

HIGH COURT OF GUJARAT**Bench: Chief Justice Mrs. Justice Sunita Agarwal and Justice Aniruddha P. Mayee****Date of Decision: 17th May 2024**

R/WRIT PETITION (PIL) NO. 94 of 2022

CIVIL APPLICATION (FOR AMENDMENT) NO. 1 of 2022

IN R/WRIT PETITION (PIL) NO. 94 of 2022

CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2023

IN R/WRIT PETITION (PIL) NO. 94 of 2022

SATYAJEET KUMAR ...PETITIONER**VERSUS****STATE OF GUJARAT & ORS. ...RESPONDENTS****Legislation:**

Gujarat Industrial Development Act, 1962

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Subject: Public Interest Litigation challenging the allotment of industrial lands by Gujarat Industrial Development Corporation (GIDC) without public auction, causing a substantial loss to the public exchequer.**Headnotes:**

Public Interest Litigation – Allotment of Industrial Land – Absence of Public Auction – Challenge to GIDC’s allotment of developed industrial plots to respondent No.5 without holding public auction – Petitioner claimed illegal and unauthorized allotment leading to significant public exchequer loss – High Court found allotment violated GIDC’s own policy mandating public auction – Exchange deed executed for lands of unequal value without proper valuation – Allotment set aside – Directed GIDC to reassess allotment process ensuring compliance with legal requirements and transparency. [Paras 1-37]

Administrative Law – Decision-Making Process – Flaws in Process – Court observed delegation of decision-making authority by GIDC Board to Vice

Chairman and Managing Director was improper – Such significant policy decisions should be made collectively by the Board – Legal opinions obtained were found to be misplaced – Directed comprehensive reassessment of allotment. [Paras 19-35]

Land Acquisition – Compensation and Exchange – Mismatch in Valuation – Court highlighted disparity in valuation between agricultural lands and developed industrial plots – Required GIDC to properly evaluate and compensate for land exchanges to protect public interest – Recommended acquisition compensation based on historical valuations to avoid undue public loss. [Paras 30-33]

Decision: Held: Writ petition allowed – Allotment of industrial plots to respondent No.5 by GIDC without public auction quashed – Directed GIDC to re-evaluate and reprocess allotments in compliance with statutory requirements and transparent procedures – Ordered GIDC to ensure fair compensation for land exchanges based on proper valuations. [Paras 36-42]

Referred Cases:

- State of Gujarat v. Shree Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. 1991 SCR (1) 136
- Essar Steel Ltd. v. Union of India 2008 (2) SCC 621
- Mafatlal Industries Ltd. v. Union of India 1997 (5) SCC 536
- Narmada Bachao Andolan v. Union of India 2000 (10) SCC 664
- S. Sundaram Pillai v. V.R. Pattabiraman 1985 (1) SCC 591

Representing Advocates:

For Petitioner: Mr. Deven Parikh, Sr. Adv. with Mr. S.P. Majmudr, Mr. Askif R. Khan, Mr. Anshul N. Shah

For Respondents: Ms. Hetal G. Vyas (Assistant Government Pleader/PP), Mr. R.R. Marshall, Sr. Adv. with Mr. Adil R. Mirza, Mr. Mihir Joshi, Sr. Adv. with Mr. R.D. Dave, Mr. Mihir Thakore, Sr. Adv. with Mr. Salil M. Thakore

CAV JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

The instant petition, in the nature of Public Interest Litigation, has been filed by a public welfare spirited person, who claims to be a responsible member of the society. The issue raised in the writ petition is about the action of the Gujarat Industrial Development Corporation (in short referred to as 'the GIDC' hereinafter) in allotment of the developed lands in favour of the respondent Nos. 5 and 6 without holding public auction. It is stated that because of illegal and unauthorised allotment, a huge loss to the tune of Rs. 90,00,00,000/- has been caused to the public exchequer. The GIDC being the Government of Gujarat undertaking, entrusted with the industrial development in the State of Gujarat, has acted in contravention of its own policy dated 19.10.2006 in the matter of allotment of lands-in-question except by way of public auction.

2. The attention of the Court is invited to the exchange deed executed in favour of the respondent No.5, appended at page No. '206' of the paper book. A perusal of the said document indicates that the exchange deed was executed in respect of Survey No. 2165 (old S.No. 61/paiki 1); Survey No. 2147 (old S.No. 51/2); Survey No. 2148 (old S.No. 51/3); all agricultural lands of village : Sarigam, Taluka : Umbergaon, District : Valsad admeasuring 34,743.00 sq.mtrs., which was exchanged as against the industrial plots bearing Nos. 741 to 746, plot No. 3303, 3305, 3307, 3309, 3311, 3313, Plot No. 3117, Plot No.1304, 1305, 1309, 1310, 1311, 1312 and plot No. 3523 of village Sarigam, Taluka Umbergaon, District Valsad admeasuring 30,000.00 sq.mtrs.

3. At the outset, it may be noted that the industrial plots admeasuring 30,000.00 sq.mtrs. were given in exchange as against the agricultural lands admeasuring 34,743.00 sq.mtrs. by way of the exchange deed with the statement that area and value of both the lands are same and the GIDC has agreed to allot a piece of land which is industrial plot comprising of the aforesaid plots and by virtue of the agreement, the first party, i.e. the respondent No.5 herein will become the allottee of the aforesaid industrial plots and the said lands have been leased out to the first party (the respondent No.5) for a period of 99 years. The exchange deed opens with the assertion that the first party namely the respondent No.5 has requested the GIDC vide letter (un-dated) to allot it the aforesaid industrial plots in

exchange of the agricultural lands noted hereinbefore. The exchange deed further records that the first party (Respondent No.5) has assured that the agricultural lands given in exchange were of his exclusive ownership and that there was no charge or encumbrance on the same and no mortgage has been created. The said lands have also not been leased or licensed or rented to anybody else. It further states that the GIDC will become the absolute owner of the said plots and will be legally entitled to allot such lands to any other allottee, which it deems fit. Further that no amount is required to be paid by the first party/allottee (Respondent No.5) to the GIDC and further the GIDC is also not required to pay any amount to the first party namely respondent No.5. The statement in the exchange deed is that for acquiring the land of the first party namely the respondent No.5 whatever compensation is to be paid, is being paid in the form of exchange of land given in Schedule-A, which are industrial plots, in lieu of the agricultural lands in Schedule-B. Thus, in total 20 industrial plots (fully developed for industrial purposes) in a full saturated industrial estate have been given in exchange by the GIDC in lieu of all agricultural plots, to which the GIDC got ownership.

4. It is brought on record by means of the additional affidavit of the petitioner that in an auction conducted in the year 2021, for two plots in Sarigam estate, one being plot No. 1318 admeasuring 1623.10 sq.mtrs., the GIDC got a price of Rs. 2,33,50,300/- in an auction, by putting price of Rs. 14,386.23 per sq.mtrs. The second plot bearing No. C1B 1909-2 admeasuring 797.04 sq.mtrs. was auctioned for a total price of Rs. 1,78,80,600/- on a price put of Rs. 22,433.75 per sq.mtrs. put up by the GIDC. The copy of the E-auction advertisement dated 1.10.2021 to 16.10.2021 as well as the receipt details of the auctioned plot Nos. 1318 and C1B 1909/2 have been appended as Annexure A/1 to the additional affidavit at Page No. '280' of the paper book. It is, thus, highlighted that 20 fully developed plots in an Industrial saturated estate have been allotted to one person, namely the respondent No.5, without any action. It is, thus, evident that the GIDC is dealing with the lands by facilitating illegal allotments in a clandestine manner. It is contended that the valuation of the agricultural lands received by the GIDC in exchange is much much lower than the developed industrial plots allotted by it almost of the same area. The statement in the exchange deed that the industrial plots given in the exchange and the agricultural lands belonging to the respondent No.5 were of the same valuation, is clearly

misleading. A huge loss to the public exchequer has been caused on account of this auction of the GIDC.

5. By means of another affidavit dated 12.01.2023, it was brought on record that the agricultural lands being Survey No. 51/2, 51/3, 61/p/1 (old numbers were running in the name of the original owner namely Narihar Sukhanand Joshi on 25.04.1970 a mutation entry No. 2041 in respect of the said land was made declaring it as *sarkari padtar* (meaning government surplus/fallow lands). Further, in the ceiling case No. 11/2, the Mamlatdar and Krishipanch passed an order dated 13.10.1970 to take back the aforesaid lands being more than ceiling limit as prescribed under the Gujarat Agricultural Lands Ceiling Act, 1960. The original owner filed appeal before the Collector and later to the Gujarat Revenue Tribunal. Ultimately, the Special Civil Application No. 82 of 1973 was filed, whereby vide order dated 10.02.197, the matter was remanded for fresh adjudication as per the provisions of the Gujarat Agricultural Lands Ceiling Act.

6. The project namely Sarigam Industrial Estate was originally conceived by the GIDC sometime in the year 1980 encompassing not only private lands but also certain government lands. Since at the relevant time, the aforesaid agricultural lands were entered in the name of government in the revenue records, it was included in the industrial estate to be developed by the GIDC without undertaking any exercise for acquisition. It is further brought on record that after remand, the matter was finally adjudicated by the Agricultural Land Ceiling Authorities in the year 2014 in favour of the original owner. However, the original owner namely Narihar Sukhanand Joshi had expired since long and the respondent No.5 appears to have actively participated in the context of such lands used by the GIDC. After the order was passed by the ceiling authorities in favour of the original owner in the year 2014, the respondent No.5 had purchased the lands in question on 24.2.2016 and on 30.06.2016 at the meager rate of Rs. 101/- and 103/- per sq.mtrs.; respectively. After purchase, the respondent No.5 made representation to the GIDC seeking transfer of the fully developed industrial lands. It is stated in the affidavit that the original owners were fighting for the lands-in-question for more than 45 years and once the respondent No.5 came to know that an order dated 29.3.2016 had been passed by the Krishipanch releasing the lands in favour of the original owner, he purchased the lands-in-question by virtue of the sale deeds dated 24.06.2016, 30.06.2016 and Entry No. 9014 was mutated in his favour on 13.07.2016 with respect to the leased lands.

7. After purchase of the lands-in-question at a meager price, the respondent No.5 acted as a middleman for the respondent GIDC by indulging into profiteering. Further, even after allotment of the industrial plots, the respondent No.5 did not use the lands allotted to him (for 99 years) and further sold the lands-in-question to the third parties at extremely high prices and, thus, made high profits. The lands allotted to the respondent No.5 are not only fully developed industrial plots, but are also situated at prime spots and are highly valuable lands. The GIDC had committed illegality in allotting the said lands to the respondent No.5 at a throwaway prices. In furtherance of the ulterior motive of respondent No.5, the GIDC granted NA permission in the lands-in-question to the respondent No.5. The office notings on the file of the GIDC with respect to the rate at which the agricultural lands as well as the non-agricultural lands were to be acquired for the plots situated in Sarigam, show that the lands acquired are actually of much lower valuation and that by simply allotting the developed industrial plots in exchange of the agricultural lands of lower valuation, the GIDC suffered a huge loss running into crores of rupees, at least to the tune of Rs. 39 crores to the public exchequer.

8. As against all the above submissions, in the affidavit dated 23.5.2023 of the Regional Manager, Vapi Regional Office, GIDC, it is contended that the Survey Nos. 51/2, 51/3 and 61/p/1 of village :

Sarigam, Taluka : Umbergaon, District : Valsad were shown as the government waste lands, for which revenue entry No. 2041 was made vide order dated 13.04.1970. The said lands were originally owned by the family of deceased Narbari Sukhchand Joshi admeasuring about 80 acres 30 Gunthas situated at Village Sarigam, Taluka Umurga, District Surat. The ceiling proceedings under the Gujarat Agricultural Lands Ceiling Act, 1960 were initiated in respect to the lands-in-question and vide order dated 21.06.1966 under Section 20(2) of the Ceiling Act, about 36 acres and 15 Gunthas lands were declared surplus. It is stated that an application dated 27.02.1992 was filed by the GIDC before the Collector, Valsad for allotment of the lands-in-question for industrial purposes. However, vide letter dated 14.09.1992, the request of the GIDC was rejected showing inability to allot the lands-in-question in view of the pending litigation between the original owners and the government under the Ceiling Act. However, the possession remained with the original owners. It is then stated that the Mamlatdar and

Agricultural Tribunal vide order dated 29.12.2014 declared in favour of the original owners by giving elaborate reasons that there was no cases under the land Ceiling Act and the notice which was issued under Section 20(2) was accordingly, withdrawn and the proceedings were closed. The original owner, thereafter, sold the disputed lands to the respondent No.5 by registered sale deed dated 30.06.2016, whereby the respondent No.5 became the absolute owner of the lands-in-question.

9. It is then stated that the agricultural lands-in-question were situated within the periphery of Sarigam Industrial Estate and the GIDC had already made plans and plottings by including the said lands. On a representation made by the respondent No.5 to the GIDC in exchange of the agricultural plots as against the allotment of the industrial plots, the matter was placed before the Board of Directors, which in its meeting held on 1.9.2021, at resolution No. 513, decided to approve the exchange after seeking opinion of the panel advocates. Further, the Board of Directors had delegated all powers to the Vice Chairman and the Managing Director of the GIDC to deal with the representation. It is stated that such area of agricultural lands was admeasuring 34,743 sq.mtrs owned by the respondent No.5 as against which the GIDC allotted only 30,000 sq.mtrs. of industrial plots to the respondent No.5. An exchange agreement was entered into for allotment of the industrial plots admeasuring total area of 30,000 sq. mtrs., keeping in mind the interest of both the sides to the effect that the agricultural lands-inquestion were lying within the boundaries of Sarigam Industrial Estate and the GIDC required the agricultural lands for industrial purpose, which have been agreed to be given by the respondent No.5 in exchange. The respondent No.5 in exchange of the lands of his ownership had given up his claim of about 4,743 sq.mtrs. and has agreed for the total area of 30,000 sq.mtrs covered by various plots in exchange. It is thus, contended that no financial loss has been caused to the GIDC. It is, however, admitted that the respondent No.5, namely the allottee, has further transferred 9 plots to different companies including the respondent No.6, which had been approved by the GIDC and finally transfer orders were passed in favour of the transferees upon fulfilling all the terms and conditions including payment of transfer fees and other charges etc.. A copy of the map indicating the situation of the plots allotted to the respondent No.5 (total 20 in numbers) by way of exchange agreement, has been placed before us to assert that the scattered pieces of industrial plots were allotted to the respondent No.5, some of which were actually developed by the GIDC belonging to the respondent No.5.

10. With these facts, it is submitted that, on the contrary, the GIDC is benefited by allotting the plots admeasuring 30,000 sq. mtrs. as against the plots received in exchange admeasuring 34,743 sq.mtrs. Moreover, 20 plots given to the respondent No.5, were on lease basis and ownership of the plots remained with the GIDC, whereas the GIDC became the absolute owner of 34,743 sq.mtrs. of the lands received in exchange. It is further stated that generally allotment in the Sarigam Industrial Estate as per the policy of the GIDC was made by the public advertisement or by allotting the plots to the adjacent plot holders sharing common wall. However, the present case was completely different and exceptional in view of the fact that the agricultural lands belonging to the respondent No.5 were situated within the industrial estate at Sarigam, the GIDC had decided to give the industrial lands in exchange, inasmuch as, in case of acquisition or purchase of agricultural lands belonging to respondent No.5, the GIDC was required to pay huge price of the lands demanded by the respondent No.5. The respondent No.5, on the other hand, showed willingness to transfer the agricultural lands belonging to him as against the allotment of industrial plots, which was found to be beneficial to the interest of the GIDC. No illegality much less irregularity can be said to have been committed in the transaction and at the same time there is no loss at all to the GIDC, as alleged by the petitioner.
11. This court has made certain queries from the learned senior counsel for the GIDC vide order dated 11.12.2023 to demonstrate the following facts :
- “(i) The decision making process;*
- (ii) The correct status of the land belonging to the respondent No.5 received in exchange by the Gujarat Industrial Development Corporation, on the date of the execution of the exchange deed;*
- (iii) The stand of the Gujarat Industrial Development Corporation that the plots in question were indispensable for the scheme, i. e. Sarigam Industrial Estate of Gujarat Industrial Development Corporation as they were utilized in the year 1992 at the time of development of the industrial estate;*
- (iv) The Gujarat Industrial Development Corporation is required to bring before us the material to demonstrate the number of plots carved out by it (out of the land belonging to the respondent No.5), the expenditure incurred*

by it in the so called development of the plots, the allotment letters, if any, issued with respect to the said plots and the resolution of the Board.

(v) Considering all the above aspects, to permit for exchange; the legal opinion, if any, sought by the Gujarat Industrial Development Corporation in terms of the Board Resolution dated 01.09.2021.

(vi) Last but not the least, the valuation report to demonstrate the statement in the exchange deed that both the lands i. e. the industrial plots developed by the Gujarat Industrial Development Corporation and the plots owned by the respondent No.5, which were received in exchange, were of the same valuation.”

12. An affidavit dated 18.12.2023, on behalf of the GIDC, has been filed by the Regional Manager (in-charge), GIDC, Valsad in compliance of order dated 11.12.2023, wherein it is stated that at the time of establishment of the Industrial estate at Sarigam, some time around in the year 1984, the lands of private owners were subjected to the acquisition proceedings under the Land Acquisition Act, 1894 vide notifications issued from 1981 onwards. At the same time, the GIDC had applied for several parcels of government lands falling within the estate. It is submitted that the lands bearing Survey No. 51/2, 51/3 and 61/p/1 were shown as the government waste land, declared as excess land under the Agricultural Lands Ceiling Act, 1960 vide order dated 25.4.1970. Entries in this regard were also made in the record of rights. The GIDC, thereafter, started the work for setting up of the infrastructural facilities.

13. It is stated that the GIDC has started the work of setting up infrastructural facilities including laying down of road and pipelines in the area notified as the Industrial estate, including the agricultural lands in question and upon applications of the eligible persons, it started allotting plots to such persons desiring to set up their industries. As regards the agricultural lands in Survey No. 51/2, 51/3 and 61/p/1, it is stated that in the aforesaid lands, roads had been laid out and it was extensively plotted for the purposes of allotment. Thirty three (33) plots were carved out wholly or partly comprised of the said lands. Out of which 17 plots came to be allotted to the various applicants; licensee agreement have also been executed with the allottees. The possession has been handed over to the allottees with the permission letters

and the approval of drawing/proposed design had been duly granted. It is further stated that the various representations of the GIDC to the State Government for allotment order of the agricultural lands-in-question were not considered due to the pendency of ceiling proceedings and the finally vide order dated 29.12.2014, the government land, which was developed and allotted by the GIDC in anticipation of allotment by the State Government were held to be not an excess land and held to be the holdings of the agriculturists owners. By that time, the position had become absolutely irreversible, as the agricultural lands had already been allotted to several persons between the year 1984 and upto 2002 and wherein the allottees have invested money, started factories and infrastructural facilities like roads etc. had been developed over the subject lands, it was not possible for the GIDC to return the same to the respondent No.5.

14. It is also admitted that the agricultural lands-in-question were purchased by the respondent No.5 from the original owners on 30.06.2016, whereafter he made several representations to return the lands, which according to him, was vacant and to allot alternative plots for the portions already utilised. The proposal for purchasing the aforesaid lands forming a pocket in the estate was placed before the Board of Directors of GIDC. In the meeting held on 1.9.2022, the decision was taken by the Board of Directors to seek legal opinion regarding exchange of the lands and after receiving the opinion, the Vice Chairman and Managing Director was authorised to take an appropriate decision. After legal opinion was sought, it was considered that in case of the acquisition of the agricultural lands-in-question under the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act, 2013), the compensation amount would be much higher and as a consequence thereof, it was recommended that the exchange would be in the interest of the GIDC. Referring to the legal opinion given by the panel advocate, it is stated that the Section 14 of the Gujarat Industrial Development Act, 1962 empowers the GIDC to exchange the properties held by it. As a result of it, the Vice Chairman and the Managing Director directed for preparation of detailed note regarding the cost implications of the proposal and sought second opinion from another advocate, which was received on 19.11.2011. Looking to the complexity and the relevant facts it was opined that the option of exchange of lands appear to be most cost efficient for the GIDC rather than acquiring the lands and that there was also such precedents in another estate.

15. On the basis of the above, the Manager (Land) prepared a Note for approval of exchange of plots as specified in the Note and considering 14% statutory deduction as against the total area of utilised lands of 34,743 sq.mtrs., in exchange, the lands of about 30,000 sq.mtrs. was proposed to be allotted. It is submitted that the allotment process of the GIDC in a particular estate is at uniform rate per sq.mtr. irrespective of the location of the plot-in-question, though it would differ for the classifications of plots such as industrial, commercial, residential, out of which industrial plots being lowest valued, it was proposed to allot 20 plots as specified with numbers in the Note put up by the Manager (Land), which was endorsed by the Vice Chairman and Managing Director. It is emphasised by the learned Senior counsel appearing for the GIDC that looking to the complexity and the cost of acquisition, development made by the GIDC without acquiring the land, existing industries on the lands and earlier proceedings and legal opinion, the proposal of exchange of lands was approved made by the GIDC. No infirmity, therefore, could be attached to the decision of the Vice Chairman and Managing Director, GIDC on evaluation of all the relevant factors.
16. It is further vehemently contended that the allotment was made in lieu of the compensation for the lands utilised by the GIDC. It is further contended that though there cannot be a condition of utilisation, the said lands allotted in exchange by the owners for his non-industrial use, but in the exchange agreement, a condition was put, wherein the owner was obliged to pay the transfer fees and other charges as per the policy. While approving the transfer by the respondent No.5, the GIDC has levied and collected the following charges at the rate of 30% being the transaction fees in case of non-utilisation pursuant to the Circular dated 22.6.2020. The transfer fees collected by the GIDC for transfer of the plots-in-question in favour of the third party as indicated in para 8.7 of the aforesaid affidavit is pertinent to be noted hereinunder,

“8.7 Accordingly, GIDC has collected the following amounts as transfer fees:

<i>Plot Nos.</i>	<i>Amount</i>
	<i>Rs.</i>
1. 3311	6,60,300/-
2.3313	<i>Rs.</i>
	11,48,970/-

3.3117

Rs.

7,80,066/-

17. It is then stated that the valuation of the lands was considered equivalent since the lands within the estate were being exchanged with similar lands of the same use classification and that all the lands within the estate were considered non-agricultural lands in view of the fact that the acquisition proceedings by the Collector under the Land Acquisition Act was for industrial purposes. No NA permission was thus, required and no valuation report was found necessary. It is, thus, stated that the allegations made by the petitioner about the illegality and irregularity in the exchange, are baseless, false and misconceived. Reference has been made to the government resolution dated 4.4.2018 providing for method of calculation for compensation, solatium and interest. The comparative statement was prepared regarding the lands-in-question and the average price received in the auction of another plot on 22.10.2021. It is stated that the compensation as per the Act, 2013 with solatium and interest if calculated, it would be approximately 45,81,51,696/- which would be much higher than the sale price of the plots-in-question of Sarigam and surrounding villages. It is contended that the valuable plots of the GIDC which were sold in the auction held in the year 2021 fetched price of approximately Rs. 43,15,80,000/-, resultantly the GIDC still will be in benefit to the extent of more than 2.5 crores. Moreover, time and expenditure to be incurred will be another disadvantage, if procedure under the 2013 Act was followed by the GIDC.
18. Lastly, valuation report dated 14.12.2023 obtained by a private architect has been placed on record as Annexure-CX to the said affidavit to submit that valuation of all 20 plots allotted to the respondent No.5, comes to Rs. 48,68,02,000/- at the rate of Rs. 14000 per sq.mtrs. as in the year 2022. It is further stated that the Collector can accept the agreement and make award as per the agreement under the Land Acquisition Act, 2013. The exchange made by the GIDC of industrial plots in lieu of the plots belonging to the respondent No.5, cannot be said to be suffering from any error of law. No *mala fide* can be attached to the proceedings conducted by the GIDC. The instant writ petition in the nature of public interest litigation is a motivated litigation and is liable to be dismissed, outrightly.

19. Heard the learned senior counsels appearing for the parties and perused the record. Noticing the submissions made by the learned counsels for the parties, we may record, at the outset, that the main contention of the learned Senior counsel appearing for the GIDC is that the GIDC possesses power to dispose of any property held by it, by lease, sale, exchange or otherwise, in view of Section 14 of the Act, 1962. The submission, thus, is that the method derived by the GIDC in disposal of its properties through exchange deed cannot be said to be beyond its jurisdiction. It was neither mandatory nor necessary in the facts and circumstances of the instant case, to go for auction of the industrial plots to the respondent No.5 for the peculiarity of the case, inasmuch as, with the release of the lands-in-question from the ceiling proceedings, the GIDC had no option but to return the industrial plots developed by it over the agricultural lands of the respondent No.5. As the return of the entire lands of Survey No. 51/1, 52/1 and 61/p/1 belonging to the respondent No.5 was not possible in view of the subsequent developments, another option before the GIDC was to acquire the land by initiating the process under the 2013 Act and pay compensation to the land owners, which would have been more onerous for the GIDC. The submission, thus, is that the GIDC had chosen the best option in the public interest and has also been benefited out of it.
20. Testing these submissions, we find it apt to first go through the provisions of the Gujarat Industrial Development Act, 1962 (hereinafter referred to as 'the Act, 1962'). The Act, 1962 has been enacted to make special provisions for securing orderly establishment and organisation of the industries in the industrial area and industrial estates in the State of Gujarat and for the purposes provided therein. The "Corporation" defined in Section 2(d) means 'the Gujarat Industrial Development Corporation' established under Section 3; "Industrial Area" means any area declared to be an industrial area by the State Government by notification in the Official Gazette, which is to be developed and where industries are to be accommodated, as per Section 2(g) of the Act, 1962;
- 'Industrial Estate' as defined under Section 2(h) means any site selected by the State Government, where the Corporation builds, factories and other buildings and makes them available for any industries or class of industries; Section 3 provides for 'Establishment and Constitution of the Corporation' as a body corporate with perpetual succession and a common seal which is competent to acquire, hold and dispose of the properties, both the movable

and immovable and to enter into contract and do all necessary functions for the purposes of the Act, 1962. The constitution of the Corporation, as provided in Section 4 of the Act, 1962 is as under :-

“4. (1) The Corporation shall consist of the following twelve Directors, that is to say-

(a) Three official Directors nominated by the State Government, of whom one shall be the Financial Adviser to the Corporation; one Director nominated by the State Electricity Board constituted under the Electricity (Supply) Act, 1948;

(b) one Director nominated by the Gujarat Housing Board constituted under the Gujarat Housing Board Act, 1961;

(c) six Directors nominated by the State Government, from amongst persons appearing to it either to be qualified by reasons of experience of, capability in, industry or trade or finance or to be suitable to represent the interest of persons engaged or employed therein: and

(d) the [Managing Director] of the Corporation, ex-officio, who shall also be the Secretary of the Corporation.”

21. As per Section 6(1), the Chairman, the Vice Chairman and Director of the Corporations are nominated by the State Government, who shall hold the office during the pleasure of the State Government. Functions and powers of the Corporation are prescribed in Sections 13 and 14, as contained in Chapter III of the Act, 1962. Some of the main functions of the Corporation are, (a) to establish and manage the industrial estates at the place selected by the State Government; (b) to develop industrial areas selected by the State Government for the purposes and make them available for undertakings to establish themselves; (c) to develop the land on its own account for the State Government for the purpose of facilitating the location of industries and commercial centers thereon; (e) to discharge other functions to assist the industries, to set up their factories into such estates or areas. Section 14 prescribes general powers of the Corporation. Section 14(a) relevant for our purposes is to be noted hereinbelow :-

“14. Subject to the provisions of this Act the Corporation shall have power-

(a) to acquire and hold such property, both movable and immovable as the Corporation may deem necessary for the performance of any of its activities, and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Corporation;”

22. Section 15 provides that :-

“15. All permissions, orders, decisions, notices and other documents of the Corporation shall be authenticated by the signature of the [Managing Director] of the Corporation or any other Officer authorised by the Corporation in this behalf.”

23. Section 16 confers powers on the State Government to issue notification in the Official Gazette to declare that the provisions to notified areas and any other provisions of the Act shall extend to and be brought into force in any industrial area, and thereupon such area shall be deemed to be a notified area under the Act; to appoint the Corporation or any officer or committee thereof for the purposes of the assessment and recovery of any taxes, when imposed under the provisions so extended and for enforcing such provisions . Section 16(c) provides that provisions of any other law relating to local authorities, which is in force in that area, shall cease to apply. The State Government is further empowered to make such other provisions as necessary for the purposes of the enforcement of the provisions of the Act so extended to that area by notification in the official gazette.

24. From the above noted provisions, it can be discerned that the GIDC has been conceptualised as a local authority, which is assigned the task of development of an industrial area and industrial estate in the city of Gujarat. It is empowered to hold properties as a body corporate / local authority and deal with the same, as per the provisions and such conditions as may be deemed proper by the Corporation. The Corporation means the body constituted of 12 Directors as per Section 4(1) of the Act, 1961. The Managing Director of the Corporation is an officer appointed by the State Government as per Section 12(1) of the Act, 1962 and the Vice Chairman is one of the Directors appointed by the State Government.

25. As per Section 14(a), the Corporation is free to acquire and hold any property or transfer any property held by it through lease, sale, exchange or otherwise, but on such conditions as may be deemed proper by the Corporation. The decision to dispose of any property by lease etc. necessarily has to be a

decision of the Corporation, which is the body constituted as per Section 4(1) of the Act, 1962. Neither the Vice Chairman nor the Managing Director, namely one of the Directors, officer of the Corporation are competent to take any policy decision such as disposal of the land held by the Corporation on behalf of the Corporation.

26. Further, going through the provisions of Sections 30 and 32 of the Act, 1962, we may record that whenever necessary for any purpose in furtherance of the objects of the Act, the Corporation, if unable to acquire any land by agreement, may move to the State Government to initiate proceedings under the relevant acquisition laws for acquiring such land on behalf of the Corporation, as if such lands were needed for public purposes within the meaning of relevant land acquisition laws, on payment of compensation awarded and all other charges incurred in the acquisition of any such land. Section 32 dealing with the lands belonging to the State Government, reads as under,

“Section 32:

- (1) For the furtherance of the objects of this Act, the State Government may, upon such conditions as may be agreed upon between it and the Corporation, place at the disposal of the Corporation any lands vested in the State Government*
- (2) After any such land has been developed by, or under the control and supervision of the Corporation, it shall be dealtwith by the Corporation in accordance, with the regulations made, and directions given by the State Government in this behalf.*
- (3) If any land placed at the disposal of the Corporation under subsection (1) is required at any time thereafter by the State Government, the Corporation shall replace it at the disposal of the State Government upon such terms and conditions as the State Government may after consultation with the Corporation determine.”*

27. A perusal thereof indicates that the State Government may agree to place any lands vested in it at the disposal of the Corporation, upon such conditions as may be agreed upon between it and the Corporation. Once any such land has been developed by or under the control and supervision of the Corporation, it shall be dealt with by the Corporation in accordance with the

regulations made, and the directions given by the State Government in this behalf. The State Government is also empowered to take back any land placed at the disposal of the Corporation under subsection(1) of Section 32.

28. Taking note of the above provisions, when we look to the facts and circumstances of the present case, it may be noted that in the year 1984, when the acquisition proceedings were undertaken for establishment of the Industrial estate namely Sarigam Industrial Estate, the agricultural lands were vested with the State Government and the Entry in the revenue records had been made accordingly, inasmuch as, the agricultural lands were declared as excess lands under the Agricultural Lands Ceiling Act vide order dated 21.06.1966. The remittal order dated 10.12.1977 passed by this Court, however, did not change the said position. The request made by the GIDC in the year 1992 to allot the aforesaid lands for the industrial purposes, though had been rejected by the Collector in view of the pending litigation between the original owner and the State Government under the Ceiling Act, but that fact by itself would not change the position much. All the agricultural lands were vested with the State Government at the time of establishment of the Sarigam Industrial estate.
29. The fact remains that the possession of the aforesaid agricultural plots were with the GIDC and falling in the Industrial area, the GIDC had developed the agricultural lands for the industrial purposes in the hope that it will get approval of the State Government. In any case, during the entire process of development of the plots-in-question, namely the agricultural plots, subject matter of the ceiling proceedings, there was no interim order directing the parties to maintain the *status quo* over the said lands. The result is that with the passage of time, the agricultural lands have changed its nature and become Industrial plots developed by the GIDC, which were allotted to many industrialists.
30. Now the question would be as to what steps were supposed to be taken by the GIDC once the agricultural plots of the original owners were released with the order passed by the Mamlatdar dated 29.12.2014 making a declaration that there was no excess land with the original owner and withdrawal of the notice under Section 20(2) of the Agricultural Land Ceiling Act.
31. The GIDC was faced with the circumstances that it was not in a position to return the lands to the original owner for the simple reason that the agricultural

lands were changed into the Industrial plot and third party rights had been accrued over some of them. In our considered opinion, the GIDC had two options:-

(i) either to pay compensation to the land owners at the rate at which the compensation was paid to the land owners of similarly situated lands in the year 1984; at the time of acquisition of private lands for the purposes of establishment of Sarigam Industrial Estate. When we say so we are conscious of the fact that the Land Acquisition Act, 1894 had been repealed by the date 29.12.2014, when the agricultural lands belonging to the land owners were released from ceiling. According to us, there was no question of grant of compensation to the land owners by application of the Act, 2013, inasmuch as, it is not a case where the GIDC can be said to have entered into the private lands, without adopting due process of law. It was a case where at the time of set up of the Sarigam Industrial Estate, the agricultural lands belonging to the land owners were already vested with the State Government and being State Government's land at the relevant point of time, there was no question of acquisition. For the changed circumstances and for no fault attributable to the Corporation, which is a public body, at the most the compensation could have been determined treating the agricultural land-in-question having been acquired by the GIDC in the year 1984, when similarly situated private lands were acquired for the purpose of establishment of Sarigam Industrial Establishment. The GIDC was required to compensate the land owners by computation of compensation considering the market value of the agricultural lands in the vicinity as in the year 1984, when awards were made with respect to similarly situated lands with reference to the date of acquisition, so as to complete the process of acquisition of the agricultural lands, which were developed by the GIDC over the period of time for industrial purposes. We say so for the another reason that had the agricultural lands comprising of Survey Nos. 51/2, 51/3 and 61/p/1 been the lands of the ownership of the original owners at the time of establishment of Industrial estate, those lands would have been acquired by adopting the acquisition proceedings under the Land Acquisition Act, 1894. It cannot be said by any stretch of imagination that the Corporation (GIDC) has committed any illegality, insofar as the land owners are concerned in utilising the agricultural lands for the purposes of development of Sarigam Industrial Estate, when it was recorded as the government lands. The result is that after release by virtue of the order passed by the Mamlatdar in the year 2014, the land owners were entitled for compensation at the same rate, as was given to the land

owners of the similarly situated private lands acquired in the vicinity, included in the Sarigam Industrial Estate.

(ii) The second option before the GIDC was to allot the industrial plots developed by it after being satisfied of the conditions for allotment of such industrial plots for the purpose of establishment of the industries to the land owners or their successors by charging the cost of development. It was incumbent on the part of the GIDC to work out the valuation of undeveloped plots namely the agricultural plots comprising in Survey Nos.51/2, 51/3 and 61/p/1 and the developed industrial plots carved out by the GIDC. The difference in the cost of the under-developed agricultural plots and fully developed industrial plots lying with the Sarigam Industrial Estate was required to be paid by the allottee, the original land owner or successor namely the respondent No.5. The allotment of fully developed industrial plots could only be in proportionate to the cost of the under-developed agricultural plots, duly worked out by the GIDC.

32. In any case, the exchange of 30,000 sq.mtrs. of fully developed plots with 34,743 sq.mtrs. of under-developed agricultural lands by giving an impression that the value of both the plots are same by way of exchange deed dated 22.3.2022, was not permissible at all.

33. The defence taken by the GIDC of the legal opinion of the panel Advocates that if it was required to pay compensation as per 2013 Act, it would be more onerous to the GIDC, is based on wrong and misplaced opinion. The exchange of fully developed plots (20 in number) in an Industrial estate with the under-developed agricultural lands of the respondent No.5, by no stretch of imagination, can be said to be in the interest of the Corporation or beneficial to the Corporation. This stand of the respondent Corporation in the affidavit of the Regional Manager, Vapi GIDC, is misleading and based on misconceived notion.

34. We further found inherent flaws in the decision making process. It is brought on record that the Board of the Corporation in its meeting held on 1.9.2021, at Resolution No. 513/2021 had considered the request for allotment of the industrial plots in lieu of the agricultural plots of respondent No.5 and resolved to obtain a legal opinion, but at the same time the Board had delegated its powers to the Vice Chairman cum Managing Director to take a decision in a policy matter, which was otherwise the function of the

Board. The Vice Chairman, one of the Directors of the Corporation, who was also working as the Managing Director of the Corporation, in our considered opinion, was not competent to take the decision for transfer of the property held by the Corporation, by invoking general powers of the Corporation under Section 14(a) of the Act, 1962.

35. From the above noted provisions of the Act, 1962 it may be recorded that the decision to dispose of the industrial plots even by way of exchange of the agricultural plots belonging to the respondent No.5, ought to have been taken by the Board of Directors collectively in a meeting on behalf of the Corporation. Even otherwise, as noted hereinbefore, while taking decision in the matter, the Vice Chairmancum-Managing Director, who was illegally authorised by the Board of Directors of the Corporation, has simply sought legal opinion of two panel advocates and on a Note submitted by the Manager (Land) without passing any order on the same, the industrial plots, 20 in numbers, have been allotted to the respondent No.5.

36. From the above noted facts, it is evident that the process of allotment of industrial plots (20 in numbers) in favour of the respondent No.5 in exchange of the agricultural lands (three in number) purchased by him, suffers from inherent flaws in the matter of allotment of industrial plots. It cannot be argued, nor can it be suggested that the lands-inquestion being the government lands, the GIDC had committed any illegality in developing the said lands. In any case, even for development of the government land, the GIDC is entitled to recover the cost of development from the allottee as per the regulations framed by it for the purposes of allotment.

37. Further, when we delve into the facts of this case, we have apprehension of collusion between the respondent No.5 and the officers of the GIDC, who have been instrumental in making the allotment in such a casual manner. We say so by noticing the categorical assertion of the petitioner in the affidavit filed by him that the respondent No.5 had purchased the agricultural lands from the original owners in the year 2016 at the rate of Rs. 100 per sq.mtrs., and soon, thereafter, moved an application before the GIDC for allotment of fully developed industrial plots. After getting allotment of 20 plots vide exchange deed dated 22.03.2022, the respondent No.5 instead of setting up an industry on his own, had transferred industrial plots vide sale deeds executed in the month of June, 2022 in favour of the

respondent No.6, that too after seeking permission from the officers of the GIDC.

38. Coming to the explanation given by the respondent No.5 in his affidavit dated 21.10.2023, we may record that though there is assertion in paragraph No.9 of the said affidavit that the respondent No.5 had purchased three agricultural plots namely Survey Nos. 51/2, 51/3 and 61/ p/1 from their original owners vide three registered sale deeds dated 24.06.2016, 30.06.2016 and 13.07.2016, but copies of the said sale deeds have not been brought on record. There is no denial to the categorical assertion of the petitioner either by respondent No.5 or by the GIDC that the respondent No. 5 had purchased three agricultural lands from the original owners in the year 2016 at the rate of Rs. 100 per sq.mtrs. The allotment of valuable Industrial plots by the GIDC in favour of the respondent No.5 who himself had purchased three agricultural plots at the rate of Rs. 100/- per sq.mtrs., is nothing but giving chance to the respondent No. '5' to profiteering.

39. In view of the above facts, we find substance in the contention of the petitioner that the respondent No.5 has acted as a middle man for getting allotment of valuable industrial plots in exchange of the agricultural lands purchased by him at a throwaway price and then profiteered by selling the industrial plots to the third parties. In the aforesaid affidavit of the respondent No.5, apart from the statement that he was entitled for exchange of industrial plots in lieu of the agricultural lands owned by him, nothing much has been stated. It is absolutely false on the part of the respondent No.5 to contend that he was the owner of the lands-in-question at the time when they were declared surplus and included in the Industrial estate developed by the GIDC. Any cost incurred by the respondent No.5 in getting the Non-agricultural permission after execution of the exchange deed, is not relevant.

40. From the affidavit filed on behalf of the respondent No.6, who is a subsequent purchaser, it is evident that the industrial plots allotted to the respondent No.5 and sold to respondent No.6, have not been utilised as yet. No industrial unit has been set up over the said plots-in-question.

41. Before parting with this judgment, we may further record that the respondent No.6 claims to be the *bona fide* purchaser of the plots bearing

No. 1311 admeasuring 1,794.00 sq. mtrs. and plot No. 1312 admeasuring 1211.81 sq.mtrs., out of total area of 30,000 sq.mtrs. of Industrial plots allotted in favour of the respondent No.5. There is no clarity with regard to any other purchaser of the Industrial plots allotted to the respondent No.5. No other third party came into picture nor the respondent No.5 has given any detail thereof. We, therefore, do not find any reason for assuming that any encumbrance have been made over the Industrial plots allotted to the respondent No.5.

42. For the above discussion, we find that the allotment of the industrial plots No. 741 to 746, Plot No. 3303, 3305, 3307, 3309, 3311, 3313, Plot No. 3117, Plot No.1304, 1305, 1309, 1310, 1311, 1312 and plot No. 3523 admeasuring around 30,000 sq.mtrs. by way of the exchange deed dated 22.03.2022 in favour of the respondent No.5 by the then Vice Chairman and Managing Director of the GIDC, suffers from grave error of law and smacks of *mala fides* on the part of the officers of the GIDC. We may note that the exchange deed has been signed by the Regional Manager, GIDC, on the basis of the decision of the Vice Chairman and the Managing Director of the GIDC without there being any decision of the Board of the Corporation. In the said scenario, while canceling the illegal allotments made by the officers of the GIDC vide exchange deed dated 22.03.2022, we allow the writ petition with the observation that the claim of the respondent No.5 to compensate him for agricultural plots No. 51/2, 51/3 and 61/p/1 (old numbers admeasuring 34,743 sq. mtrs. of village : Sarigam, Taluka : Umbergaon, District : Valsad shall be dealt with strictly in accordance with the observations made hereinbefore. Fresh consideration into the claim of respondent No.5 shall be made by the Board of the Corporation taking into consideration of all the relevant factors mentioned hereinbefore, in an expeditious manner, preferably within a period of four weeks from the date of receipt of this order.

43. With the above observations and direction, the instant petition in the nature of Public Interest Litigation, stands allowed. Pending Civil Applications stand disposed of accordingly.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

FURTHER ORDER

At the time of delivery of the judgment, a prayer has been made on behalf of the Respondent No.5 to stay the operation of the judgment, which is rejected in view of the reasoning given hereinbefore.

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