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No.JMBS/GSLC/PS-LPAD/2014/01

Date: 27.01.2014

To,
The Principal Secretary,
Legislative and Parliamentary Affairs Department,
Sachivalaya, Gandhinagar.

Sub.: Report of the Law Commission regarding suitable amendment in Section 89A of the Gujarat Tenancy and Agricultural Land Laws (Amendment) Act, 1997 (amended by Guj. Act No.7 of 1997)

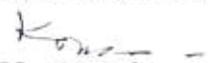
Sir,

I am forwarding the report dated 27.01.2014 with regard to suitable amendment in Section 89A of the Gujarat Tenancy and Agricultural Land Laws (Amendment) Act, 1997 (amended by Guj. Act No.7 of 1997).

I am, therefore, directed by Hon'ble Chairman of the Commission to forward this Report to the Cabinet Sub-Committee, as per the Government Resolution dated 31.12.2013 bearing No.LAC/2006/44/110/Law Cell to study the same for its implementation.

Thanking you,

Yours faithfully,


(K. B. Bhavsar)
Under Secretary

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Report submitted by Gujarat Law Commission under the chairmanship of Justice M. B. Shah (Retd.) for suitable amendment in Section 89A of the Gujarat Tenancy and Agricultural Land Laws (Amendment) Act, 1997 (amended by Guj. Act No.7 of 1997)

1. Mere reading of Section 57 (1A) and Section 89A of the Gujarat Tenancy and Agricultural Land Laws (Amendment) Act, 1997 (amended by Guj. Act No.7 of 1997) would reveal total inconsistency. Land purchased under this Act i.e. deemed purchaser is entitled to transfer the land for bonafide industrial purpose without obtaining previous sanction from the Collector.

As against this, the occupant who is owner of the agricultural land has to obtain previous sanction from the Collector to transfer land for bona-fide industrial purpose.

For this purpose, relevant provisions are as under:-

Section 57 provides:-

“(1) No land purchased by a tenant under section 41 or 46 or 57D or 130 or sold to any person under section 91 or 122 shall be transferred by sale, gift exchange, mortgage, lease or assignment or partitioned without

the previous sanction of the Collector. Such sanction shall be given by the Collector in such circumstances and subject to such conditions as may be prescribed by the State Government.”

Aforesaid Section 57 is amended by the Gujarat Tenancy and Agricultural Land Laws (Amendment) Act, 1997 (Guj. Act No.7 of 1997) by inserting sub-section (1A), which is as under:–

*“(1A)The land to which sub-section (1) applies and for which no permission is required under sub-section (1) of section 65B of the Bombay Land Revenue Code, 1879 for **use of such land for a bonafide industrial purpose may, notwithstanding anything contained in sub-section (1) of this section, be sold without the previous sanction of the Collector under sub-section (1).**”*

From the aforesaid inserted Sub-Section (1A), it is apparent that a tenant who has purchased the agricultural land under the Tenancy Act (**Deemed Purchaser**) is entitled to transfer the land for bonafide industrial purpose **without obtaining previous sanction from the Collector.**

Thereafter, the provisions contained in Sections 89 and 89A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 deal with land held by the occupant. Section 89 reads as under:–

“(1) *Save as provided in this Act, –*

(a) **no sale** (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein,

or

(b) **no mortgage** of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee,

shall be valid in favour of a person who is not an agriculturist or who being an agriculturist cultivates personally land not less than three family holdings whether as owner or tenant or partly as owner or partly as tenant or who is not an agricultural labourer:

Provided that the Collector or an officer authorized by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, in such circumstances as may be prescribed:

Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturists for agricultural purpose, if the annual income of such person from other source exceeds five thousand rupees.

(2) *Nothing in this section shall be deemed to prohibit the sale, gift, exchange or lease of a dwelling house or*

the site thereof or any land appurtenant to it in favour of an agricultural labourer or an artisan.

- (3) *Nothing in this section shall apply to a mortgage of any land or interest therein effected in favour of a co-operative society as security for the loan advanced by such society.*
- (4) *Nothing in section 90 shall apply to any sale made under sub-section (1).”*

Section 89A

Thereafter, Section 89A was inserted by the Gujarat Tenancy and Agricultural Lands Laws (Amendment) Act, 1997, which is as under:-

*“(1) Nothing in section 89 shall prohibit the sale or the agreement for the sale of land **for which no permission is required under sub-section (1) of section 65B of the Bombay Land Revenue Code, 1879 in favour of any person for use of such land by such person for a bonafide industrial purpose:***

Provided that-

- (a) *The land is not situated within the urban agglomeration as defined in clause (a) of section 2 of the Urban Land (Ceiling and Regulation) Act, 1976;*
- (b) *Where the area of the land proposed to be sold exceeds ten hectares, the person to whom the*

land is proposed to be sold in pursuance of this sub-section shall obtain previous permission of the Industries Commissioner, Gujarat State, or such other officer as the State Government may, by an order in writing, authorize in this behalf;

- (c) *The area of the land proposed to be sold shall not exceed four times the area on which construction for a bonafide industrial purpose is proposed to be made by the purchaser:*

Provided that any additional land which may be required for pollution control measures or required under any relevant law for the time being in force and certified as such by the relevant authority under that law shall not be taken into account for the purpose of computing four times the area;

- (d) *Where the land proposed to be sold is owned by a person belonging to the Scheduled Tribe, the sale shall be subject to the provisions of section 73AA of the Bombay Land Revenue Code, 1879.*

- (2) *Nothing in section 90 shall apply to any sale made in pursuance of sub-section (1).*

- (3) (a) *Where the land is sold to a person in pursuance of sub-section (1) (hereinafter referred to as "the purchaser"), he shall within thirty days from the date of the purchase of the land for a bonafide industrial purpose, send a notice of such purchase in such form along with such other particulars as may be prescribed, to the*

Collector and endorse a copy thereof to the Mamlatdar.

- (b) Where the purchaser fails to send the notice and other particulars to the Collector under clause (d) within the period specified therein, he shall be liable to pay, in addition to the non-agricultural assessment leviable under this Act, such fine not exceeding two thousand rupees as the Collector may subject to rules made under this Act, direct.*
- (c) Where, on receipt of the notice of the date of purchase for the use of land for a bonafide industrial purpose and other particulars sent by the purchaser under clause (a), the Collector, after making such inquiry as he deems fit—*
 - (i) is satisfied that the purchaser of such land has validly purchased the land for a bonafide industrial purpose in conformity with the provisions of sub-section (1), he shall issue a certificate to that effect to the purchaser in such form and within such time as may be prescribed.*
 - (ii) is not to satisfy, he shall, after giving the purchaser an opportunity of being heard, refused to issue such certificate and on such refusal, the sale of land to the purchaser shall be deemed to be in contravention of Section 89.*
- (d) (i) The purchaser aggrieved by the refusal to issue a certificate by the Collector under*

sub-clause (ii) of clause (c) may file an appeal to the State Government or such officer, as it may, by an order in writing, authorise in this behalf.

(ii) The State Government or the authorized officer shall, after giving the appellant an opportunity of being heard, pass such order on the appeal as it or he deems fit.

(4) (a) The purchaser shall comply with the provisions of any law for the time being in force or any order or direction of the Central Government or State Government or any Corporation owned or controlled by such Government, Government Company, local authority or statutory authority in relation to use of land for industrial purpose before the land is put to use for such purpose.

(b) The purchaser to whom a certificate is issued under sub-clause (i) of clause (c) of sub-section (3), shall commence industrial activity on such land within three years from the date of such certificate and commence production of goods or providing of services within five years from such date:

Provided that the period of three years or, as the case may be, five years may, on an application made by the purchases in that behalf, be extended from time to time, by the State Government or such officer, as it may, by an order in writing, authorize in this behalf, in such circumstances as may be prescribed.

(5) *Where the Collector, after making such inquiry as he deems fit and giving the purchaser an opportunity of being heard, comes to a conclusion that the purchaser has failed to commence industrial activity or production of goods or providing of services within the period specified in clause (b) of sub-section (4), or the period extended under the proviso to that clause, the land shall vest in the State Government free from all encumbrances **on payment to the purchaser of such compensation as the Collector may determine, having regard to the price paid by the purchaser and such land shall be disposed of by the State Government, having regard to the use of land.***

2. From reading Section 89 as it was, it is apparent that agricultural land could not be transferred to a non-agriculturist. However, in the year 1997, Section 89A was inserted by amending Act No.7 of 1997 dated 06.03.1997 with effect from 24.12.1996. By the said amending Act, it is made clear that agricultural land for which there was prohibition for transfer, could be transferred in favour of any person for use of such land by such person for a bonafide industrial purpose. However, there are various conditions provided in Section 89A(1)(a), (b) and (c) which are neither required to be discussed nor sub-section (2) thereof.

Thereafter, sub-section (3) provides for issuing a notice in a prescribed form to the Collector, informing that he has purchased the land for bonafide industrial purpose. If the Collector is satisfied that the land is purchased for bonafide industrial purpose, he would issue certificate to that effect. If he is not satisfied, then after giving the purchaser an opportunity of being heard, refuse to issue certificate and the sale of the land would be considered to be in contravention of Section 89, against which appeal is also provided.

Further, sub-section (4) provides that the purchaser whom a certificate is issued is required to commence industrial activity on such land within three years or five years, if period is extended.

Then, sub-section (5) provides that after making inquiry, if it is found that the purchaser has not commenced the industrial activity or production of goods or providing of services within the aforesaid period, **the land shall vest in the Government on payment of such compensation as the Collector may determine, having regard to the price paid by the purchaser.**

The aforesaid sub-section (5) would indicate that at the time of vesting of the land, the Government has to pay adequate compensation by taking into consideration the price paid by him. This would mean that the Collector

has to determine the market price, keeping in view the price paid at the time of purchase.

Thereafter, the State Government is required to dispose of the said land having regard to the use of the land.

3. From the afore-quoted Sections 57(1A) and 89(A)(5), it is apparent that there is total inconsistency.

A person, who was a tenant of the agricultural land, becomes deemed purchaser under the provisions of the Tenancy Act. He is entitled to transfer the land for industrial use without prior permission. For the purchaser of such land for industrial use, there is no restriction of obtaining permission from the Collector for its transfer (Section 57 1(A) as quoted earlier).

However, in a case of agriculture land, owned by the occupant, if he transfers the land for industrial use, the purchaser is required to inform the Collector, obtain the Certificate and, thereafter, the purchaser, who purchased the land for industrial use, is required to use it for the said purpose within a period of three to five years. In case of failure, the land is required to be forfeited by the Collector by paying market value of the land having regard to sale consideration and again dispose it for the industrial use.

This, prima-facie, is inconsistent and inequitable.

4. Other relevant Section 65B was inserted by the Bombay Land Revenue (Gujarat Amendment) Act, 1997. The said Section reads as under:–

“65B. Use of certain lands for bonafide industrial purpose.

(1) *Notwithstanding anything contained in section 65 or 65A, where –*

(a) ***any land used or held for the purpose of agriculture, or, as the case may be, for any non-agricultural purpose not being an industrial purpose is, –***

(i) *designated for the use of industrial purpose in the draft or final development plan or draft or final town planning scheme under the Gujarat Town Planning and Urban Development Act, 1976 (President’s Act No. 27 of 1976);*

or

(ii) *situated in the area where no plan or scheme referred to in sub-clause (i) is in force and is designated by the State Government, by notification in the Official Gazette, for the use of*

such industrial purpose as may be specified therein having regard to such factors as may be prescribed by rules made under this Act in this behalf:

Provided that nothing in this sub-clause shall render invalid the use of land for a bonafide industrial purpose in pursuance of the provisions of the Bombay Land Revenue (Gujarat Amendment) (Second) Ordinance, 1996 (Guj. Ord. 20 of 1996), during the period when the said Ordinance was in force notwithstanding that the said land is not designated for such use under this Act; and

(b) the occupant of such land wishes to use such land or part thereof –

(I) for a bonafide industrial purpose other than the purpose of manufacture or storage of any chemical or petrochemical, –

*It shall be lawful for him to use such land for such bonafide industrial purpose **without the permission of the Collector** subject to the fulfillment of the following conditions, namely:–*

(a) xxx xxx

and

(b) (i) to (vi) xxx xxx

(II) for the purpose of manufacture or storage of any chemical or petrochemical, –

It shall be lawful for him to use such land for such bonafide industrial purpose without the permission of the Collector subject to the fulfillment of the following conditions, in addition to the conditions mentioned in sub-clause (I), namely :–

Such land or part thereof is not situated within two kilometers from the boundary of –

(i) to (vi) xxx xxx

(2) (a) and (b) xxx xxx

(3) xxx xxx xxx xxx

(4) (a) Where the occupant fails to send the notice and other particulars under clause (b) of sub-section (2) within the period specified therein, he shall be liable to pay, in addition to the non-agricultural assessment leviable under this

Act, such fine not exceeding ten thousand rupees as the Collector may, subject to rules made under this Act, direct.

(b) and (c) xxx xxx

- (5) (a) The occupant shall commence industrial activity on such land within three years from the date of the notice sent by him to the Collector under clause (b) of sub-section (2) and commence production of goods or providing of services on such land within five years from such date:*

Provided xxx xxx

(b) xxx xxx xxx xxx”

5. From the aforesaid provisions, it is apparent that:–

- (i)** There is no prohibition for transfer of land for industrial purpose. The restriction under Sub-Sections (3) and (4) of Section 89A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, is to see that the land is utilized for industrial purpose within maximum period of five years. **During that five years’ period, if a person who has purchased the land after obtaining the permission, transfers the land to an industrial unit for establishing industry,**

there is no restriction, if the industrial activity takes place within prescribed time, condition under sub-section (4) because condition of establishing industry would be satisfied.

(ii) Further, it is to be stated that under Sub-Section (5) of Section 89A, even if land is resumed by the Government, **Government has to make payment to the holder such compensation as the Collector may determine, having regard to the price paid by him.**

(iii) There is no provision under Acts/Rules which direct that the State Government can resume the land without paying the market price, prevailing at the relevant time. No doubt, for determining market price, the Collector may determine the same after taking into consideration the price paid at the time of purchase. But that is not the sole criteria. If the price has increased tremendously, the Collector cannot determine the price only on the basis of price paid at the time of purchase. It is to be stated that the provision is half hearted without making any statutory Rules for payment of compensation.

In that set of circumstances, market price is to be determined, no doubt having regard to the price paid at the time of purchase of the land.

- (iv) It flows from the aforesaid provision that the Collector has been authorized to take appropriate action in the matter of vesting of the land in the Government and in the matter of fixation of compensation to be paid to the holder who failed to start industry within stipulated time.
- (v) At the same time, the District Collector has statutory duty under Section 89 A(5) to transfer the land for its industrial use.
- (vi) **Transfer of the land:—**

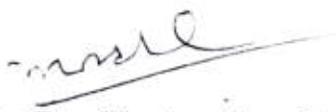
There is a specific provision that after resuming the land, the District Collector is required to dispose of the land having regard to the use of the same. In Kutch District, the purpose is to see that there is industrial development in that area.

6. From the aforesaid provisions, it is crystal clear that once a tenant who became a deemed purchaser, would be permitted to transfer the land for bona-fide industrial purpose without obtaining sanction from the Collector, that means he has not to follow any other conditions which are required to be followed under Section 89A. As against this, the purchaser of the land for bonafide purpose from the original occupant has to follow the strict conditions provided under Section 89A, particularly, sub-sections (3), (4) and (5).

This prima facie is inequitable and unjust. Hence, this anomaly requires amendment.

7. At this stage, only option which is left is to amend Section 89 A of the Act in conformity with Section 57(1A). For that purpose, a suitable amendment is required in the said provision. Otherwise, there is no justifiable reason for imposing restrictions on the occupant of the land and permit the deemed purchaser to transfer the land without any condition.

Date: 27.01.2014
Place: Ahmedabad


Justice M. B. Shah (Retd.)
Chairman