¢â‚¬Å“pot kharabaÃ¢â‚¬ under the Gujarat Land Revenue

Code, is land covered by any of the classes of Ã¢â‚¬Å“landÃ¢â‚¬â€‹ under the Ceiling Act?Ã¢â‚¬â€‹

4.5 The learned counsel submitted that admittedly, no proceedings whatsoever came to be initiated under the provisions of the Ceiling Act until the

year 1999. Admittedly, the subject lands were never cultivated nor are they capable of being cultivated and have been shown as khar-no-kharabo

uncultivable under category B-1 in the revenue records as well as in the 7/12 extracts for the years 1976 to 2005, and admittedly, no contrary

documentary evidence has been produced by anyone. The third respondent Ã¢â‚¬" Collector, in the course of revenue proceedings, had observed that the

subject lands were uncultivable, pot kharaba land and the Special Secretary, Revenue Department (Appeals), had also made similar observations. It

was submitted that thus, it is an admitted position of the lands being salty, were never put to cultivation and were never assessed to land revenue, and

are covered under the development plan under the Town Planning Act.

4.6 It was contended that the subject lands being khar-no-kharabo/khar lands, the provisions of the Ceiling Act do not apply to such lands. Elaborating

upon the said submission, the learned counsel submitted that the legislative intent behind the Ceiling Act is to distribute surplus agricultural lands in the

hands of the holders of agricultural lands to the agriculturists who were landless. Thus, the Ceiling Act never applied to non-agricultural lands or lands

that are not arable. Referring to the definition of Ã¢â‚¬Å“landÃ¢â‚¬ as defined under section 2(17) of the Ceiling Act, it was submitted that the lands which

are covered under section 2(1) are the lands which fall under any of the four classes defined in section 2(6) read with Schedule-I of the Ceiling Act. It

was submitted that the activities which can be undertaken on these classes of lands under section 2(6) of the Ceiling Act are activities which are

covered by the artificial definition of the expression Ã¢â‚¬Å“agricultureÃ¢â‚¬â€‹ under section 2(1) of the Ceiling Act which was amended in the year 1974.

4.7 The attention of the court was invited to the amended definition of Ã¢â‚¬Å“agricultureÃ¢â‚¬ to submit that the legislature also introduced an amendment to

section 2(17) of the Act to include bid lands into section 2(6) read with section 2(17) of the Ceiling Act which were until then excluded by restricting

the definition of land to the lands covered by the four classes enumerated in section 2(6) of the Ceiling Act. It was contended that the legislature while

introducing the amendment in 1974 is presumed to have had knowledge that apart from bid lands, there were other unarable lands which were not

covered by the Ceiling Act. It was submitted that while amending the Ceiling Act in 1974, the legislature intentionally included only one more class of

land, viz., bid lands, whilst excluding other lands which did not fall in any of the four classes of lands. Furthermore, the legislature intentionally also did

not introduce any residuary class to cover all lands and that such exclusion is deliberate and intentional. The legislature also, though amended

Schedule-I to the Ceiling Act, did not include khar lands or khar-no-kharabo or other lands which did not fall in any of the classes, except for the four

classes provided in section 2(6) of the Ceiling Act.

4.8 It was contended that the Ceiling Act does not per se include all types of lands, for example, lands submerged in water, pot kharaba land, salt pan

lands, marshy lands, mangroves, etc. According to the learned counsel, in order to determine which lands are covered by the Ceiling Act, one will

have to harmoniously read section 2(17) with the classes of land as enumerated in section 2(6) in conjunction with section 5, section 6 and Schedule-I

of the Ceiling Act. It was submitted that one of the principal parameters of the Ceiling Act is to fix land within the ceiling limit provided in section 5

read with Schedule-I thereof. If the class of land is not included either in section 2(6) or in Schedule-I, then it is obviously excluded from the purview

of the Ceiling Act.

4.9 It was submitted that under the Ceiling Act, if the lands are found to be surplus, depending upon the location, nature, irrigation, for example,

perennially or seasonally irrigated and dependent upon the nature of crop, the ceiling limits in Schedule-I is fixed as to the quantum of retainable lands

in different local areas. Under the Ceiling Act, the quantum of compensation is fixed for different local areas based on the assessment and the

multiples of assessment. It was urged that a totality of reading of the provisions of the Ceiling Act leave no manner of doubt that khar-no-kharabo

lands are not covered by the provisions of the Ceiling Act, inasmuch as, the subject lands were never assessed to revenue and the lands were

admittedly unarable.

4.10 It was submitted that on behalf of the State, it had been contended that looking to the activities under the definition of agriculture, the

appellantÃ¢â‚¬â„¢s lands can be used for some or the other activities under the definition of agriculture. It was submitted that such contention is erroneous

and unsound, inasmuch as, the definition of Ã¢â‚¬Ëœagriculture Ã¢â‚¬â„¢ as defined under section 2(1) of the Ceiling Act is an artificial definition. It was argued

that for the purpose of the Ceiling Act, the said activities are called agriculture if they are undertaken on the lands falling in any of the classes under

section 2(6) read with section 2(17) of the Ceiling Act and that the definition of agriculture is not determinative of the nature of lands and whether the

same are covered by the Ceiling Act. According to the learned counsel, if the determination was on the basis of the definition of agriculture, the

appellantÃ¢â‚¬â„¢s lands when it comes to a class would not fall in any of the classes. Similarly, it would not fall in any of the columns in Schedule-I and

hence, it would not be possible to compute the ceiling limit or the compensation payable in respect thereof. It was submitted that therefore, for the

purpose of interpretation, the provisions of the Ceiling Act are required to be read in totality and contextually and when the same are read in the

context and harmoniously, there is no doubt that the Ceiling Act does not cover all types of lands and it covers only such lands as would fall within the

four classes under section 2(6) read with Schedule-I of the Ceiling Act.

4.11 In support of such submission, the learned counsel placed reliance upon the decision of the Supreme Court in the case of Reserve Bank of India

v. Peerless General Finance and Investment Company and others, (1987) 1 SCC 424, wherein it has been held thus:

Ã¢â‚¬Å“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture,

context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match

the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and

then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses

of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when

the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each

section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no

word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by

looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the

Court construed the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the Court's construction.Ã¢â‚¬â€‹

4.12 Next it was submitted that the Ceiling Act is an expropriatory Act and is required to be construed strictly and the provisions thereof ought to be

interpreted in a manner as would benefit the citizen. In support of such submission, reliance was placed upon the decision of the Supreme Court in the

case of Dev Sharan v. State of Uttar Pradesh, (2011) 4 SCC 769, wherein the court has discussed various principles and observed that the said

principles in their jurisprudence compel the court to construe any expropriatory legislation like the Land Acquisition Act very strictly. The court relied

upon its earlier decision in the case of DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622, wherein it

was held that expropriatory statute, as is well known, must be strictly construed.

4.13 It was submitted that the expression Ã¢â‚¬Å“agricultureÃ¢â‚¬ in section 2(1) of the Ceiling Act must be read as the activities which are undertaken in

any of the classes of land defined in section 2(6) read with section 2(17) of the Ceiling Act. It was reiterated that while amending the definitions of

Ã¢â‚¬Å“agricultureÃ¢â‚¬ and Ã¢â‚¬Å“landÃ¢â‚¬, Schedule-I was also amended, which included bid land, but did not include khar lands/khar-no-kharabo lands. It was

contended that if the legislative intent was to include all kinds of lands including the khar-no-kharabo, a suitable amendment would have been made to

section 2(6) and Schedule-I of the Ceiling Act.

4.14 Next, it was contended that the Ceiling Act makes provision for exempting the agricultural lands in certain cases under section 3 thereof.

However, the provisions of section 3 of the Ceiling Act do not apply in the case of the appellant as the appellantÃ¢â‚¬â„¢s lands are not khar lands as

defined under the Gujarat Khar Lands Act, 1963 (hereinafter referred to as Ã¢â‚¬Å“the Khar Lands ActÃ¢â‚¬) and in any event, the Khar Lands Act was

repealed on 7th June, 2000. It was submitted that khar land is defined in clause (d) of section 2 of the Khar Lands Act to mean such Ã¢â‚¬Å“tidal landÃ¢â‚¬

as is made cultivable by means of embankment. Therefore, on a plain reading of the provisions on the date on which the Ceiling Act is sought to be

applied, there had to be existence of an embankment, if that is so, then such land, irrespective of its nomenclature, would be called Ã¢â‚¬Å“khar landÃ¢â‚¬

under the Khar Lands Act. Reference was made to section 9 of the Khar Lands Act to submit that the Government is placed under an obligation to

inter alia prepare a list of (i) existing embankments, (ii) the lands which have been deriving benefit from embankment, and (iii) for future, prepare a

scheme for construction, maintenance and preservation of embankment. It was submitted that under section 10 of the Khar Lands Act, the

Government can prepare a scheme for including or improving khar lands by construction of an embankment and maintaining the same. Such scheme is

required to be published in the Official Gazette under section 14 of the Khar Lands Act. It was argued that admittedly, there is no existence of any

embankment on the subject lands and admittedly, there is no scheme prepared which contains a provision for construction of any embankment on the

subject lands, nor is any scheme published in the Official Gazette. It was submitted that the subject lands are khar-no-kharabo (B- 1) lands as

corroborated by the revenue records and the Government has taken a conscious decision not to include them in the scheme under the Khar Lands

Act. Moreover, no improvements have been made on the subject lands which therefore, continue to be khar-no-kharabo lands, uncultivable, unarable

and outside the provisions of the Khar Lands Act. It was submitted that in the aforesaid premises, reliance placed by the State upon the provisions of

section 3(1)(aa) of the Ceiling Act, with reference to the Khar Lands Act, is without any basis and that in any event, the exemption under section 3(1)

(aa) of the Ceiling Act applies only to the lands taken from the Government on lease.

4.15 It was further submitted that the subject lands are covered by the draft development plan of SUDA in 1996 which got sanctioned in the year

2004, which was again under reservation. In the said plans, at least since the year 1996 the subject lands are shown as reserved for township. It was

submitted that though the appellant has adopted the proceedings for lapsing of reservation, the land use still has to be in terms of the land used and the

adjoining lands which are reserved for residential zone, therefore also, the provisions of the Ceiling Act cannot be invoked. It was submitted that the

subject lands are required to be excluded from the Ceiling Act as they now fall within the municipal limits of Surat. In support of such submission, the

learned counsel placed reliance upon the decision of the Supreme Court in the case of Ramji Sharma v. State of Bihar, (1996) 10 SCC 671, for the

proposition that it is a matter of common knowledge that even in areas which are completely urban in nature or even in a colony some plots are lying

vacant as no constructions have been made over the same for one reason or the other including financial constraint. Till constructions are made, they

are being used for growing some crops or fruits. But it cannot be said that such plots which are meant for building purposes shall be deemed to be land

within the meaning of section 2(f) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961.

4.16 Reference was also made to the Soil Analysis report of the Navsari Agricultural University which was prepared during the pendency of the writ

petition to submit that such report which was prepared at the instance of the Collector clearly shows that the subject lands are not fit for agriculture.

4.17 Insofar as the orders passed by the authorities below are concerned, it was submitted that the fifth respondent Ã¢â‚¬" Mamlatdar and ALT who was

required to go into the factual aspects of cultivability of the subject lands, had on consideration of the documentary evidence produced before him, by

his order dated 18th September, 2000, held that the subject lands were not agricultural lands and therefore, the provisions of the Ceiling Act would not

apply. It was submitted that there was also a letter dated 3rd June, 1985 of the Assistant Collector, who had acknowledged that the subject lands were

pot kharaba. It was submitted that the findings rendered by the fifth respondent Ã¢â‚¬" Mamlatdar and ALT in his order were findings of facts on

consideration of the entire material evidence on record which clearly establishes that the subject lands do not fall in any of the classes of the land

under section 2(6) of the Ceiling Act and were, thus, not lands as defined in section 2(17) of the Ceiling Act and consequently, the provisions of the

Ceiling Act did not apply.

4.18 It was further submitted that in terms of the provisions of the Ceiling Act, the fifth respondent Ã¢â‚¬" Mamlatdar and ALT had issued notice to the

appellant under section 16 of the Ceiling Act and no other authority was required to be noticed. Neither the Ceiling Act nor the rules made thereunder

prescribe any other party to be noticed. The appellant had produced undisputed revenue records establishing the nature of the subject lands. In the

course of proceedings right up to this court, there is no other record or additional record produced by the State to controvert the case of the appellant.

Thus, no fault can be found in the order of the fifth respondent Ã¢â‚¬" Mamlatdar and ALT.

4.19 Insofar as the order passed by the Deputy Collector is concerned, it was submitted that in exercise of revisional jurisdiction, the revisional

authority is not empowered to interfere with the findings of facts unless the revisional authority finds a jurisdictional error or finds that the findings of

the lower authority are perverse. In support of such submission, the learned counsel placed reliance upon the decision of the Supreme Court in the

case of Hindustan Petroleum Corporation Limited v. Dilbahar Singh, (2014) 9 SCC 78, wherein it has been held thus:

Ã¢â‚¬Å“42. The observation in Ramdoss that the High Court in exercise of its revisional jurisdiction cannot act as an appellate court/authority and it is

impermissible for the High Court to re-assess the evidence in a revision petition filed under Section 25 of the Act is in accord with Rukmini (AIR 1993

SC 1616: 1993 AIR SCW 317) and Sankaranarayanan. Its observation that the High Court can interfere with incorrect finding of fact must be

understood in the context where such finding is perverse, based on no evidence or misreading of the evidence or such finding has been arrived at by

ignoring or overlooking the material evidence or such finding is so grossly erroneous that if allowed to stand, will occasion in miscarriage of justice.

Ramdoss does not hold that the High Court may interfere with the findings of fact because on re-appreciation of the evidence its view is different

from that of the first Appellate Court or Authority. The decision of this Court in V. M. Mohan is again in line with the judgment of this Court in

Rukmini.

43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First

Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The

consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts

recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority

below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the

evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated

as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled

to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any

decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned

decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a

different finding on facts. Revisional power is not and cannot be equated with the power of re-consideration of all questions of fact as a court of first

appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it

suffers from procedural illegality or irregularity.Ã¢â‚¬â€‹

4.20 Reliance was also placed upon the decision of the Supreme Court in the case of Ram Avadh and others v. Ram Das and others, (2008) 8 SCC

58, wherein the court has held that the revisional court had no jurisdiction under section 48 of the U. P. Zamindari Abolition and Land Reforms Act,

1950 to set aside the concurrent findings of fact of the Consolidation Officer and the Settlement Officer. The court held that it was not open to the

Assistant Director, Consolidation, whose order was affirmed by the High Court in the impugned judgment, to interfere with the concurrent findings of

fact arrived at by the Consolidation Officer as also the Settlement Officer, Consolidation.

4.21 Next it was contended that there was no additional material in the form of any evidence produced by the State before the fourth respondent Ã¢â‚¬

Deputy Collector and in these circumstances, there was no warrant to interfere with the order of the fifth respondent Ã¢â‚¬" Mamlatdar and ALT. It was

submitted that the Deputy Collector did not render any finding that the subject land was cultivable under section 2(17) or fell in any of the classes

under section 2(6) of the Ceiling Act and that in the absence of any such finding, the order passed by the Deputy Collector was wholly illegal and

without any basis. It was submitted that the fourth respondent Ã¢â‚¬" Deputy Collector has completely misdirected himself by proceeding on a

presumption that the provisions of the Khar Lands Act were attracted or that the lands were not notified under the Khar Lands Act and thus, the

exemption under the Ceiling Act was not permissible. It was submitted that the interpretation placed by the fourth respondent Ã¢â‚¬" Deputy Collector on

the provisions of the Ceiling Act is completely erroneous. It was submitted that the appellantÃ¢â‚¬â„¢s case has always been that the provisions of the

Ceiling Act do not apply and the appellantÃ¢â‚¬â„¢s lands were not notified under the Khar Lands Act for the purposes of improvement by construction of

embankment. It was submitted that the appellant was not seeking exemption and though the appellantÃ¢â‚¬â„¢s land was khar-no-kharabo, they were not

khar lands as defined under the Khar Lands Act. It was contended that the fact that the subject lands were not notified under the Khar Lands Act is

something which is in favour of the appellant, inasmuch as wherever the Government takes a decision to convert any Khar lands into cultivable lands,

it issues a notification and absence of such notification only supports the case of the appellant that the subject lands were uncultivable and were

incapable of being used for agricultural purposes. It was submitted that there was no other or contrary basis found by the fourth respondent Ã¢â‚¬

Deputy Collector to reverse the findings of the fifth respondent Ã¢â‚¬" Mamlatdar and ALT, under the circumstances, the order passed by the Deputy

Collector was wholly illegal and unsustainable in law and on facts.

4.22 As regards the impugned order passed by the Gujarat Revenue Tribunal, it was submitted that the Tribunal while setting aside the order passed

by the Deputy Collector, has erred in setting aside the order passed by the Mamlatdar and ALT. Referring to the order passed by the Tribunal, it was

submitted that the Tribunal has observed that the Mamlatdar and ALT ought not to have relied upon the revenue record to determine the nature of

land. It was submitted that there is no other documentary evidence to ascertain the nature of lands, and agricultural activities, if any, on the subject

lands except the revenue record. It was pointed out that the Tribunal has observed that the State did not get an opportunity to prove the case or grant

of exemption to the appellant, to submit that neither the Ceiling Act nor the rules made thereunder prescribe notice to be issued to any other party. It

was submitted that the above observation is, therefore, clearly contrary to the record, inasmuch as the State never made any complaint that it did not

get an opportunity to prove its case, and furthermore, the appellant did not apply for grant of exemption under the Ceiling Act. It was submitted that

the Tribunal while correctly finding that the presumption by the Deputy Collector that the subject lands were agricultural lands to be incorrect, again

fell in error in observing that the evidence before the Mamlatdar and ALT was not satisfactory. It was submitted that the evidence about the subject

lands being non-agricultural lands was more than sufficient to render the findings that were rendered by the Mamlatdar and ALT, namely, it was no

oneÃ¢â‚¬â„¢s case that the subject lands were ever cultivated or were cultivable; it was no oneÃ¢â‚¬â„¢s case that the subject lands were capable of being

cultivated; and that in view of the documentary evidence on record, viz., the revenue records, durasti patrak, the letter of Collector and the

observations in the parallel revenue proceedings, no other material was required to ascertain the nature of the subject lands. Furthermore, on the

GovernmentÃ¢â‚¬â„¢s own showing, the subject lands were never ever notified under the Khar Lands Act for the purposes of construction of

embankment to convert the subject lands into agricultural lands.

4.23 It was emphatically argued that the only thing that was required to be adjudicated and determined by the Tribunal was whether the provisions of

the Ceiling Act apply to the subject lands which were admittedly and undisputedly non- agricultural lands as established by the revenue records

(showing the subject lands as khar-no-kharabo), the absence of any notification under the Khar Lands Act to indicate that the subject lands were

made or were being made cultivable by construction of embankment, and a complete absence of any suggestion or insinuation that the subject lands

were ever cultivated in the past or in the present time, and the fact that the subject lands which are described as khar-no-kharabo, were, therefore, not

assessed. It was submitted that instead of deciding the controversy in issue, the Tribunal fell in error in framing the four questions of which, first two

had no bearing on merits and the others were correctly answered by the Mamlatdar in the first instance.

4.24 Reliance was placed upon the decision of the Supreme Court in the case of Ashwinkumar K. Patel v. Upendra J. Patel and others, (1999) 3 SCC

161, wherein the court has expressed the view that the High Court should not ordinarily remand a case under Order XLI rule 23 of the Code of Civil

Procedure to the lower court merely because it considered that the reasoning of the lower court in some respects was wrong. The court observed that

such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High court,

it should have itself decided the appeal one way or the other. It could have considered the various aspects of the case mentioned in the order of the

trial court and considered whether the order of the trial court ought to be confirmed or reversed or modified. It could have easily considered the

documents and affidavits and decided about the prima facie case on the material available. In matters involving agreements of 1980 (and 1996) on the

one hand and an agreement of 1991 on the other, as in this case, such remand orders would lead to further delay and uncertainty. The court was,

therefore, of the view that the remand by the High Court was not necessary. The learned counsel submitted that the aforesaid decision would be

squarely applicable to the facts of the present case and that the Tribunal ought to have decided the matter by itself instead of remanding the matter to

the Mamlatdar and ALT.

4.25 In conclusion, it was submitted that from the commencement of acquisition in the year 1985, which was after due diligence, the appellant

acquired the subject lands with the expectation of developing a township. The events clearly established with certainty that the subject lands were

non-agricultural and were capable of development of a township. The appellantÃ¢â‚¬â„¢s title to the subject lands is now accepted in a lis by the State

which ended in the year 2014 and the name of the appellant is duly mutated in the 7/12 extracts. It was submitted that the appellant being bona fide

acquirer of the subject lands in good faith and for value, has not been treated fairly by the State. It was submitted that every State action is expected

to be just, fair and reasonable; however, all actions in the instant case, by the State are not only unfair but also unjust and create an atmosphere of

uncertainty, inasmuch as settled matters are attempted to be unsettled. It was submitted that the actions of the State are unfair, unreasonable and

liable to be quashed and set aside, more so, when the subject lands are included in the development plan within the municipal limits of Surat. It was,

accordingly, urged that the impugned judgment and order passed by the learned Single Judge as well as the Gujarat Revenue Tribunal and the Deputy

Collector, are liable to be quashed and set aside, and the order passed by the Mamlatdar and ALT deserves to be upheld.

5. Vehemently opposing the appeal, Mr. P. K. Jani, learned Additional Advocate General for the respondent State authorities submitted that the

subject land would fall within the definition of Ã¢â‚¬Å“landÃ¢â‚¬ as defined under section 2(17) of the Ceiling Act and, therefore, the provisions of the Ceiling

Act would be applicable to such lands. It was submitted that section 117C(6) of the Gujarat Land Revenue Code covers only three classes of land,

viz., dry crop, rice or garden land. Thus, it becomes clear that the classification of lands as per the Code is limited to three classes only, and all

agricultural lands are to be classified in either of the said categories. It was submitted that as far as Ã¢â‚¬Å“kharÃ¢â‚¬ lands or Ã¢â‚¬Å“pot kharabaÃ¢â‚¬ lands are

concerned, by themselves, they are not a class of land. According to the learned Additional Advocate General, Ã¢â‚¬Å“pot kharabaÃ¢â‚¬ or Ã¢â‚¬Å“kharÃ¢â‚¬ is the

fault or deficiency or characteristic of agricultural land. It was contended that a unilateral assertion on the part of the appellant that the subject land is

Ã¢â‚¬Å“kharÃ¢â‚¬ land and that Ã¢â‚¬Å“kharÃ¢â‚¬ land is exempt even though it may not have been notified as such by the State Government and thereby, the

subject lands stand exempt from the applicability of the Ceiling Act, is without any basis. It was submitted that the appellant is a Private Limited

Company holding 1600 acres of land, which falls within the purview of the Ceiling Act and that the definition of Ã¢â‚¬Å“landÃ¢â‚¬ under section 2(17) of the

Ceiling Act covers the land possessed by the appellant company.

5.1 Reference was made to rule 75 of the Gujarat Land Revenue Rules, 1972 (hereinafter referred to as Ã¢â‚¬Å“the rulesÃ¢â‚¬â€‹), which reads as under:

75. Cultivation of unarable land in survey number when prohibited.- (1) Land included as unarable (pot kharab) in a survey number assessed for

purposes of agriculture only is of two kinds:-

(a) that which is classified as unfit for agriculture at the time of survey including the farm building or threshing floors of the holder;

(b) that which is not assessed because it is reserved or assigned for public purposes; or because it is occupied by a road or recognised footpath, or by

a tank or stream used by persons other than the holder for irrigation or for drinking or domestic purposes, or used for a burial or burning ground by any

community, or by the public; or because it is assigned for village potteries.

Class (a) may be brought under cultivation at time by the holder and no additional assessment shall be charged therefor.

The cultivation of class (b) is hereby prohibited under section 48, sub-section (3):

Provided that this prohibition shall not apply in assessee of a tank or stream when such tank or stream is used for irrigation only and waters only land

which is in the sole occupation of the holder, or when the privilege of cultivating the dry bed of the tank or stream has been specifically conceded to

the holder.

5.2 It was submitted that Ã¢â‚¬Å“pot kharabaÃ¢â‚¬ lands are described in rule 75 of the rules. It was submitted that if the land is pot kharaba land, then such

land would be covered under rule 75(1)(a) of the rules and such pot kharaba land is also cultivable and, therefore, it would be required to be taken into

consideration while determining the total holding of a person. It was submitted that it is not the case of the appellant that the subject land falls under

rule 75(1)(b) of the rules, which is used/assigned for public purposes. Therefore, the assertion on part of the appellant that the land is pot kharaba, is

contrary to the provisions of rule 75(1)(a) and 75(1)(b) of the rules because pot kharaba land is cultivable land.

5.3 It was submitted that a holding of 1600 acres of land cannot be pot kharaba land and that even land which is pot kharaba is capable of cultivation

even as per the prescription of rule 75(1)(a) and 75(1)(b) of the rules. It was submitted that a bare perusal of rule 75 of the rules makes it clear that

unarable (pot kharab) lands are of two types as per rule 75(1) (a) and 75(1)(b) of the rules and as far as the land falling under rule 75(1)(a) of the

rules is concerned, the same can always be brought under cultivation and no prior permission is required. It was submitted that therefore, without

prejudice to the contention that such a huge parcel of land cannot be pot kharaba land; assuming for the sake of argument that the subject land is pot

kharaba land, even then, such land is to be included in the holding as agricultural land. It was submitted that insofar as land falling under rule 75(1)(b)

of the rules are concerned, there is a prohibition under section 48(3) of the Code for cultivating such land, which is also not an absolute prohibition and

such land can also be brought under cultivation, once the public purpose ceases to exist. Therefore, pot kharaba land cannot be said to have been

exempted from the operation of the Ceiling Act and that there is no provision under the Ceiling Act, including section 3 thereof, which declares that

the Ceiling Act is not applicable to pot kharaba land. It was submitted that various manuals also clearly reflect that the pot kharaba land is an

agricultural land and it cannot be said that such land cannot be cultivated or brought under cultivation. Referring to the conveyance deeds in respect of

the subject land as well as the order passed by the Tribunal, it was submitted that there is an indication therein that grass was grown on the subject

land. Moreover, it was the case of the appellant before the authorities below that upon taking certain steps, the subject land can be made cultivable.

5.4 Next, it was contended that before the lower authorities, the appellant had raised a plea that the subject land is khar land and in some of the

proceedings, it had been stated that the subject land is pot kharaba land. It was submitted that the appellant is raising inconsistent stands, inasmuch as,

there is a difference between pot kharaba land and khar land. It was submitted that if it is the case of the appellant that the subject lands are khar

lands, then it is only after such lands are notified as khar lands under the Khar Lands Act and after following the due procedure under section 3 of the

Ceiling Act, that such a parcel of land which has been declared as khar land under the Khar Lands Act, can be treated as khar land and only

thereafter, it can be considered for exemption, as per the prescription of section 3 of the Ceiling Act.

5.5 It was contended that, to bring the subject land under the definition of section 3 of the Ceiling Act which provides for exempted land, the

mandatory procedure as enumerated under section 3(1-A) to section 3(1-D) of the Ceiling Act is required to be followed. It was submitted that it was

the duty of the appellant to apply and seek exemption from the provisions of the Ceiling Act in respect of the subject lands under section 3(1-A) of the

Ceiling Act before the Collector. It was submitted that for claiming exemption under the Ceiling Act on the ground that the subject land is khar land, it

is obligatory on the part of the appellant to satisfy that prior to 1.4.1976, the subject land was khar land and the appellant was required to make an

application in this regard to the Collector under the provisions of the Ceiling Act. It was submitted that the appellant company has not undertaken the

mandatory exercise as prescribed under section 3 of the Ceiling Act to get the land declared as Ã¢â‚¬Å“exempted landÃ¢â‚¬ nor has it produced any such

notification in this regard till date to show that the subject land is khar land as notified under the Act. It was submitted that if such land is not notified, it

cannot be termed as khar land, which would be exempted under section 3 of the Ceiling Act. It was submitted that it is clear from a reading of section

3 of the Ceiling Act that the extent of exemption is subject to the provisions of sub-sections (1-A) to (1-D) thereof.

5.6 It was argued that the appellant is trying to narrow down the whole issue with an attempt to create an impression that the subject land is not

agricultural land for the purpose of computation of holding of agricultural land. It was submitted that on a perusal of the definitions under sections 2(1)

and 2(17)(2) of the Ceiling Act, it becomes clear that Ã¢â‚¬Ëœagriculture Ã¢â‚¬â„¢ and Ã¢â‚¬Ëœagricultural landÃ¢â‚¬â„¢ have a broader prescription, as to what would

fall within the ambit of agriculture and agricultural land and thus, it would cover the subject land also and the appellant cannot claim that the subject

land is not agricultural land and cannot be calculated in its holding.

5.7 Insofar as the contention raised on behalf of the appellant that the Mamlatdar and ALT had passed the order under the dictates of the Collector, it

was submitted that the Collector while calling upon the Mamlatdar and ALT to initiate proceedings under the Agriculture Lands Ceiling Act in respect

of the subject lands, has not specifically directed him to pass the order in a particular manner and has thereby not influenced the mind of the

Mamlatdar and ALT. It was submitted that the Collector had left it to the discretion of the Mamlatdar and ALT to inquire and take an independent

decision in respect of the subject lands and to decide the proceedings in accordance with law and hence, it cannot be said that the Mamlatdar and

ALT has passed the order as per the dictates of the Collector. It was submitted that all that the Tribunal has done is that it has remanded the matter to

the first authority, viz., the Mamlatdar and ALT to decide the matter afresh in accordance with the operative directions as contained in the said order

and hence, there is no infirmity in the impugned order warranting interference. It was emphatically argued that there are many disputed questions of

fact involved in the present case and the Tribunal had kept all the issues open, including the applicability of the provisions of the Ceiling Act. It was

submitted that the Tribunal has passed the order remanding the matter after due consideration of the entire case and merely because the appellant will

have to undertake the exercise again before the lower authority, is not a ground to set aside the order of remand passed by the Tribunal, especially

considering the fact that various factual aspects are required to be considered for adjudication of the issues.

5.8 It was submitted that the scope of writ jurisdiction is very limited when the High Court exercises power under Article 227 of the Constitution of

India wherein the Tribunal has remanded the matter to decide the same afresh.

5.9 It was emphatically argued that it is the Mamlatdar and ALT, which is the competent authority to inquire into the questions of fact and that the

Mamlatdar and ALT has not yet passed any order declaring any part of the holding of the appellant to be surplus. It was submitted that the present

case involves complex disputed questions of fact which require detailed examination of facts and documents for which the Mamlatdar and ALT,

which is the appropriate authority and that the order of the Mamlatdar and ALT is subject to further appeal before the Collector and can further be

challenged before the Tribunal. It was submitted that therefore, if the Mamlatdar and ALT decides the matter afresh, the appellantÃ¢â‚¬â„¢s rights are not

closed for ever. It was urged that the appellant has sought a declaratory relief which is not maintainable as the issue about the applicability of the

provisions of the Ceiling Act and other ancillary issues need to be gone into by the appropriate authority constituted under the Ceiling Act. It was

submitted that whether the subject land is pot kharaba land or khar land and its cultivability are also disputed questions of fact, which requires in depth

examination and it would not be possible to decide the same in the present writ petition under article 226 of the Constitution of India.

5.10 As regards the contention raised on behalf of the appellant that the proceedings by the Mamlatdar and ALT and the Deputy Collector had been

initiated at the instance of the Collector is concerned, it was submitted that the appellant having participated in the proceedings before the authorities,

has acquiesced in the proceedings, and it is now not open for the appellant to raise grievance that the Collector did not have any jurisdiction to pass

such order and could not have issued such directions.

5.11 Next, it was submitted that the appellant has failed to prove that the subject land is khar land as defined under the Khar Lands Act and that until

the statutory procedure as prescribed under the Ceiling Act is followed, no land can be declared as Khar land. In support of such submission, the

learned Additional Advocate General placed reliance upon the decision of this court in the case of Shrikant Bhalchandra Karulkar and others v. State

of Gujarat and another, 1994 (2) GLH 397, wherein it has been held thus:

Ã¢â‚¬Å“9. The State Legislature has the legislative competence to enact the Act under Entry 18 List-II read with Entry 42 List-III 7th Schedule

Constitution of India. The lands - governed by the provisions of the Act - are situated within the territory of the State of Gujarat. The provisions of the

Act provide for fixation of ceiling in respect of the agricultural lands which are within the territory of the State of Gujarat. The declaration of the

surplus land under the Act is also in respect of the lands held by various persons in the State of Gujarat. The territorial nexus is obvious. It is the land

and the persons holding such land within the territory of Gujarat to which the provisions of the Act are applicable. If a person has no land within the

State of Gujarat the provisions of the Act are not applicable to him or to the land which he owns outside the territory of the State of Gujarat. The sine

qua non for the application of the provisions of the Act is the holding of the land within the State of Gujarat. The territorial connection is thus, real and

sufficient and the liability sought to be imposed under section 6(3A) of the Act is directly in relation to that connection. The factum of a person holding

land outside the State of Gujarat is undoubtedly an aspect pertinent to the question of his entitlement under the Act to hold land in State of Gujarat.

There is no dispute that within the State a ceiling can be fixed by law beyond which no person can hold agricultural land, and if for determining the

extent of said ceiling, the land held by a person outside the State is taken into consideration, the law pertaining to fixation of ceiling would not become

extra-territorial. In pith and substance the law remains to be a legislation imposing the ceiling on holding of land within the State under Entry 18 List II

read with 42 List III 7th Schedule Constitution of India. Mere consideration of some factors which exist outside the State, for the purpose of legislating

in respect of the subject for which the legislature is competent to make law, would not amount to extra territorial legislation. Such considerations are

part of the plenary legislative function of the State Legislature. The legislative entries not only indicate the subjects for the exercise of legislative

power but their scope is much wider in the sense that they specify a field for legislation on the subject concerned. Therefore, when a statute fixes a

ceiling on agricultural land holding within the State, it would not become extra territorial simply because it provides that while determining the

permissible area of a person under the said Statute the land owned by him outside the State is to be taken into consideration. We are, therefore, of the

view that the impugned provisions are within the legislative competence of the State Legislature and have been validly enacted.Ã¢â‚¬‹

5.12 Reliance was also placed upon the decision of a Division Bench of this court in the case of Khachar Godadbhai Pithubhai v. State of Gujarat,

2004 (2) GLH 589, wherein the court held thus:

Ã¢â‚¬Å“4. Examining in the present cases the type of bid lands held by Girasdars in light of the successive land reforms legislations in respect thereof, it

would appear that bid lands were given consistent and distinct meaning of the lands used by girasdars for grazing cattle or cutting grass. Such lands

were excluded from acquisition under section 5 of the Saurashtra Estates Acquisition Act, 1952 if the lands were also uncultivable waste or were

cultivable waste but not in excess of the requirements of the Girasdar. Accordingly, bid lands could be cultivable or uncultivable waste, but it would at

the same time be necessarily the land chosen (under the Saurashtra Land Reforms Act, 1951) and used by Girasdars for grazing their cattle or cutting

grass. If the bid land allowed to be retained by the girasdar were to be put to any other use, it was liable to be acquired under the provisions of sub-

section (2) of section 5 of the Saurashtra Estates Acquisition Act, 1952. In that view of the matter, it was irrelevant, and futile for the petitioners to

contend at this stage, that such bid lands were mostly rocky, barren or uncultivable waste which could not be put to any agricultural use. In any case,

agriculture"" is defined in section 2(1) to include the use by an agriculturist of the land held by him or part thereof for grazing or breeding of livestock.

Agriculturist"", as defined in section 2(3), means a person who cultivates land personally. And, as defined in section 2(11) ""to cultivate"", with its

grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce, whether

by manual labour or by means of cattle or machinery or to carry on any agricultural operation thereon. Thus, carrying on of any agricultural operations

which would include use by an agriculturist of the land for grazing or breeding of livestock amounts to cultivation. Therefore, bid lands in question are,

not only expressly included in the definition of land, but its use by the girasdar is also agriculture and the lands were accordingly agricultural land within

the meaning and for the purpose of the Act.

4.1 In defining the classes of land in clause (6) of section 2, ""dry crop land"" is defined to mean land other than the land specified in paragraphs (a) to

(c), which clauses define ""perennially irrigated land"", ""seasonally irrigated land"" and ""superior dry crop land"". Thus, all lands other than the above three

classes of lands are deemed to be ""dry crop land"" falling in sub-clause (e). It is true that in sub-clause (e) of clause (6), grass land is also mentioned

and defined to mean land which abounds in grass grown naturally and which is capable of being used for agricultural purpose. However, the land

which is, strictly speaking, not ""grass land"" is also covered by the residuary part of the definition of ""dry crop land"". ""Grass land"" appears to have been

included in the definition of ""dry crop land"" and also defined separately as ""grass land"" in sub-clause (f) in order to provide for the deeming provision

under which grass land would be deemed to be ""rice land"" for the purpose of classification. That, however, does not derogate from the proposition that

bid lands were included as such and not as grassland in the definition of ""dry crop land"" in sub-clause (e) of clause (6) of section 2 of the Act. It is

clear that Section 2(6) only defines the classes of land relevant for the purpose of prescribing particular ceiling area for particular type of land in

particular local area and cannot control the charging section.

4.2 The ""ceiling area"" limits under the provisions of the charging Section 6 of the Act are applied to ""land"" as defined in Section 2(17) and not to any

particular class of land. And, ""land"" is defined to specifically include bid lands held by girasdars under the Saurashtra Land Reforms Act, 1951 or the

Saurashtra Estates Acquisition Act, 1952. Thus, the intention of the Legislature is absolutely clear about covering bid lands held by Girasdars in the

matter of imposing ceiling upon holding of land. The argument to the effect that, in defining ceiling area under the provisions of sections 4 and 5 of the

Act, bid lands had to be disregarded as not falling in any of the classes of land as defined in section 2(6) and, therefore, ceiling area restrictions under

section 6 of the Act cannot be applied to such land has, therefore, to be negatived.Ã¢â‚¬â€‹

5.13 Reference was made to the decision of this court in the case of Ahmedabad Municipal Corporation v. Rataji Gandaji Thakore, 2005 (2) GCD

1476, and more particularly, paragraphs 5 and 6 thereof. Reliance was also placed upon an unreported decision of this court in the case of Chhotubhai

G. Patel v. State of Gujarat rendered on 1st February, 2007 in Special Civil Application No.11238 of 1994, wherein the court held that section 2(17) of

the Ceiling Act provides the definition of land. According to the definition, the land, which can be put under cultivation, would be deemed to be the

land, in any case, the land falling under section 3 of the Ceiling Act, would be taken to be exempted land. Section 3(1)(aa) of the Ceiling Act provides

that any khar land, as defined under the Khar Lands Act, would be taken to be exempted land. For application of clause (aa) of section 3(1) of the

Ceiling Act, one has to prove that the land is khar land, as provided under the provisions of the Khar Lands Act. A submission by somebody that the

land was khar land would not be sufficient and no evidence would satisfy the requirement of law, which provides that an application on behalf of the

holder of the land is required to be made before the Collector, who, under the provisions of the Khar Lands Act, shall make an inquiry and shall

thereafter certify that the land is khar land. Reference was also made to the decisions of the Supreme Court in the case of Nagbhai Najbhai Khackar

v. State of Gujarat, (2010) 10 SCC 594, and more particularly, paragraphs 9 to 11 thereof and in the case of State of Gujarat v. Manoharsinhji

Pradyumansinhji Jadeja, (2013) 2 SCC 300, wherein the court held thus:

Ã¢â‚¬Å“35. Keeping the above statutory prescription relating to the description of Ã¢â‚¬ËœBid landÃ¢â‚¬â„¢ in the above enactments which were all prior to coming

into force of Act, 1976 namely, 17.02.1976 the nature of Ã¢â‚¬ËœBid landÃ¢â‚¬â„¢ has been succinctly described to mean a land which was used for grazing of

cattle or for cutting grass for the use of rearing of cattle. To recapitulate the definition of Ã¢â‚¬ËœagricultureÃ¢â‚¬â„¢ under Section 2(1), as well as, the

definition of Ã¢â‚¬ËœlandÃ¢â‚¬â„¢ under Section 2(17) of the unamended Act of 1960, the expression Ã¢â‚¬ËœagricultureÃ¢â‚¬â„¢ included inter alia, the land used for

raising of grass, as well as, the land held by the agriculturist for grazing purpose. When we consider the explanation part of sub section (1) of Section

2 which contains as many as Clauses (i) to (vi) the lands used for grazing purposes as well as cutting of grass for rearing of cattle are not the lands to

be excluded from the definition of Ã¢â‚¬ËœagricultureÃ¢â‚¬â„¢. The definition of Ã¢â‚¬ËœlandÃ¢â‚¬â„¢ under Section 2(17) categorically mentions that the land which is

either used or capable of being used for agriculture purposes would fall within the said definition. Therefore reading the above definitions together a

Ã¢â‚¬ËœlandÃ¢â‚¬â„¢ where grass is grown or used for grazing purposes fall within the inclusive provision of the definition of Ã¢â‚¬ËœagricultureÃ¢â‚¬â„¢. The definition

of Ã¢â‚¬ËœBid landÃ¢â‚¬â„¢ in the earlier enactments namely Act Nos.XXV of 1951, XXVI of 1951 and Act No.III of 1952 make the position clear that the

Ã¢â‚¬ËœBid landÃ¢â‚¬â„¢ is nothing but the land used for grazing of cattle and for raising grass for the purpose of rearing of cattle.

36. Under the amended Act of 1960 the definition of agriculture under Section 2(1) as it existed prior to the said amendment was maintained. In

addition, some of those excluded categories, namely, the one mentioned in sub clauses (i), (ii), (iii), (iv) and (v) were also included as falling within the

definition of the expression Ã¢â‚¬Ëœagriculture Ã¢â‚¬â„¢. Further the nature of exclusion as mentioned in sub-clause (vi) of clause 1 of Section 2, namely, such

other pursuits as may be described was also mentioned by stating that such of those pursuits which have been prescribed prior to the specified date

would continue to stand excluded for that period which was prior in point of time to the specified date as mentioned in the Amendment Act which was

notified on 01.04.1976. Here and now it is relevant to mention the date which was specified under the Amendment Act which as per Section 2 (27A)

meant the date of the coming into force of the amended act of 1972, namely, 01.04.1976. Therefore, the conclusion to be drawn would be that while

as from 01.04.1976 the definition of Ã¢â‚¬Ëœagriculture Ã¢â‚¬â„¢ under the amended Act was wider in scope which included land used whether or not as an

appendage to rice or paddy land for the purpose of rabmanure, dairy farming, poultry farming, breeding of livestock and the cutting of woods and such

of those lands which were in the excluded category under the unamended Act cease to have effect of such exclusion on and after 01.04.1976.Ã¢â‚¬â€‹

5.14 Next, it was contended that the Khar Lands Act defines Ã¢â‚¬Å“khar landÃ¢â‚¬ under section 2(d) as Ã¢â‚¬Å“such tidal landÃ¢â‚¬, whereas section 2(h)

defines Ã¢â‚¬Å“tidal landÃ¢â‚¬, which says the Ã¢â‚¬Å“shore not exceeding two furlongsÃ¢â‚¬ (400 metres). Thus, assuming without admitting that the subject land

is khar/pot kharaba land, as per the definition under section 2(d) read with section 2(h) of the Khar Lands Act, such khar land can be exempted from

the operation of applicability of the Act to the extent of 400 metres from the sea. Hence, only a belt of 400 metres can be considered as Ã¢â‚¬Å“kharÃ¢â‚¬

land and not entire 1600 acres of land. Therefore, the contentions raised by the appellant are not tenable.

5.15 It was submitted that the Tribunal was justified in holding that the Mamlatdar and ALT had not given an opportunity to the State authorities prior

to passing the order dated 18th September, 2000. It was submitted that all the records and documents were taken into consideration by the Mamlatdar

and ALT, were provided by the appellant herein and that the order passed by the Mamlatdar and ALT declaring that the provisions of the Ceiling Act

are not attracted insofar as the subject lands are concerned, is bad in law.

5.16 Insofar as the reliance placed by the appellant upon the Soil Analysis Report, which is in the form of opinion by the Navsari Agricultural

University, it was submitted that the said opinion cannot be relied upon as the same has been produced after the order was passed by the Tribunal and

during the pendency of the present petition. It was further submitted that the report of the University also cannot be considered to determine that the

subject land as khar land and that the Navsari Agricultural University is neither authorized to give such opinion nor is it enlisted as expert authority. It

was submitted that the entire case of the petitioner that the subject land is khar-no-kharabo or khar land is based on the revenue entries. It was

submitted that the revenue entries cannot be considered to decide that the subject lands are khar lands and not agricultural lands. It was submitted that

the assessment of the land is for the purpose of charging revenue and therefore, those entries in relation to revenue are to be understood in the context

of the provisions of the Code which are for the purpose of charging revenue on the land. It was submitted that mere reference in the revenue record

that the subject land is khar land, does not prove that the land is khar land. It was contended that it is settled principle of law that the entries in the

revenue record are merely for fiscal purposes and that the appellant has to undertake the procedure as contemplated under section 3 of the Ceiling

Act to substantiate their claim that the subject land is khar land.

5.17 It was, accordingly, urged that having regard to the fact that disputed questions of fact are involved in the present appeal, and considering the

settled principles of law, the appeal be dismissed and the impugned judgment and order passed by the learned Single Judge be upheld.

6. In rejoinder, Mr. Pravin Samdani, learned counsel for the appellant submitted that the contention that pot kharaba land are required to be included

under the Ceiling Act and the reliance placed on rule 75 of the Gujarat Land Revenue Rules, is misplaced. It was submitted that under the Code, there

are two functions performed by the authorities, viz., (i) in the context of preparation of land records on transfer of ownership or land tenure; (ii)

records for the purposes of levy and collection of land revenue in respect of lands which are arable. It was submitted that for preparation of records

for collection of land revenue, an inquiry commences with Village Form No.1 (Akarbandh Register). The said form provides in Column No.5 for

deduction of kharaba. After deduction, the area of remaining cultivable land is determined. Thereafter, depending on the class of land, assessment is

fixed. After Form No.1 is completed, entries are made in Village Form No.5 (Thara Band). After process of Form No.5 is completed, Village Form

No.7 is completed. Thereafter, Form No.12 is completed for every year reflecting therein cultivation during the year. These entries in Form No.12 are

made by the Talati. After completion of the entries, a 7/12 extract is issued to the appellant, which indicates the area of the land, deducted land which

is under pot kharaba and agricultural activities on the assessed land during the year. Such 7/12 extracts are issued year after year to indicate the

activities on the land year after year. In the case of the appellant, the lands have continuously been shown as khar, no cultivation has been shown and

the status of the land continues to be khar-no-kharabo and is reflected as pot kharaba.

6.1 It was submitted that rule 75 of the rules has no applicability to the facts of the present case. The said rule falls under Chapter XIII under the

heading Ã¢â‚¬Å“Restrictions on Use of LandÃ¢â‚¬. The pre-condition for invocation of the said rule is that pot kharaba land is assessed and if it is assessed,

then under category (a), it may be brought under cultivation without there being any further assessment.

6.2 Insofar as the category (b) is concerned, the lands are lands which fall under the column where there is no assessment on account of reservation.

It was submitted that thus, the subject lands do not fall in either of the categories (a) or (b) as admittedly, the subject lands have not been assessed and

the entire area of the land is khar-no-kharabo.

6.3 It was submitted that in the Akarbandh of Village Abhava, when prepared after survey was done in the year 1951, Survey No.505, 506 and 507

were not included, as they were sub-merged in water. In 1967, the Kami Jasti Patrak was prepared after survey of Survey No.505, 506 and 507. The

said Kami Jasti Patrak was prepared by the Surveyor, checked by Head Surveyor, confirmed by District Inspector of Land Records (DILR) and

finally approved by the Superintendent of Land Records (SLR). After its approval in the year 1967, the effect thereof was given in Village Form No.1

and the entries of Kami Jasti Patrak were duly reflected as Akarbandh. It was submitted that the revenue record is not in dispute and the Kami Jasti

Patrak in the instant case correctly described the land as khar-no-kharabo. The 7/12 extracts do not have a separate column to reflect khar-no-

kharabo and, therefore, the same is reflected in pot kharaba column, the intent being to deduct the lands which are uncultivable/unarable. It was

submitted that the appellantÃ¢â‚¬â„¢s entire land was khar-no-kharabo and therefore, in the 7/12 extracts, it is shown deducted as pot kharabo and that it

is clear that the appellantÃ¢â‚¬â„¢s lands are correctly put in the category of pot kharaba and not counted in any other category or class and that the

appellantÃ¢â‚¬â„¢s lands are not only khar, but a category more inferior than khar, viz., khar-no-kharabo.

6.4 It was submitted that the revenue record in the present case, viz., Durasti Patrak/Kami Jasti Patrak and its effect in Village Form No.1 and the

7/12 extracts are admitted documents and are not disputed and hence, there is a presumption of genuineness attached to them. In support of such

submission, the learned counsel placed reliance upon the decision of the Supreme Court in the case of Vishwasrao S. Naik v. State of Maharashtra,

(2018) 6 SCC 580, wherein the court has held that presumption of truth is attached to the revenue record.

6.5 Dealing with the submission made on behalf of the State Government that the subject lands would fall within the ambit of Ã¢â‚¬Å“dry crop landÃ¢â‚¬, it

was submitted that it was the case of the Government that the appellantÃ¢â‚¬â„¢s lands are khar lands, but since there is no exemption obtained or applied

under the Ceiling Act, the lands would be covered by the Ceiling Act. It was submitted that thus, the State had accepted the nature of the subject

lands as khar lands and that the same are not the khar lands as defined under the Khar Lands Act. It was submitted that in fact, the appellantÃ¢â‚¬â„¢s

lands are, by their very nature, uncultivable khar-no-kharabo by reason of salty water from the river Mindola entering upon the appellantÃ¢â‚¬â„¢s lands

and accordingly, rendering the subject lands unarable due to the salt content on the land. It was submitted that the authority for undertaking

classification is the Mamlatdar and ALT under the Land Revenue Code, but it is in the domain of the surveyor whose work is supervised or verified

by the Head Quarter Assistant and thereafter, by the District Inspector of Land Records and the Superintendent of Land Records.

6.6 It was emphatically argued that the subject lands do not fall in any of the classes under section 2(6) of the Ceiling Act and not even the class of

Ã¢â‚¬Å“dry crop landÃ¢â‚¬. It was submitted that in order for a land to be a Ã¢â‚¬Å“dry crop landÃ¢â‚¬, three things have to be established: (i) grass should grow

naturally in abundance and should be duly reflected in the revenue record;

(ii) it must be assessed to land revenue; and (iii) it must have characteristic of a land which is used or capable of being used for agriculture purposes

under section 2(17) of the Ceiling Act. It was submitted that the revenue record on the contrary continuously indicates that the subject land is khar

land and in the revenue record, the subject lands have been deducted for the purposes of assessment as the same are uncultivable, unarable where

nothing can grow. Admittedly, there has not been any assessment since at least the year 1967 and in order to bring the subject lands within Ã¢â‚¬Å“dry

crop landÃ¢â‚¬, the State has not produced any material to indicate that grass is grown and the lands are used or capable of being used for agriculture

purpose.

6.7 It was submitted that the consistent judicial view is that the lands which are khar-no-kharabo and which are unarable, unassessed, pot kharaba

lands are not covered by the provisions of the Ceiling Act, inasmuch as they do not fall in any of the classes of land under section 2(6) read with

Schedule-I to the Ceiling Act. Reliance was placed upon the decision of the Supreme Court in the case of Vishwasrao S. Naik v. State of

Maharashtra (supra), wherein it has been observed thus:

Ã¢â‚¬Å“2. Satwarao, predecessor-in-interest of the appellant, held huge tracts of land but did not file return under the Ceiling Signature Not Verified Act.

A notice was issued to him and in response to the notice, he claimed that he only held agricultural land measuring 127 acres and 8 guntas in various

villages. On inquiry, the authorities prima facie found that on 04.08.1959, Satwarao held 468.08 acres of land and notice was again sent to him. He

again filed reply and set up some sales, gifts and transfers which, according to him, took place prior to the enforcement of the Ceiling Act. For the

purposes of deciding this case, it is not necessary to go into all the details. It would be sufficient to state that Satwarao was found to hold 333.14 acres

of land. The admitted case of the parties is that keeping in view the quality of land and the area in which it is situate, the Sub Divisional Officer (SDO)

held that Satwarao was entitled to retain 114 acres of land for his family. 44.51 acres of land was deducted as Ã¢â‚¬Ëœpot kharabÃ¢â‚¬â„¢ land i.e. land which

is totally unfit for cultivation and thus, excluded from the ceiling limit.Ã¢â‚¬â€‹

6.8 It was, accordingly, urged that the evidence on record clearly shows that the subject land is khar-no-kharabo and that the same is not agricultural

land and therefore, does not fall within the ambit of land as defined under section 2(17) of the Ceiling Act. Under the circumstances, the appellant is

entitled to the declaration as prayed for, viz., that the provisions of the Gujarat Agricultural Land Ceilings Act have no application insofar as the

subject lands are concerned. It was, accordingly, urged that the impugned order passed by the learned Single Judge deserves to be quashed and set

aside and the petition deserves to be allowed in terms of the reliefs prayed for.

7. As noticed earlier, the appellant has sought a declaration that the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 have no application

to the subject land and has further prayed that the respondent authorities be prohibited from taking any action of any nature whatsoever under the

Gujarat Agricultural Lands Ceiling Act, 1960 vis-Ãƒ -vis the land situated at village Abhava in Revenue Survey No.506 paiki, admeasuring

approximately 1603 acres. Ordinarily, this court in exercise of powers under article 226 of the Constitution of India would be reluctant to decide such a

controversy; however, considering the infirmities found by the Gujarat Revenue Tribunal in the orders passed by the Deputy Collector as well as the

Mamlatdar and ALT, and the nature of the directions contained in the impugned orders, it appears that none of the authorities have properly

understood the controversy in dispute as well as in view of the fact that the learned counsel for both the parties have addressed the court at length on

the legal as well as factual aspects of the matter, the court has thought it fit to enter into the merits of such arguments and give a finding one way or

the other.

8. According to the learned counsel for the appellant, the main question of law that arises for determination in this appeal is:

Ã¢â‚¬Å“Whether the land which is called Ã¢â‚¬Å“khar-no-kharaboÃ¢â‚¬ (uncultivable B-1 category) and is put in its entirety in the column of Ã¢â‚¬Å“pot kharabaÃ¢â‚¬

under the Gujarat Land Revenue Code, is land covered by any of the classes of Ã¢â‚¬Å“landÃ¢â‚¬â€‹ under the Ceiling Act?Ã¢â‚¬â€‹

9. From the facts and contentions noted hereinabove, it is evident that the appellant seeks a declaration that the provisions of the Ceiling Act are not

applicable to the subject land on the ground that in the durasti patrak/kami jasti patrak, the entire Survey No.506 including the subject land was

classified as khar-no-kharabo, uncultivable under Category B-1 and in the village 7/12 extract of such land prepared from time to time, the entire land

is shown in the column of pot kharaba and no part of the subject lands was shown in the column of cultivation and such lands were not assessed to

revenue, which classification has not undergone any change till date.

10. The question that therefore arises for consideration is whether in view of the fact that the subject lands have been classified as pot kharaba/khar-

no-kharabo; have not been cultivated; and are not being assessed to revenue, they fall outside the ambit of the Gujarat Agricultural Lands Ceiling Act,

1960?

11. Insofar as the Ceiling Act is concerned, lands are classified under section 2(6) thereof, which to the extent the same is relevant for the present

purpose, reads as under:

Ã¢â‚¬Å“2. Definitions.- In this Act, unless the context requires otherwise -

(6) ""class of land"" means any of the following classes of land, that is to say:-

(i) perennially irrigated land; (ii) seasonally irrigated land; (iii) superior dry crop land; (iv) dry crop land;

Explanation 1.Ã¢â‚¬"For the purpose of this Act-

(a) ""perennially irrigated land"" means land which is assured of a regular and actual supply of water for a period of not less than ten months during the

year from any source of irrigation and which is consequently capable of growing at least two crops in a year or is utilised for growing sugarcane crop :

Provided that land irrigated by a tube-well or lift irrigation from a perennial source of water, operated by diesel or electric power or both and

constructed on or after 15th August, 1972 by any person other than Government or a local authority, shall not be deemed to be perennially irrigated

land;

(b) ""seasonally irrigated land"" means land which is assured of a regular and actual supply of water for a period of less than ten months but not less

than four months during the period from 15th September to the end of February in a year from any source of irrigation, and is consequently capable of

growing at least one crop in a year;

(c) ""Superior dry crop land"" means rice land and orchard;

(d) ""rice land"" means land which is situated in a local area where the average rainfall is not less than 89 centimetres a year, such average being

calculated on the basis of rain-fall in that area during the five years immediately preceding the year 1959 and which is used for the cultivation of rice

or which, in the opinion of the State Government is fit for the cultivation of rice but does not include perennially or seasonally irrigated land used for

the cultivation of rice;

(e) ""dry crop land"" means land other than the land specified in paragraphs (a) to (c) and grass land, that is to say, land which abounds in grass grown

naturally and which is capable of being used for agricultural purposes;

(f) ""grass land"" referred to in paragraph (e) shall, notwithstanding anything contained in that paragraph, be deemed to be rice land if it is situated in a

local area referred to in paragraph (d) and in the opinion of the state Government it is fit for the cultivation of rice ;

(g) land irrigated by dug wells except in the irrigation command of an irrigation project or in the bed of a river, stream, or natural collection of water or

a drainage channel (being an irrigation project, a river, stream, natural collection of water or a drainage channel which is a perennial source of water)

shall be deemed to be irrigated land;

12. In the facts of the present case, the subject lands do not fall under sub-clauses (a) perennially irrigated land; (b) seasonally irrigated land; (c)

superior dry crop land; (d) rice land; (f) grass land and (g) land irrigated by dug wells, etc., of the Explanation I to section 2(6) of the Ceiling Act.

However, on behalf of the respondents it has been contended that the subject lands would fall within the ambit of clause (e) of Explanation I to section

2(6) of the Ceiling Act viz., Ã¢â‚¬Å“dry crop landÃ¢â‚¬â€‹.

13. Insofar as the scope and ambit of the expression Ã¢â‚¬Å“dry crop landÃ¢â‚¬ as contained in sub-clause (e) of Explanation I to section 2(6) of the Ceiling

Act is concerned, the Supreme Court in Nagbhai Najbhai Khackar v. State of Gujarat (supra) had occasion to interpret the same. The relevant part of

the decision is extracted hereunder:

Ã¢â‚¬Å“6. According to the learned counsel, even as per the revenue records, the subject lands have been described as Ã¢â‚¬Å“pot kharabaÃ¢â‚¬â€‹ i.e. wastelands,

barren lands or uncultivable lands and, consequently, the same cannot fall within the definition of Ã¢â‚¬Å“dry crop landÃ¢â‚¬ under Section 2(6)(iv).

According to the learned counsel, the said Act had to be interpreted in the context of agricultural land ceiling and in the context of the said 1960 Act

being part of agrarian reforms and unless lands were capable of being used for agricultural purposes, the bid lands which were also uncultivable

wastelands cannot fall within the ambit of the 1960 Act.

7. According to the learned counsel, the impugned judgment of the High Court was erroneous as it has placed interpretation on the proviso to Section

5(1) and so read the High Court has held that even desert and hilly areas where no cultivation is possible can be subjected to ceiling. According to the

learned counsel, Section 5 states that lands in deserts or hilly areas must first be dry crop lands as defined under Explanation I(e) after which such

lands falling in a desert or hill may be accorded a larger ceiling area by the State Government. In any event, according to the learned counsel, Section

5(1) proviso has no bearing on the definition of dry crop land except to the extent that the dry crop land may also fall in hilly or desert areas; for

example, hilly or desert areas which abound in grass and which are capable of being used for agricultural purposes. Consequently, hilly or desert areas

which do not abound in grass or which are incapable of being used for agricultural purposes are not covered by the Ceiling Act, 1960.

8. Thus, according to the learned counsel, bid lands are excluded from the definition of dry crop land and they do not fall within any of the categories

of classes of land under the Act and, therefore, cannot be subjected to ceiling under the 1960 Act.Ã¢â‚¬‹

Ã¢â‚¬Å“22. Now, coming to the question of interpretation of the definition of the words Ã¢â‚¬Å“dry crop landÃ¢â‚¬ in Explanation I(e), one finds that the

definition has two parts, namely, (i) Ã¢â‚¬Å“land other than the land specified in paras (a) to (c)Ã¢â‚¬â€‹ and

(ii) Ã¢â‚¬Å“grasslandÃ¢â‚¬. Thus, the first part includes all lands other than those specified in paras (a) to (c). Therefore, once the subject land falls in the

first part of definition of the word Ã¢â‚¬Å“dry crop landÃ¢â‚¬ which land comes under Section 2(17) and which falls outside paras (a) to (c) then such lands

would fall within the definition of the words Ã¢â‚¬Å“dry crop landÃ¢â‚¬. Further, there are two reasons why Ã¢â‚¬Å“grasslandÃ¢â‚¬ stood separately defined in

Explanation I(e). Firstly, under the proviso to Section 5, which is also inserted by the amending Act, a distinction is made between Ã¢â‚¬Å“grasslandsÃ¢â‚¬

included within Ã¢â‚¬Å“dry crop landÃ¢â‚¬ and Ã¢â‚¬Å“grasslandsÃ¢â‚¬ falling in the desert or hill areas of drought-prone areas for fixing the ceiling of dry crop land

in those areas. Secondly, under clause (f) to Explanation I, Ã¢â‚¬Å“grasslandÃ¢â‚¬ and not all Ã¢â‚¬Å“dry crop landÃ¢â‚¬ is deemed to be rice land in certain

situations.

23. The proviso to Section 5 itself makes it clear that by the amending Act of 1974 the legislature was placing a ceiling even on desert and hill areas.

The proviso inter alia states that the ceiling limit with reference to Ã¢â‚¬Å“dry crop landÃ¢â‚¬ shall be 12Ã‚Â½ more than that specified in the Schedule which

makes it clear that the legislature intended to include even desert and hills in drought-prone areas within the definition of Ã¢â‚¬Å“dry crop landÃ¢â‚¬â€‹.Ã¢â‚¬â€‹

14. Thus, the Supreme Court in the above decision has held that the definition of Ã¢â‚¬Å“dry crop landÃ¢â‚¬â€‹ would take within its sweep all lands which come

under section 2(17) of the Ceiling Act other than those specified in sub-clauses (a) to (c), and grass land.

15. On behalf of the appellant, it had been submitted that the subject lands would not fall within the ambit of the expression Ã¢â‚¬Å“landÃ¢â‚¬ as defined

under section 2(17) of the Ceiling Act as lands to be covered under section 2(17) are lands which have to be under any of the four classes defined in

section 2(6) read with Schedule 1 of the Ceiling Act and the activities which can be undertaken on these classes of lands under section 2(6) are

activities which are covered by the artificial definition of the expression Ã¢â‚¬Å“agricultureÃ¢â‚¬ under section 2(1) of the Ceiling Act as amended in the year

1974. Therefore, the subject lands would not be included in the definition of Ã¢â‚¬Å“dry crop landÃ¢â‚¬. In this backdrop it would be necessary to refer to the

provisions of section 2(17) of the Ceiling Act, which read as under:

(17) ""land"" means-

(i) in relation to any period prior to the specified date, land which is used or capable of being used for agricultural purpose and includes the sites of

farm buildings appurtenant to such land;

(ii) in relation to any other period, land which is used or capable of being used for agricultural purposes, and includes-

(a) the sites of farm buildings appurtenant to such land;

(b) the lands on which grass grows naturally;

(c) the bid lands held by the Girasdars or Barkhalidars under the Saurashtra Land Reforms Act, 1951, (Sau. Act XXV of 1951) the Saurashtra

Barkhali Abolition Act, 1951 or the Saurashtra Estates Acquisition Act, 1952, (Sau. Act XXVI of 1951) as the case may be;

(d) such bid lands as are held by a person who, before the commencement of the Constitution (Twenty- Sixth Amendment) Act, 1971 (Sau. Act III of

1952) was a Ruler of an Indian State comprised in the Saurashtra area of the State of Gujarat, as his private property in pursuance of the covenant

entered into by the Ruler of such State ;

(e) trees and standing crops on such land;

(f) canals, channels, wells, pipes or reservoirs and other works constructed or maintained on such land for the supply or storage of water for the

purpose of agriculture;

(g) drainage works, embankments, bandharas or any other works appurtenant to such land, or constructed or maintained thereon for the purpose of

agriculture, and all structures and permanent fixtures on such land;

Explanation - In clause (d), the expressions ""Ruler"" and ""Indian State"" shall have the same meanings as are assigned to them in clauses (22) and (15)

respectively of article 366 of the Constitution and the expression ""covenant"" shall have reference to the covenant which was referred to in article 291

of the Constitution before the repeal of that article by the Constitution (Twenty-Sixth Amendment) Act, 1971;

16. Thus, land as defined under section 2(17) of the Ceiling Act means land which is used or capable of being used for agricultural purposes, and

includes the categories of lands enumerated thereunder.

17. It is the case of the appellant that the subject lands are neither being used for agricultural purposes nor are they capable of being used for

agricultural purposes and, therefore, stand excluded from the definition of land. According to the appellant, the definition of Ã¢â‚¬Ëœagriculture Ã¢â‚¬â„¢ in

section 2(1) of the Ceiling Act is an artificial definition and that for the purposes of the Ceiling Act, the said activities are called agricultural if they are

undertaken on the lands falling in any of the clauses of section 2(6) read with section 2(17) of the Ceiling Act. It is the case of the appellant that the

definition of agriculture is not determinative of the nature of lands as to whether the same are covered by the Ceiling Act. On behalf of the appellant,

reliance has been placed on the extracts of the Village Form No.7/12 in respect of the subject lands for the years 1976 to 2005, which show that the

lands are not cultivated; as well as upon the report of the Navsari Agriculture University (page 228) which says that the chemical analysis data on pH,

electrical conductivity, organic carbon, available nutrient and physical condition of surveyed soil, indicate that it is not fit (congenial) for agriculture.

Thus, in effect and substance, it is the case of the appellant that the meaning of agriculture has to be restricted to whether such lands are being

cultivated or are otherwise capable of being cultivated.

18. Reference may, therefore, be made to the definition of Ã¢â‚¬Å“agriculture Ã¢â‚¬â€‹ as defined under section 2(1) of the Ceiling Act, which reads thus:

Ã¢â‚¬Å“2. In this Act, unless the context requires otherwise-(1)""agriculture"" includes-

(a) horticulture,

(b) the raising of crops, grass or garden produce,

(c) the use by an agriculturist of the land held by him or part thereof for grazing.

(d) the use of any land, whether or not an appanage to rice or paddy land, for the purpose of rabmanure,

(e) dairy farming,

(f) poultry farming.

(g) breeding of live-stock, and

(h) the cutting of wood :

Provided that in relation to any period prior to the specified date, ""agriculture"" shall not include any of the pursuits specified in sub-clauses (d), (e), (f),

(g) and (h) and also such other pursuits as may have been prescribed prior to the specified date as pursuits not included in that word;Ã¢â‚¬‹

19. Thus, the definition of Ã¢â‚¬Å“agricultureÃ¢â‚¬ under section 2(1) of the Ceiling Act is very wide and takes within its ambit not only cultivation of land but

other pursuits like dairy farming, poultry farming, breeding of live-stock and cutting of wood. Therefore, land which is not fit for cultivation may still be

fit for dairy farming, poultry farming and breeding of live-stock. In the opinion of this court, while interpreting the scope of section 2(17) of the Ceiling

Act, the words Ã¢â‚¬Å“agricultural purposesÃ¢â‚¬ have to be construed in the context of the meaning of the word Ã¢â‚¬Å“agricultureÃ¢â‚¬ as defined under section

2(1) of the Ceiling Act and cannot be confined to the narrow meaning of cultivation.

20. In the present case, while the appellant has come with a case that the subject lands are not being used for or capable of being used for cultivation,

it is nobodyÃ¢â‚¬â„¢s case that such land cannot be used for other pursuits like dairy farming, poultry farming, breeding of live-stock, etc. so as to exclude

such lands from the ambit of the expression Ã¢â‚¬Ëœland Ã¢â‚¬â„¢ as defined under section 2(17) of the Ceiling Act. Therefore, if the subject lands fall within

the ambit of Ã¢â‚¬Ëœland Ã¢â‚¬â„¢ as defined under section 2(17) of the Ceiling Act and do not belong to the classes specified in sub-clauses (a), (b) and (c) of

Explanation I to section 2(6) of the Ceiling Act, they would stand included within the ambit of Ã¢â‚¬Å“dry crop landÃ¢â‚¬ as defined under sub-clause (e)

thereof.

21. It, however, is the case of the appellant that the subject lands are khar lands/khar-no-kharabo/pot kharabo and are, therefore, not amenable to the

provisions of the Ceiling Act. It appears that the authorities below are also not clear in this regard.

22. To understand this controversy, it would be necessary to refer to certain facts as emerging from the record.

23. In this regard, it may be germane to refer to the order dated 8th April, 1976 of the Gujarat Revenue Tribunal in Appeal No.TEN/AS/5 of 1974,

wherein it has, inter alia, been recorded that the land in question is Survey No.400, admeasuring 2762 acres 20 gunthas, situate in Village Abhava,

Taluka Choryasi. The new survey number given to it after 1968 is Survey No.506, admeasuring 2814 acres 28 gunthas. The entire village of Abhava

was originally a Personal Inam Village and was recorded as such in the alienation register of 1886-87 A.D. maintained under section 53 of the

Bombay Land Revenue Code. The Inamdars were the family of the former Nawab of Baroda as recorded in that alienation register. The Bombay

Personal Inam Abolition Act, 1952 came into force with effect from 01.08.1955. Section 4 of that Act extinguished all personal inams with effect from

the appointed day and the inam villages or the inam lands became liable for payment of land revenue in accordance with the provisions of the Land

Revenue Code and the inamdars became occupants of the inam lands under section 5 of the Inams Abolition Act. By virtue of section 7 of the

Personal Inam Abolition Act, all public roads, lanes and paths, the bridges, dikes and fences, on or beside, the same, the bed of the sea and of

harbours, creeks below high water mar, and of rivers, streams, nallas, lakes, wells and tanks, and all canals, and water courses, and all standing and

flowing water, all unbuilt village site lands, all waste land and all uncultivated lands (excluding lands used for building or other non-agricultural

purposes) which were situate within the limits of any inam village or inam land was subject to the exceptions provided therein, vested in and were

deemed to be property of the State Government and the rights held by the inamdars were deemed to have been extinguished. The subject lands were

shown to be assessed to land revenue of Rs. 114-12 annas 0 Ps, till the year 1955-56. During the survey of 1950-51, the survey party by mistake

omitted to survey the lands in question and on coming to know that mistake, the land in question as well as two other survey numbers which were also

omitted for survey, were surveyed again and the lands in question were given new Survey No.506 and the area thereof came to 2814 acres 28

gunthas and were entered as padtar lands of the Government from December, 1968 onwards. The six sharers of NawabÃ¢â‚¬â„¢s family who were the

owners of the land, made an application to the Collector, Surat on 25.11.1969 for deleting the name of the Collector and entering their names in the

lands in question. Therefore, correspondence arose and it went to the various officers including the District Inspector of Land Records, Surat. It

transpires that the lands were omitted from the Inam Village by the survey party and therefore, that mistake was rectified and the lands were entered

as Government Kharaba land in the year 1968. It also came to light that the lands were shown as unassessed to land revenue because at the time of

local inspection in 1968, the survey party did not find any produce in the land. In paragraph 10 of the order, the Gujarat Revenue Tribunal has recorded

that Survey No.400 was assessed to land revenue of Rs.114-12 annas Ã¢â‚¬" 0 ps. till 1967-68. The Village Form Nos.7, 7-A and 12 of the

MamlatdarÃ¢â‚¬â„¢s record show that the land bearing Survey No.400, admeasuring 2763 acres 20 gunthas, was assessed to land revenue of Rs.114-12

annas and 0 ps. and that the survey number ceased to be unassessed (sic. assessed) only when it was given Survey No.506 in the year 1968-69. The

Gujarat Revenue Tribunal has also referred to a letter of the District Inspector of Land Records which made it clear that the land in dispute, viz.,

Survey No.400 of Village Abhava came to be entered as unassessed kharaba land for the first time in the year 1968. The Tribunal has further noted

that the land was termed as unassessed because there was no produce on it at the time of the site inspection. Thus, the record reveals that the subject

land was assessed till the year 1968-69, whereafter it came to be entered as unassessed kharaba land.

24. On the question of ownership, proceedings under section 37(2) of the Bombay Land Revenue Code came to be taken, which by the above order

of the Tribunal came to be concluded in favour of the predecessors-in-title of the appellant. The Tribunal has held that the decision of the Mamlatdar

that the subject land was Government land or that it was kharaba land, cannot be upheld. It ultimately held that the subject lands being khar lands or

saltish lands were not cultivable and no produce could be grown therein; they are neither waste lands nor uncultivated lands and therefore, they would

not vest in the Government; and that the only effect of the Personal Inam Abolition Act, 1952 on the lands in dispute is that they become liable to

payment of land revenue.

25. A perusal of the extracts of the Village Form No.7/12 of the subject lands shows that the nature of the land is shown to be pot kharaba and under

the column of crops, it is shown as khar (page 1050). In the Durasti Patrak / Kami Jasti Patrak (page 242), the subject lands are shown as khar-no-

kharabo.

26. Therefore, from the available record, it emerges that the subject lands are shown to be either pot kharaba or khar-no-kharabo or khar lands.

27. It may be noted that under the general classification of lands under section 2(6) of the Ceiling Act, there is no category of pot kharaba or khar-no-

kharabo. Insofar as Ã¢â‚¬Å“pot kharaboÃ¢â‚¬ is concerned, rule 75 of the Gujarat Land Revenue Rules refers to unarable land as pot kharab and says that

there are two kinds of unarable lands: (a) that which is classed as unfit for agriculture at the time of survey including the farm building or threshing

floors of the holder; or (b) that which is not assessed because it is reserved or assigned for public purposes; or because it is occupied by a road or

recognised footpath, or by a tank or stream used by persons other than the holder for irrigation or for drinking or domestic purposes, or used for burial

or burning ground by any community, or by the public; or because it is assigned for village potteries. The rule further says that class (a) may be

brought under cultivation at any time by the holder and no additional assessment shall be charged therefor. It further says that the cultivation of class

(b) is prohibited under section 48, sub-section (3). In the facts of the present case, indubitably the subject lands do not fall within class (b) and from the

findings recorded by the Gujarat Revenue Tribunal in the above referred order, it appears that the subject land is shown as pot kharaba as the same

was not cultivated at the time of survey, and, therefore, appears to fall in class (a).

28. Apart from the provisions of rule 75 of the rules which refer to pot kharab land, the appellant had placed on record a copy of the Manual of

Revenue Accounts provided by the Public Information Officer as Annexure-T to the petition (page 202/EE), which is in the vernacular language,

wherein under the heading Ã¢â‚¬Å“Pot KharabÃ¢â‚¬â€‹, it is stated thus (translated version):

Ã¢â‚¬Å“When any field is to be shown for the purpose of agriculture, then at times it is found that part of it is so bad that it cannot be cultivated; that is,

the level of the land is rocky or there is a stream/rivulet or there are hollows like old mines; besides there might be a part of a public road, or an

embankment of a public lake; or there might be some other reason due to which though a portion of the land is cultivable despite which it may not be

possible to grant permission to cultivate, for part of the year it is used for some other purpose due to which the main purpose is not obstructed (namely,

used for a road in the summer), then they are not considered. For this reason, all the pot kharab lands forming part of Government or Inam lands are

shown in the Village Form No.1 as unassessed and thereafter, it is deducted from all accounts/records. It is not shown in the Village Form No.3;

however, now it shall be disclosed and for that reason, it would be necessary to show its area in Form No.12 and Village Form No.6. The accounting

is not for any kind of addition but out of caution, they are required to be shown in this statement so that in the survey, there is no mistake in

comparison.Ã¢â‚¬â€‹

There are two types of two types of pot kharab:

(1) Which cannot be cultivated, and (2) which can be cultivated; but is assigned for any other purpose and hence, is excluded from carrying out

cultivation. There was no attempt to show that there are two kinds of pot kharaba lands in the record prior to 1915; however in this book, they are

shown separately.

(7) When the Talati carries out survey, at that time he should implement the following:- If any part of the field is uncultivated, he should first see

whether any part is pot kharab in that field. If any part of the field is shown as pot kharaba and is lying fallow, if the land lying as waste is not more

than the pot kharaba, he is not required to pay any attention. But if it is not so and the area of the land lying as waste is more than the pot kharaba,

then only the additional land (which is not cultivated and not the entire land) should be considered as waste land and should be entered in the proper

class for waste land.Ã¢â‚¬â€‹

29. The Bombay Survey and Settlement Manual, Volume I, an extract whereof is annexed along with the affidavit-in-reply filed on behalf of the

respondent No.5 in the letters patent appeal, refers to the cultivation of pot-kharab wherein it is inter alia stated that by the term Ã¢â‚¬Å“pot-kharabÃ¢â‚¬ is

meant Ã¢â‚¬Å“barren or unculturable land included in an assessed survey numberÃ¢â‚¬ and includes Ã¢â‚¬Å“any land comprised in a survey number which from

any reason is held not likely to be brought under cultivation.Ã¢â‚¬â€‹ It thus includes Ã¢â‚¬Å“lands in a field covered with buildings which may be removed at any

time, burying-grounds which may be disused and brought under the plough, tracks and paths which may cease to be employed as such, beds of nalas

which may suddenly become culturable from any change in the course of the stream, and such like.Ã¢â‚¬ Reference is also made to rule 4 of the Joint

Report Rules which states: Ã¢â‚¬Å“In the registers also a deduction is made on account of barren (unarable) land in certain fields and the assessment

placed on the arable land alone; but in the event of the cultivator bringing any portion of the land deducted as barren (unarable) into cultivation no extra

assessment is to be levied on that account; the assessment on the field entered in the register alone is to be levied.Ã¢â‚¬â€‹

30. Thus, basically, pot kharab land appears to be land which for some reason or the other cannot be cultivated. It may be that such land by its very

nature cannot be cultivated or on account of it being assigned for some other purpose, it may not be cultivated.

31. Insofar as khar lands are concerned, on behalf of the respondents, reliance has been placed upon the Ex-Saurashtra State Region Rules for

Classification of Land, 1955-56. An extract of Chapter 3 thereof has been annexed along with the affidavit-in-reply filed in the letters patent appeal,

wherein reference is made to land classified as khar land which indicates that khar lands are such wherein the salt content is high. There are different

kinds of khar lands, wherein the lands do not remain fertile and yield is reduced. If the land is more salty, then nothing cultivated would grow on it. At

times, even grass does not grow on such lands. The fault with regard to khar cannot be seen immediately and for the purpose of determination

whether the land is khar land or not, the indications given therein are of use. Rule 16 thereunder says that such lands are to be classified as Jirayat

lands, viz. Dry Crop lands.

32. Chapter IV of Volume II of the Bombay Survey and Settlement Manual bears the heading Ã¢â‚¬Å“The Gujarat System of ClassificationÃ¢â‚¬ wherein

ordinary land classes of Gujarat are Dry-crop, Garden and Rice. In addition there is a fourth class of land called Natural Bagayat. Dry Crop lands are

sub-classified into Ã¢â‚¬ËœOrdinaryÃ¢â‚¬â„¢ and Ã¢â‚¬ËœMalÃ¢â‚¬â„¢. The factors taken into account in the classification of ordinary Dry-crop lands of Gujarat are

two in number, viz. Soil and Sub-soil water-supply. Soil was of three orders, (i) black soil or besar; (ii) goradu or sandy loam and (iii) goramti or

yellowish inferior soil. There were nine kinds of faults recognised as deteriorating from the quality of the soil; one of which was khar = salt

efflorescence or impregnation with salt. Thus khar appears to be a fault in dry-crop land.

33. Khar lands also find reference in section 3 of the Gujarat Agricultural Lands Ceiling Act, 1960, which provides for Ã¢â‚¬Å“exempted landsÃ¢â‚¬. Clause

(aa) of sub-section (1) of section 3 of the Ceiling Act reads thus:

Ã¢â‚¬Å“3. Exempted lands. - (1) Subject to the provisions of sub-sections (1A) to (1D) (both inclusive), the following lands shall be exempted from the

provisions of this Act, that is to say - [aa] Khar lands and tidal lands as defined in the Gujarat Khar Lands Act, 1963 and any other lands which, being

in the opinion of the State Government such as need special efforts for their reclamation for the purpose of bringing them under cultivation, are notified

in this behalf by the State Government by a notification in the Official Gazette, held on lease from the Government for a period not exceeding twenty

years.Ã¢â‚¬â€‹

34. Section 2(d) of the Khar Lands Act defines Ã¢â‚¬Å“Khar landÃ¢â‚¬â€‹ and reads as under:

Ã¢â‚¬Å“2(d) Ã¢â‚¬" Khar land means such tidal land as is made cultivable by protecting it by means of an embankment from the sea or tidal river, and

includes all such land in whatever manner described, whether as khar, khajan, kharepat, gazni or otherwise.Ã¢â‚¬â€‹

35. Thus, under section 2(d) of the Khar Lands Act, all khar lands are tidal lands, which are made cultivable by protecting them by means of an

embankment from the sea or tidal river, whether described as khar, khajan, kharepat, gazni or otherwise, within the meaning of such expression as

contemplated under the Khar Lands Act.

36. Tidal land is defined under section 2(h) of the Khar Lands Act to mean such parts of the bed or shore of the tidal water as are covered and

uncovered by the flow and ebb of the tide at ordinary spring tides together with adjoining bed and shore not exceeding two furlongs in distance from

the spring tide mark. Thus, if section 3(1)(aa) of the Ceiling Act is read by incorporating the definitions of Ã¢â‚¬Ëœkhar landÃ¢â‚¬â„¢ and Ã¢â‚¬Ëœtidal landÃ¢â‚¬â„¢ as

contemplated under the Khar Lands Act, it would read as under:

If the Government is of the opinion that any khar land, that is, such tidal land as is made cultivable by protecting it by means of an embankment from

the sea or tidal river, and includes all such land in whatever manner described, whether as khar, khajan, kharepat, gazni or otherwise; tidal lands, that

is, such parts of the bed or shore of the tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides together with

adjoining bed and shore not exceeding two furlongs in distance from the spring tide mark; and any other lands held on lease from the Government for

a period not exceeding twenty years are such as need special efforts for their reclamation for the purpose of bringing them under cultivation and are

notified by the Government in this behalf, such lands are exempt under section 3(1)(aa) of the Act.

37. Therefore, it is lands that are held on lease from the Government for a period not exceeding twenty years and are lands which may be either khar

lands or tidal lands as defined under the Khar Lands Act or any other lands, which in the opinion of the Government need special efforts for their

reclamation for the purpose of bringing them under cultivation and are notified in that behalf by the Government that are exempt under section 3(1)

(aa) of the Act.

38. Significantly, it is not only khar lands but also tidal lands as defined in the Ceiling Act which meet with the requirements stipulated in clause (aa) of

section 3 (1) of the Ceiling Act which are exempt from the provisions of that Act. From the material on record there is nothing to show that tidal lands

are cultivable lands. Therefore, if only cultivable lands were sought to be exempted and lands which are not cultivable were not covered by the

expression Ã¢â‚¬Å“landÃ¢â‚¬ as defined under section 2(17) of the Ceiling Act, tidal land would not be required to be exempted, which means that all other

khar lands except those specifically excluded would be covered by the provisions of the Ceiling Act unless exempted.

39. Therefore, unless khar lands whether they are khar lands as defined under the Khar Lands Act or otherwise, are lands which fall within the ambit

of section 3(1)(aa) of the Act, they are not exempt from the provisions of the Act. In the opinion of this court, since khar lands to the extent described

in section 3(1)(aa) of the Act, are specifically excluded from the purview of the Ceiling Act, therefore, by necessary implication it follows that all other

khar lands are included within the purview of that Act, inasmuch as if all khar lands of whatever description were to be excluded from the purview of

the Ceiling Act, there was no need for the Legislature to specifically exclude khar lands to the extent described in section 3(1)(aa) of the Act from the

purview of the Ceiling Act. Therefore, the contention of the appellant that the subject lands being khar lands are not amenable to the provisions of the

Gujarat Agricultural Lands Ceiling Act, 1960, does not merit acceptance.

40. The decision of the Supreme Court in the case of Vishwasrao Satwarao Naik v. State of Maharashtra (supra) on which reliance has been placed

on behalf of the appellant does not in any manner support the case of the appellant inasmuch as in the facts of the said case it was an admitted

position between the parties therein that the subject land which was deducted as Ã¢â‚¬Å“pot kharabÃ¢â‚¬ land was excluded from the ceiling limit, which is

not so in the present case. Insofar as the proposition of law that presumption of truth is attached to the revenue record is concerned, even if the

revenue record is accepted to be true and correct, it does not carry the case of the appellant any further.

41. The decision of the Supreme Court in the case of Malankara Rubber and Produce Co. v. State of Kerala (supra) also would have no applicability

to the facts of the present case inasmuch as the same was rendered in the context of the Kerala Land Reforms Act, 1963 wherein the definition of

the expression agriculture is not as wide as under the Ceiling Act. Besides in the facts of the said case, the lands which were sought to be taken away

were either from industrial or commercial undertakings or from the owner of house sites within a municipality, and therefore, the said decision would

have no applicability to the facts of the present case. The decision of the Supreme Court in Ramji Sharma v. State of Bihar (supra) would also not be

applicable to the facts of the present case inasmuch as the said decision was rendered in the context of the Bihar Land Reforms (Fixation of Ceiling

Area and Acquisition of Surplus Land) Act, 1961 wherein the definition of land is not as wide as the definition of land as defined under the Ceiling Act

and the scheme of that Act is also different.

42. Insofar as the contention that for the purpose of the Ceiling Act, the activities mentioned in the definition of Ã¢â‚¬Å“agricultureÃ¢â‚¬ under section 2(1) of

that Act are called agriculture if they are undertaken on the lands falling in any of the classes under section 2(6) read with section 2(17) of the Ceiling

Act and that the definition of agriculture is not determinative of the nature of lands and whether the same are covered by the Ceiling Act is concerned,

in the opinion of this court such contention does not merit acceptance for the reason that it is the activity carried out or capable of being carried out on

the land which determines the nature of the land as to whether it is agricultural or not. When the Ceiling Act was enacted, the definition of

Ã¢â‚¬Å“agricultureÃ¢â‚¬â€‹ was a narrow one and to the extent the same is relevant for the present purpose, reads thus:

Ã¢â‚¬Å“(1) Ã¢â‚¬Å“agricultureÃ¢â‚¬ includes horticulture, the raising of crops, grass or garden produce, the use by an agriculturist of the land held by him or part

thereof for grazing but does not include.-

(i) the use of any land, whether or not an appanage to rice or paddy land, for the purpose of rab-manure;

(ii) the cutting of wood only;

(iii) dairy farming;

(iv) poultry farming;

(v) breeding of live-stock; and

(vi) such other pursuits as may be prescribed.

43. The definition of Ã¢â‚¬Å“agricultureÃ¢â‚¬â€‹ has been amended subsequently and the amended definition reads thus:

2. In this Act, unless the context requires otherwise-

(1)""agriculture"" includes-

(a) horticulture,

(b) the raising of crops, grass or garden produce,

(c) the use by an agriculturist of the land held by him or part thereof for grazing.

(d) the use of any land, whether or not an appanage to rice or paddy land, for the purpose of rabmanure,

(e) dairy farming,

(f) poultry farming.

(g) breeding of live-stock, and

(h) the cutting of wood :

Provided that in relation to any period prior to the specified date, ""agriculture"" shall not include any of the pursuits specified in sub-clauses (d), (e), (f),

(g) and (h) and also such other pursuits as may have been prescribed prior to the specified date as pursuits not included in that word;

44. Thus, what was expressly excluded from the definition of agriculture when the Ceiling Act came to be enacted, came to be included by the

Amendment Act, which indicates the legislative intent to cover pursuits other than horticulture, raising of crops, grass and garden produce and the use

by an agriculturist of the land held by him or part thereof for grazing, within the ambit of agriculture. Since the Act is a Ceiling Act, it is manifest that

the definition of agriculture has been sought to be amended in the context of land ceiling, namely to bring within its ambit more lands than the lands

which were otherwise covered prior to the amendment. If the contention of the learned counsel for the appellant were to be accepted, the amendment

would be rendered nugatory inasmuch as the scope and ambit of the ceiling area would remain the same despite the amendment in the definition of

agriculture. Therefore, the expression Ã¢â‚¬Å“agricultural purposeÃ¢â‚¬â€‹ as contained in section 2(17) of the Ceiling Act has to be considered in the context of

the definition of Ã¢â‚¬Å“agricultureÃ¢â‚¬ as defined under section 2(1) thereof, and accordingly, the expression agricultural purpose has to be given a broad

meaning by including other pursuits mentioned in the definition of agriculture. As a natural corollary therefore, land which is being used or capable of

being used for agricultural purposes, namely for any of the pursuits that are specified in the definition of agriculture would fall within the ambit of the

expression Ã¢â‚¬Å“landÃ¢â‚¬â€‹ as defined under section 2(17) of the Ceiling Act.

45. On behalf of the appellant it has also been contended that the legislature introduced an amendment to section 2(17) of the Ceiling Act to include

bid lands into section 2(6) read with section 2(17) of the Ceiling Act which were until then excluded by restricting the definition of land to the lands

covered by the four classes enumerated in section 2(6) of the Ceiling Act. The legislature while introducing the amendment in 1974 is presumed to

have had knowledge that apart from bid lands, there were other unarable lands which were not covered by the Ceiling Act; however, while amending

the Ceiling Act in 1974, the legislature intentionally included only one more class of land, viz., bid lands, whilst excluding other lands which did not fall

in any of the four classes of lands. Furthermore, the legislature intentionally also did not introduce any residuary class to cover all lands and that such

exclusion is deliberate and intentional. The legislature also, though amended Schedule-I to the Ceiling Act, did not include khar lands or khar-no-

kharabo or other lands which did not fall in any of the classes, except for the four classes provided in section 2(6) of the Ceiling Act. It was

accordingly, submitted that khar lands have been expressly excluded from the purview of the Ceiling Act. In the considered opinion of this court such

contention does not merit acceptance, for the reason that khar land is not a separate category of land but is dry crop land with a fault, viz. salt

efflorescence or impregnation with salt. Since dry crop land is one of the classes of land specified under section 2(6) of the Ceiling Act, ipso facto

khar land stood included within the purview of the Ceiling Act and there was no necessity to expressly include it at the time when bid lands came to be

included. Moreover, even as regards bid lands the Supreme Court in Nagbhai Najbhai Khackar v. State of Gujarat (supra) held thus:

Ã¢â‚¬Å“18. The short question which is inborn in this batch of cases concerns applicability of the Gujarat Agricultural Lands Ceiling (Amendment) Act,

1972 which came into force w.e.f. 1-4-1976 to the Ã¢â‚¬Å“bid landsÃ¢â‚¬. It is the case of the appellants before us that the Ã¢â‚¬Å“bid landsÃ¢â‚¬ of the appellants

do not fall within the definition of Ã¢â‚¬Å“dry crop landÃ¢â‚¬ under Explanation I(e) to Section 2(6) of the 1960 Act principally because the said definition

under the unamended Act included grasslands, that is to say, land which Ã¢â‚¬Å“abounds in grass grown naturally and which is capable of being used for

agricultural purposesÃ¢â‚¬. According to the appellants, in the amended Act, through oversight, the word Ã¢â‚¬Å“includesÃ¢â‚¬ in Explanation I(e), which

defines Ã¢â‚¬Å“dry crop landÃ¢â‚¬ stood omitted and, therefore, this Court could always fill in the omission by reading the word Ã¢â‚¬Å“includesÃ¢â‚¬ in the said

clause. According to the appellants, the legislative intent behind enacting clause (e) of Explanation I was to include only cultivable lands in the

definition of Ã¢â‚¬Å“dry crop landsÃ¢â‚¬ as the ultimate object of the 1960 Act is to fix a ceiling on lands held for agricultural purpose and consequently

Ã¢â‚¬Å“bid landsÃ¢â‚¬â€‹ which are uncultivable wastelands cannot be included in Explanation I(e).

19. We find no merit in this argument. The definition of Ã¢â‚¬Å“landÃ¢â‚¬ is specifically amended by Amendment Act 2 of 1974 to include Ã¢â‚¬Å“bid landsÃ¢â‚¬ of

girasdars or barkhalidars in Section 2(17)(ii)(c). The Statement of Objects and Reasons of the amending Act also makes it clear that there was a

specific legislative intent of including Ã¢â‚¬Å“bid landsÃ¢â‚¬ of girasdars or barkhalidars within the definition of Ã¢â‚¬Å“landÃ¢â‚¬. This inclusion does not make any

distinction between cultivable and uncultivable bid lands. The insertion of bid lands in Section 2(17) is without any such qualification. Therefore, this

specific intent of the legislature must be given its full meaning. If the argument of the appellants is to be accepted, it would defeat the very purpose of

the 1960 Act because in that event a holder could hold lands to an unlimited extent by including wastelands in drought-prone areas, hill areas and

wastelands within their holdings.

20. There is one more reason for not accepting the argument of the appellants. The subject lands survived acquisition under the 1952 Act only

because they were Ã¢â‚¬Å“bid landsÃ¢â‚¬ which by definition under those Acts were treated as lands being used by the girasdars for grazing cattle (see

Section 2(a) of the 1952 Act). Now, under the present Ceiling Act, Section 2(1) defines the use of land for the purpose of grazing cattle as an

agricultural purpose. Thus, Ã¢â‚¬Å“bid landsÃ¢â‚¬ fall under Section 2(1) of the Ceiling Act. This is one more reason for coming to the conclusion that the

Ceiling Act as amended applies to Ã¢â‚¬Å“bid landsÃ¢â‚¬â€‹.Ã¢â‚¬â€‹

Ã¢â‚¬Å“74. We too are not inclined to go by the argument based on the Objects and Reasons in relation to a Ã¢â‚¬Å“bid landÃ¢â‚¬. We have considered the

definition of Ã¢â‚¬Å“agricultureÃ¢â‚¬ under Section 2(1), the definition of Ã¢â‚¬Å“agriculturistÃ¢â‚¬ under Section 2(3) along with the expressions Ã¢â‚¬Å“a person who

cultivates land personallyÃ¢â‚¬ and the definition of Ã¢â‚¬Å“landÃ¢â‚¬ under Section 2(17) of the unamended Act. Having examined the nature of description of

those expressions contained therein, we are convinced that the legislature intended and did include Ã¢â‚¬Å“landsÃ¢â‚¬ held by the Ã¢â‚¬Å“agriculturistÃ¢â‚¬ where

grass is raised or used for grazing purposes as part of agricultural land which was in the possession of agriculturist. Such lands where grass is grown

or used for grazing purpose are always known as Ã¢â‚¬Å“bid landÃ¢â‚¬. Such Ã¢â‚¬Å“bid landÃ¢â‚¬ was ultimately brought within the definition of Ã¢â‚¬Å“landÃ¢â‚¬ under

Section 2(17) of the 1960 Act. Therefore, even by keeping aside the implication of the wider definition which was introduced by the 1974 Amendment

Act in regard to Ã¢â‚¬Å“bid landsÃ¢â‚¬ and going by the definition of Ã¢â‚¬Å“agricultureÃ¢â‚¬ and Ã¢â‚¬Å“landÃ¢â‚¬ under Sections 2(1) and 2(17) of the 1960 Act, we

have no difficulty in taking a definite conclusion that such definition contained in the Act as it originally stood did include Ã¢â‚¬Å“bid landsÃ¢â‚¬ which lands

were exclusively meant for cutting grass for cattle or used for grazing purposes. Therefore, there was no necessity for this Court to draw any further

assistance either from the Objects and Reasons or from the provisions of the amended 1974 Act in order to hold that Ã¢â‚¬Å“bid landsÃ¢â‚¬ were part of

agricultural land governed by the provisions of the 1960 Act.Ã¢â‚¬â€‹

Thus, the Supreme Court in the above decision has held that the definition contained in the Act as it originally stood did include Ã¢â‚¬Å“bid landsÃ¢â‚¬ which

lands were exclusively meant for cutting grass for cattle or used for grazing purposes. Another notable aspect is that the Supreme Court in the above

decision has also held that Statement of Object and Reasons of the amending Act also makes it clear that there was a specific legislative intent of

including Ã¢â‚¬Å“bid landsÃ¢â‚¬ girasdars or barkhalidars within the definition of Ã¢â‚¬Å“landÃ¢â‚¬. This inclusion does not make any distinction between cultivable

and uncultivable bid lands. The court also held that if the argument of the appellants therein were to be accepted, it would defeat the very purpose of

the 1960 Act because in that event a holder could hold lands to an unlimited extent by including wastelands in drought-prone areas, hill areas and

wastelands within their holdings. In the present case, the appellant holds 1603 acres of land which is far beyond the ceiling limit provided under the

Ceiling Act and if the contention that the subject land being khar land does not fall within the purview of the Ceiling Act were to be accepted, it would

defeat the very purpose of the Ceiling Act as in that event the appellant would be in a position to hold lands to an unlimited extent by including such

lands in its holding.

46. In the light of what is discussed hereinabove the contention that since the subject land does not fall within any of the classes specified under

section 2(6) of the Ceiling Act it would not be possible to compute the compensation in respect of such lands in terms of Schedule I to the Ceiling Act

automatically fails.

47. At this juncture, reference may be made to the proceedings leading to the filing of the present petition.

48. By a letter dated 24.8.1999, the Collector, Surat rejected the application made by the appellant for allotment of 600 acres of land from Survey

No.507 of Mouje Abhava, Taluka Choryasi, and instructed the Mamlatdar and ALT to examine the lands admeasuring 1600 acres held by the

appellant under the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960. Accordingly, the Mamlatdar and ALT issued notice to the appellant

under section 20(2) of the Ceiling Act calling upon it to produce the original order passed by the competent authority exempting the subject lands from

the provisions of the Ceiling Act and if no such exemption was obtained, to produce copies of the village record of such lands as on 1.4.1976.

49. Before the Mamlatdar and ALT, the appellant produced a certified copy of the order dated 5.11.1997 of the Collector, Surat, letter dated 3.6.1985

of the Assistant Collector Prant, Surat, a copy of the Durasti Patrak and a copy of section 3 of the Gujarat Agricultural Lands Ceiling Act, 1960.

Before the Mamlatdar and ALT, on behalf of the appellant, it was contended that the subject land was kharaba (khar land). Reliance was placed upon

the findings recorded by the Collector in the order dated 5.11.1997 in the RTS proceedings, wherein he has observed that as the subject lands are khar

lands, the provisions of the Tenancy Act and the Agricultural Lands Ceiling Act would not apply. It was also contended that under the Ceiling Act, pot

kharaba and tidal lands have been exempted from the provisions thereof and their lands are running under the head of pot kharaba; the subject lands

are situated on the banks of river Mindhola and when there is high tide, the subject lands are under submergence and for this reason also, their lands

are exempted from the restrictions under the Ceiling Act. Reliance was placed upon the letter of the Assistant Collector clarifying that the provisions

of the Tenancy Act would not apply and it was requested that it be declared that the lands being pot kharaba lands, the provisions of the Ceiling Act

do not apply and the proceedings be dropped.

50. The Mamlatdar and ALT has referred to the order dated 5.11.1997 passed by the Collector in the RTS (mutation entry) proceedings; as well as

the letter of the Assistant Collector wherein it is stated that the subject lands are shown to be pot kharaba lands in the land records and are khar lands

and hence, the provisions of the Tenancy Act do not apply; he has also referred to the provisions of section 3(1)(aa) of the Ceiling Act under which

the Khar lands and Tidal lands have been exempted from the provisions of the Act. Considering the above evidence produced by the appellant

company, the Mamlatdar and ALT after referring to the contents of the order dated 5.11.1997 passed by the Collector, as well as the letter of the

Assistant Collector and the provisions of the Ceiling Act which exempt pot kharaba lands and tidal lands, and considering the fact that the lands are

shown as pot kharaba since years and during high tide, the lands go under submergence as they are situated on the banks of river Mindhola, has held

that the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 do not apply.

51. Thus, the order dated 18th September, 2000 of the Mamlatdar and ALT is based principally on the order passed by the Collector in the RTS

proceedings, the letter of the Assistant Collector certifying that the provisions of the Tenancy Act do not apply to the subject lands and on the

provisions of section 3 of the Gujarat Agricultural Lands Ceiling Act, 1960, and the fact that the lands are shown as pot kharaba in the revenue record

since years. The appellant has prayed that this order be confirmed.

52. Insofar as the evidence relied upon by the appellant before the Mamlatdar and ALT is concerned, the order dated 5.11.1997 of the Collector has

been passed in RTS proceedings under rule 108 (6) of the Gujarat Land Revenue Rules, while considering the validity of the mutation entries and

would have no bearing on proceedings under the Ceiling Act. In those proceedings, it appears that the objection to mutating the name of the appellant

in the revenue record was that the appellant was a non-agriculturist and hence, its name could not be entered in respect of agricultural lands;

therefore, what had weighed with the Collector was that the appellant did not seek to become an agriculturist based upon its name being mutated in

the revenue record and did not intend to use the lands for agricultural purposes. The issue as regards the nature of the land as to whether it was

agricultural land within the meaning of such expression as envisaged under the Ceiling Act was not involved in those proceedings. Therefore, any

finding regarding the nature of the subject lands in the RTS proceedings would be limited to those proceedings and would not have bearing on any

inquiry made under the Ceiling Act.

53. Insofar as the certificate dated 3rd June, 1985 issued by the Assistant Collector (Annexure-VI, page 246) produced along with an additional

affidavit of the petitioner is concerned, the same is addressed to one Shri J.B. Nagarsheth Advocate, wherein in the context of an application made by

him, the Assistant Collector has informed him that Ã¢â‚¬Å“on a perusal of the 7/12 extract of the land, the land of Mouje Abhava, Taluka Choryasi,

Survey No.506 paiki is shown as pot kharaba. This land being khar land, the provisions of the Tenancy Act do not apply. If the lands are reclaimed

and made capable of cultivation, then the same can be considered to be agricultural lands in which case, permission under section 63 of the Tenancy

Act would be necessary if the lands are to be soldÃ¢â‚¬. Insofar as this letter is concerned, in the first place, it is not clear as to why and under which

provision of law, such clarification has been given by the Assistant Collector. It appears that in the context of some query raised by the learned

advocate, he has given a reply which has no evidentiary value. Besides, such clarification has been issued in the context of the provisions of the

Bombay Tenancy and Agricultural Lands Act, 1948, wherein the definitions of Ã¢â‚¬Å“agricultureÃ¢â‚¬ and Ã¢â‚¬Å“landÃ¢â‚¬ are much narrower than the

definitions of Ã¢â‚¬Å“agricultureÃ¢â‚¬ and Ã¢â‚¬Å“landÃ¢â‚¬ under the Gujarat Agricultural Lands Ceiling Act, 1960. Under the Tenancy Act, the expression

Ã¢â‚¬ËœagricultureÃ¢â‚¬â„¢ has been defined under section 2(1) thereof to mean thus:

(1) Ã¢â‚¬Å“Agriculture"" includes horticulture, the raising of crops, grass or garden produce, the use by an agriculturist of the land held by him or a part

thereof for the grazing of his cattle, the use of any land, whether or not an appendage to rice or paddy land, for the purpose of rab manure but does

not include allied pursuits or the cutting of wood only.Ã¢â‚¬â€‹

Whereas Ã¢â‚¬Å“landÃ¢â‚¬â€‹ has been defined under section 2(8) thereof to mean thus:

Ã¢â‚¬Å“(8)""land"" means-

(a) land which is used for agricultural purposes or which is so used but is left fallow, and includes the sites of farm buildings appurtenant to such land;

and

(b) for the purposes of sections, 11, 16, 17, 17A, 17B, 18, 19, 20, 26, 27, 28, 29, 30, 41, 63, 64, 64A, 84A, 84B and 84C-

(i) the sites of dwelling houses occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses;

(ii) the sites of structures used by agriculturists for allied pursuits;Ã¢â‚¬â€‹

Therefore, since the definitions of Ã¢â‚¬Å“agricultureÃ¢â‚¬ and Ã¢â‚¬Å“landÃ¢â‚¬ are much narrower under the Tenancy Act as compared to their definitions under

the Ceiling Act, no reliance can be placed upon a certificate or clarification issued under the Tenancy Act for the purpose of considering whether or

not any parcel of land is land within the meaning of such expression as envisaged under the Ceiling Act. Besides, such certificate has no statutory

backing inasmuch as there is no provision of law which empowers the Assistant Collector to issue a certificate of this nature. Under the

circumstances, no reliance can be placed upon such certificate which has no evidentiary value whatsoever and, therefore, the same could not have

been taken into consideration by the authorities below while considering the controversy in issue.

54. It may be noted that by a letter dated 22.1.2001, the Collector, Surat instructed the Deputy Collector, Choryasi Prant to take the order dated

18.9.2000 of the Mamlatdar and ALT in revision as the said order appears to be improper and illegal as despite the fact that the land owner had 1600

acres of land, no declaration had been made under section 10 of the ceiling Act and hence, initially no action has been taken under sections 11 and 16

of the Ceiling Act and that action has been taken by the Mamlatdar and ALT under section 20 of that Act which does not appear to be legal.

55. Pursuant to the said letter of the Collector, the Deputy Collector issued a notice dated 6.2.2001 taking the order of the Mamlatdar and ALT in

revision under section 33 of the Ceiling Act, inter alia, informing the appellant that the Collector has instructed him to call for the record of the order

dated 18.9.2000 passed by the Mamlatdar and ALT and take the matter in revision and pass appropriate orders. In response to such notice, the

appellant filed written submissions before the Deputy Collector, wherein it is the specific case of the appellant that their lands being khar lands, in view

of section 3 of the Gujarat Agricultural Lands Ceiling Act, 1960, the lands are exempted from the provisions thereof. Reliance has been placed upon

the certificate issued by the Assistant Collector dated 3.6.1985, again reiterating that khar lands have been exempted from the provisions of the Ceiling

Act.

56. It appears that thereafter, by a letter dated 28.4.2003, the Resident Deputy Collector informed the Deputy Collector, Choryasi Prant that he was

instructed to take the order of the Mamlatdar dropping the proceedings under section 20 of the Act in review as per instructions of the Government

and to convey the decision taken thereon. If no decision has been taken, to decide the same at the earliest. Thereafter, by the order dated 7.7.2003,

the Deputy Collector set aside the order passed by the Mamlatdar and ALT, and held that the subject lands are amenable to the provisions of the

Ceiling Act. The Deputy Collector, in the order dated 7.7.2003, has recorded that since the Mamlatdar has held that the lands are exempted under

section 3(1)(aa) of the Act, he is required to first examine such issue. He has held that the appellant has not adduced any evidence to show that the

subject lands are khar lands as contemplated under the Khar Lands Act and that no notification of the State Government notifying such lands to be

khar lands has been produced on the basis of which the subject lands could be considered to be khar lands. The Deputy Collector has accordingly held

that the Mamlatdar and ALT has assumed that the lands are khar lands and that the provisions of the Ceiling Act would not be applicable, which is not

proper and legal and has further held that these lands cannot be said to be khar lands as no notification declaring them to be khar lands has been

issued and hence, such lands cannot be considered to be lands exempted under section 3 of the Ceiling Act. He, accordingly, has set aside the order of

the Mamlatdar and ALT and instructed him to take further action under the Ceiling Act.

57. Thus, considering the fact that the appellant had claimed that the subject lands are khar lands and are exempted under section 3(1)(aa) of the

Ceiling Act, the Deputy Collector appears to have proceeded in the right direction, viz., that if the appellant claims that the subject lands are khar lands

and, therefore, exempted under section 3(1)(aa) of the Act, it has to adduce evidence to show that the subject lands are khar lands as envisaged under

section 3(1)(aa) of the Act. Therefore, on the basis of the material on record and the contentions raised before him, the order of the Deputy Collector

appears to be correct, namely, that in the absence of any notification declaring the subject lands to be khar lands, such lands cannot be exempted

under section 3 of the Ceiling Act.

58. Being aggrieved by the above order passed by the Deputy Collector, the appellant made a revision application under section 38 of the Ceiling Act

before the Gujarat Revenue Tribunal, wherein reference was made to the order of the Collector in RTS proceedings as well as to the order dated

18.9.2000 of the Mamlatdar and ALT. It was submitted that, Ã¢â‚¬Å“In the revenue records, the said lands are recorded as Ã¢â‚¬Å“kharÃ¢â‚¬ lands and no

agricultural activity was ever done in the said lands as they are unsuitable for the same.Ã¢â‚¬ It was contended that when the revenue record of the

Government is clear on the point, the Deputy Collector ought to have taken the same into consideration, but the same was overlooked. Reliance was

placed upon the findings of the Collector in the order passed in the RTS proceedings. In paragraph 10, it was contended for the first time that the

subject land being khar and pot kharaba land and classified as such in the revenue records, cannot be considered as agricultural land and when the

land itself is not an agricultural land, the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 are not applicable to the same and thus, the

order passed by the Deputy Collector suffers from material irregularity. No further record other than the record produced before the Mamlatdar and

ALT has been produced before the Tribunal. Before the Tribunal, the appellant also submitted written arguments and submissions, wherein it was

submitted that the subject lands were never classified as agricultural lands and from times immemorial, they were classified as Ã¢â‚¬Å“kharÃ¢â‚¬ or Ã¢â‚¬Å“pot

kharabaÃ¢â‚¬ lands in revenue records and no agricultural activity was ever carried on in the said lands. Reference was made to the provisions of section

2(17) and section 2(1) of the Ceiling Act, and it was contended that it is evident that the land which is used for the purposes defined in section 2(1)

and the land which is capable of use defined in section 2(17) are considered as agricultural lands and no other. It was submitted that the important

question to be decided is that whether the land owned by the appellant is capable of being used for agriculture or whether it has been used for

agricultural purposes. For that purpose, reference to the revenue record is a must and the appellant has produced the village form No.7/12 extracts

from 1977-78 till date, that is, the year 2005 and it is very much evident that the said lands are Ã¢â‚¬Å“kharÃ¢â‚¬ or Ã¢â‚¬Å“pot kharabaÃ¢â‚¬ lands, which have

never been used for agriculture or any of its allied activities or pursuits. The said lands were not capable of the use set out in section 2(1) and section

2(17) and hence, can never be considered agriculture lands for the purpose of the Gujarat Agriculture Land Ceiling Act. It was further contended that

section 3(aa) clearly sets out that khar lands and tidal lands shall be exempted from the provisions of the Ceiling Act. The lands held by the appellant

are tidal lands and classified as Ã¢â‚¬Å“kharÃ¢â‚¬ lands in the revenue records. The lands are situated on the banks of river Mindhola near Abhava village,

Taluka Choryasi, District Surat and many times, the lands are even submerged during high tide. Because of the high tide, the lands have never been

used for agricultural activity and lands being saline, have been classified as khar lands in the revenue record. This is an undisputed fact and so the land

being Ã¢â‚¬Å“kharÃ¢â‚¬ or Ã¢â‚¬Å“pot kharabaÃ¢â‚¬ land is unchallenged. It is further submitted that the State Government or any of its departments have never

challenged the said fact and even presently, the said lands are lying fallow and barren. Moreover, section 3(aa) also refers to the lands held on lease

from Government for period not exceeding twenty years, but in the present case, the land is privately owned and so even a notification for exemption

in the official gazette is not necessary for the same. It was contended that the subject lands were khar lands much prior to the coming into force of the

Gujarat Khar Lands Act or the Gujarat Agriculture Land Ceiling Act and hence, even under the provisions of the Gujarat Agriculture Land Ceiling

Act , the subject lands could not be considered as agricultural lands and hence the subject lands could not be included within the purview of the said

Act. It was submitted that the provisions of section 3(aa) of the Ceiling Act are applicable only to those lands which are held on lease from the

Government, but in the present case, the lands held by the appellant company are private lands and are purchased by the appellant company vide

registered sale deeds and therefore, section 3(aa) is not applicable to the subject lands and the provisions of the Gujarat Agriculture Land Ceiling are

not applicable. It was further submitted that the appellant company had produced all the extracts of revenue records before the Agriculture Lands

Tribunal and thereafter also before the Deputy Collector and the revenue record itself is the proof that the subject lands are khar lands. The revenue

record is a part of official Government record and the Government is estopped from challenging it or disbelieving it or coming to a conclusion militating

against the same.

59. On behalf of the State, the Special Government Pleader had relied upon a circular dated 3.6.1980 of the Revenue Department and submitted that

even if the subject lands are considered to be khar lands, the same do not become exempt under the provisions of the Ceiling Act. That no exemption

certificate/order exempting the subject lands from the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 has been produced.

60. The Gujarat Revenue Tribunal, after considering the material on record as well as the submissions of the respective parties, has found that neither

of the authorities below has framed issues of law and fact nor has either of them given any clear finding supported by proper reasons on such issues

and recorded any just conclusion. The Mamlatdar has placed reliance upon the written submissions of the appellant and the village form No.7/12 and

relied upon certain entries and assumed that the subject lands are khar lands and has dropped the proceedings; whereas the Deputy Collector has

directed the Mamlatdar and ALT to take further action. Thus, neither of the two authorities appears to have carried out sufficient scrutiny. The

Tribunal was of the view that the Mamlatdar and ALT has, without issuing any notice to the Government or hearing anyone on behalf of the

Government, on the basis of the submissions of the appellant and xerox copies of the record, assumed that the subject lands are khar lands and hence,

the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 do not apply; whereas the Deputy Collector has assumed that the lands are

agricultural lands, which is also not just and proper. The Tribunal has further recorded that the Mamlatdar and ALT had, after the appellant had made

submissions on 19.6.2000, called for the original record of the subject land from the Talati-cum-Mantri and had also sent a copy thereof to the Taluka

Development Officer; however, before the Talati-cum-Mantri could give a reply or produce the record, the Mamlatdar and ALT passed the order.

The Tribunal has noted that after perusing the material on record and considering the submissions of the appellant, since the Mamlatdar and ALT did

not find it sufficient, he thought it fit to make further inquiry and addressed a letter dated 19.6.2000 to the Talati-cum-Mantri and called for further

information; however, without carrying out further inquiry, he passed the order in question which is not just and proper. The Tribunal has further

observed that the Mamlatdar has not maintained any rojkam of the proceedings before him and that the order of the Mamlatdar cannot be said to have

been passed in accordance with the settled principles of law and is, therefore, liable to be set aside. The Tribunal has further observed that the

Mamlatdar has accepted the submissions of the appellant and the entries in the Government record to be completely true, but has not applied his mind

to them. No notice has been issued to the Collector as a representative of the Government and that the appellant has not adduced any oral evidence

on oath before any competent authority and thus, the Agricultural Lands Tribunal has merely placed reliance upon the oral submissions, which is not

just and proper. According to the Tribunal, the Mamlatdar and ALT should have taken into consideration the submissions of the appellant and ought to

have conducted an inquiry into the nature of land as per the revenue laws and the settled principles and that no evidence has been led by anyone to

establish that the subject land is khar land. The Tribunal was of the opinion that both the authorities below have acted as administrative authorities and

not as quasi-judicial authorities who are required to hear both the sides and render a decision. The Tribunal has found that the evidence on record is

not sufficient and cogent to establish that the subject lands are khar lands and/or agricultural lands and considering the evidence on record, there is no

option but to hold that the same is not sufficient to render a just decision. The Tribunal has further observed that the questions as to - whether the

Collector has the jurisdiction to instruct the Agricultural Lands Tribunal to take action in accordance with law;

- whether the bar of limitation would operate against initiation of such proceedings; and

- whether the provisions of the Ceiling Act would apply to such lands; are all required to be examined. It is also necessary to examine whether the

subject lands are khar lands or agricultural lands and that till the Agricultural Lands Tribunal decides on the issues raised on behalf of the appellant and

the State Government in accordance with law, it does not appear to be proper to agree with the orders of either of the authorities below. The Tribunal

was of the view that if the Agricultural Lands Tribunal conducts fresh inquiry and takes a decision, the interests of both the parties would be taken

care of and a just decision would be taken. The Tribunal further observed that the appellant has produced a copy of the letter of the Prant Officer,

Choryasi addressed to their Advocate Shri Nagarsheth, but there is no clarity as regards in what capacity the Prant Officer has issued such letter and

at the end of which inquiry. Besides, in the previous part of that letter, it has been opined that the said lands are khar lands, but in the last part, it has

been stated that if the said lands are to be sold, permission under section 63 of the Tenancy Act is required to be obtained, which is conflicting. The

Tribunal was of the view that relying upon such evidence; a just decision cannot be arrived at. The Tribunal was, accordingly, of the view that neither

of the orders of the authorities below is sustainable, and has partly allowed the revision and held that both the orders are required to be set aside.

61. In the operative part of the order, the Tribunal has partly allowed the revision and set aside the order dated 18.9.2000 passed by the Mamlatdar

and Agricultural Lands Tribunal and the order dated 7.7.2003 passed by the Deputy Collector and has restored the matter to the file of the Mamlatdar

and Agricultural Lands Tribunal and directed the Agricultural Lands Tribunal, Choryasi to decide issues like the following issues:

(1) As per the instructions issued by the Collector Surat by his letter dated 24.8.99 to examine the subject land under the provisions of the Ceiling Act

and take action and while taking such action as per the observations discussed hereinabove, to consider whether the Collector has the authority to

issue such instructions;

(2) Whether the issue of delay arises as regards initiation of the said proceedings;

(3) Whether the subject lands are khar lands or whether they are agricultural lands; and

(4) If the provisions of the Agricultural Lands Ceiling Act apply to the subject lands, whether such lands are liable to be exempted.

62. The Tribunal has, accordingly, remanded the matter to the Mamlatdar and ALT to examine issues like the above issues as well as any other issue

that may arise and to grant opportunity of adducing documentary as well as oral evidence to the parties in this regard and call for the original Tippan

and all the record from the Talati-cum-Mantri and record the evidence of any resident of Village Abhava in respect of the subject land, and examine

all the evidence and with a view to ensure that the interests of both the sides is maintained, give notice to both the sides and render a just decision in

their presence.

63. Thus, the Tribunal while remanding the matter to the Mamlatdar and ALT, has directed him to examine whether the Collector has the authority to

issue instructions to inquire into the holding of the subject land by the appellant under the Ceiling Act. In the opinion of this court, issuance of such

directions reflects non-application of mind on the part of the Tribunal to the powers of the Mamlatdar and ALT while determining the applicability or

otherwise of the provisions of the Ceiling Act to the subject lands. Besides, one fails to comprehend as to how the Tribunal expects the Mamlatdar to

sit in appeal over the instructions issued by the Collector who is a superior officer and decide the validity of the same.

64. Insofar as the issue of delay in initiation of the proceedings under the Ceiling Act is concerned; once again the Tribunal has displayed lack of

application of mind to the relevant statutory provisions and the scheme of the Gujarat Agricultural Lands Ceiling Act, 1960. In the facts of the present

case, the appellant holds 1603 acres of land, which according to the appellant are khar lands and therefore, excluded from the purview of the Act;

therefore, the appellant has not furnished particulars of land to the Mamlatdar as required under section 10 of the Ceiling Act and accordingly, no

proceedings were undertaken to decide whether the appellant was holding any surplus land. In the absence of any such declaration filed by the

appellant, the proper action on the part of the Mamlatdar should have been to initiate proceedings under sections 11 and 16 of the Act.

65. Besides, under the scheme of the Ceiling Act, as is apparent from the provisions of section 6 thereof, no person can hold land in excess of the

ceiling area. Under section 10 of the Ceiling Act, an obligation is cast upon every person holding land (including exempted land, if any) in excess of the

ceiling area to furnish to the Mamlatdar in whose jurisdiction such lands are situated a true statement specifying the particulars as enumerated in sub-

section (1) thereof. If a person fails to furnish such statement without reasonable cause, he would be liable to penalty under section 11 of the Act.

Since section 6 of the Ceiling Act bars a person from holding land in excess of the ceiling area, if at any point of time it comes to the notice of the

authorities that a person is holding land in excess of the ceiling area, it is open for them to initiate proceedings under the Ceiling Act. Therefore, the

question of delay in initiation of proceedings would not arise while taking action under the provisions of the Ceiling Act, inasmuch as in view of the

provisions of section 6 of the Act, it is not permissible for a person to hold land in excess of the ceiling area at any point of time.

66. Insofar as the direction to decide whether the subject lands are khar lands or agricultural lands is concerned, the same appears to be based on the

misconception that khar lands are a special category of lands which are exempted from the provisions of the Ceiling Act merely because they are

khar lands and are therefore not agricultural lands. Thus, the Tribunal appears to have proceeded on an assumption that khar lands are not agricultural

lands. In the opinion of this court in the light of what is held hereinabove, the question of deciding whether the subject lands are khar lands or

agricultural lands would not arise, inasmuch as khar lands are dry crop lands with faults and dry crop land is one of the classes of land expressly

specified under section 2(6) of the Ceiling Act.

67. Insofar as the last direction, namely, if the provisions of the Gujarat Agricultural Lands Ceiling Act apply to the subject lands and whether such

lands are liable to be exempted is concerned, if the provisions of the Ceiling Act apply to the subject lands, such lands would be exempted provided

they fall within the exempted categories as enumerated in section 3(1) of the Ceiling Act. In the present case, it is the specific case of the appellant

that the subject lands are not khar lands as contemplated under section 3(1)(aa) of the Ceiling Act, and, therefore, if the subject lands fall within the

ambit of the Ceiling Act, the question of such lands being exempted would not arise.

68. In the light of the above discussion, the Tribunal was not justified in remanding the case to the Mamlatdar by issuing the above directions.

Considering the nature of the controversy involved and the fact that there does not appear to be any other material on record, the Tribunal ought to

have decided the issues itself instead of remanding the matter to the Mamlatdar and ALT.

69. Insofar as the contention that the Collector could not have instructed the Mamlatdar to initiate proceedings under the Gujarat Agricultural Lands

Ceiling Act, 1960 is concerned, under section 11 of the Ceiling Act, there is a duty cast upon every person holding lands in excess of the ceiling limit to

declare his holding. In the present case, the appellant has not filed any such declaration on the presumption that the subject lands are not agricultural

lands; however, the decision as to whether such lands are agricultural lands or not has to be left to the authorities concerned, and the appellant cannot

assume that the lands are not agricultural lands and, therefore, not amenable to the provisions of the Ceiling Act. Therefore, as the appellant, despite

holding 1603 acres of land, has not made any such declaration, when it made an application for allotment of additional 600 acres of land, it came to the

notice of the Collector that the appellant was holding land far beyond the ceiling limit and, therefore, he instructed the Mamlatdar to look into it. In the

opinion of this court, it is open to any revenue or other authority to draw the attention of the competent authority if it comes to their notice that there is

any breach of any provisions of any enactment. Therefore, no infirmity can be found in the action of the Collector in instructing the Mamlatdar to

initiate proceedings under the Ceiling Act. Had the Collector instructed the Mamlatdar as regards what decision he should take in the matter, it would

have been a different matter as in that case the Mamlatdar which is a quasi-judicial authority would have passed the order as per the dictates of the

Collector, which would vitiate such order on the ground that the same has not been passed on an independent application of mind to the material on

record but that the authority has acted as per the dictates of the higher authority. Moreover, the Mamlatdar, after independently applying his mind to

the facts of the case, has held in favour of the appellant and the appellant has prayed that the order of the Mamlatdar be restored. Therefore, merely

because the initiation of the proceedings was at the behest of the Collector, would not vitiate the proceedings.

70. Insofar as the contention that the subject lands are now covered by the Draft Development Plan of SUDA wherein the lands are shown to be

reserved for township and therefore, not amenable to the provisions of the Ceiling Act is concerned, the relevant date for the purpose of deciding

whether the appellant is holding land in excess of the ceiling area would be the date of acquisition of such land and not the date on which the question

as to whether or not the appellant is holding land in excess of the ceiling area is decided. Having regard to the fact that at the time when the appellant

acquired the subject lands, the same were not reserved for township, but in terms of the sale deed which forms part of the record, such lands shown in

the agricultural zone, the question of excluding such lands from the ambit of the Ceiling Act would not arise.

71. The upshot of the above discussion is that the khar lands per se are not exempt from the provisions of the Ceiling Act unless they answer the

description of khar land as provided under section 3(1)(aa) of the Act; all lands which fall within the ambit of section 2(17) of the Act except the three

categories provided under clauses (a), (b) and (c) of Explanation I to section 2(6) of the Act would fall within the class of dry crop land, accordingly,

the subject lands would be classified as dry crop lands and would fall within the ambit of the provisions of the Ceiling Act. Once the subject lands fall

within the ambit of the Ceiling Act, there is an obligation cast upon the appellant as a holder of land in excess of the ceiling area to file a statement as

contemplated under section 10 of the Ceiling Act, in the absence whereof the Mamlatdar is required to take action under sections 11 and 16 thereof.

In the present case, the Mamlatdar had wrongly initiated proceedings under section 20 of the Ceiling Act instead of taking action under the relevant

statutory provision. Be that as it may, in the light of the findings recorded by this court, the order of the Deputy Collector to the extent it remits the

case to the Mamlatdar and ALT to take further action under the Ceiling Act deserves to be restored.

72. The decisions of the Supreme Court in Hindustan Petroleum Corporation Limited v. Dilbahar Singh as well as in Ram Avadh v. Ram Das (supra)

would not be applicable to the facts of the present case inasmuch as in the writ petition the appellant (original petitioner) has not only challenged the

order passed by the Gujarat Revenue Tribunal but has also sought a declaration that the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960

have no application to the subject lands and the learned counsel for the appellant has insisted upon a finding one way or the other on the basis of the

available material on record. Moreover, the appellant has relied upon the decision of the Supreme Court in Ashwinkumar K. Patel v. Upendra J. Patel

(supra) wherein it has been held thus:

Ã¢â‚¬Å“8. In our view, the High Court should not ordinarily remand a case under Order 41 Rule 23 CPC to the lower court merely because it considered

that the reasoning of the lower court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties

to the case. When the material was available before the High Court, it should have itself decided the appeal one way or the other. It could have

considered the various aspects of the case mentioned in the order of the trial court and considered whether the order of the trial court ought to be

confirmed or reversed or modified. It could have easily considered the documents and affidavits and decided about the prima facie case on the

material available. In matters involving agreements of 1980 (and 1996) on the one hand and an agreement of 1991 on the other, as in this case, such

remand orders would lead to further delay and uncertainty. We are, therefore, of the view that the remand by the High Court was not necessary.Ã¢â‚¬â€‹

73. A perusal of the impugned judgment and order passed by the learned Single Judge shows that despite the fact that the controversy involved in the

present case was related to the question as to whether or not the provisions of the Ceiling Act would be applicable to the subject lands, the learned

Single Judge in paragraph 15.10 of the judgment has doubted the entire transactions in respect of the subject lands, including the execution of the sale

deeds in favour of the predecessors-in-title of the appellant and the subject lands being mutated in the names of sixty-seven persons to whom shares

were allotted. In the opinion of this court, the observations made by the learned Single Judge as regards the transactions entered into in respect of the

subject lands by the predecessors-in-title of the appellant, was not subject matter of present proceedings and hence, such observations made by the

learned Single Judge cannot be sustained.

74. Moreover, the learned Single Judge has upheld the order passed by the Gujarat Revenue Tribunal and for the reasons recorded hereinabove, this

court does not agree with the findings recorded by the Tribunal and hence, the impugned judgment and order passed by the learned Single Judge

deserves to be quashed and set aside to that extent.

75. In the light of the above discussion, the appeal partly succeeds and is, accordingly, allowed to the following extent:

The impugned judgment and order dated 7th August, 2018 passed by the learned Single Judge in Special Civil Application No.12502 of 2010 is hereby

quashed and set aside. The directions contained in the order dated 11th May, 2010 passed by the Gujarat Revenue Tribunal while reminding the matter

to the Mamlatdar and ALT, Surat are hereby quashed and set aside. The order dated 7th July, 2000 passed by the Deputy Collector, Surat, to the

extent he has directed the Mamlatdar and ALT, Surat to take further action under the provisions of the Gujarat Agricultural Land Ceiling Act, 1960, is

hereby confirmed. Rule is made absolute accordingly to the aforesaid extent with no order as to costs.

76. At this stage, Mr. Tanvish Bhatt, learned advocate for the appellant has requested that the operation of this judgment and order be stayed for a

period of twelve weeks so as to enable the appellant to approach the higher forum. The request appears to be reasonable. Under the circumstances,

the operation of this judgment and order is stayed for a period of twelve weeks from today.