IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 554 of 2014

In R/SPECIAL CIVIL APPLICATION/5775/2004

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STATE OF GUJARAT & ORS.

Versus

SAHAJANAND TECHNOLOGIES PVT.LTD. & ORS.

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Appearance:

MS.HETAL PATEL, ASST.GOVERNMENT PLEADER for the Appellant(s) No. 1,2,3

Mr.PARAM SHAH WITH MR ABHISHEK M MEHTA(3469) for the Respondent(s) No. 2

MR. DERICK RAJAN THOMAS(15499) for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 3,4

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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**

and

HONOURABLE MR.JUSTICE D.N.RAY

Date : 02/09/2026

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

1. Heard Ms. Hetal Patel, learned Assistant Government Pleader for the appellant State, Mr. Abhishek M. Mehta for the respondent No.2 and Mr. Derick Rajan Thomas for the respondent No.1.

2. This intra-court appeal is directed against the judgment and order dated 15.07.2013 passed by the learned Single Judge in allowing the writ petition directing the respondents to refund the stamp duty and registration fee paid by the petitioners on the lease deed dated 04.12.2003 without interest within a period of four weeks from the date of the

order. The writ petition has been filed with the prayers as under :-

> *"10. In the premises aforesaid, the petitioner prays as under:-*
>
> *A. You Lordship be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ, order or direction declaring the collection of the stamp duty on the land-lease transaction between the petitioner and the respondent no. 3 being illegal, arbitrary and without any authority of law.*
>
> *B. You Lordship be pleased to issue a writ of mandamus or a writ in mature of mandamus or a by other appropriate writ, order or direction Commanding the respondent to refund the stamp duty and the registration fees paid by the petitioner on the land lease deed with the respondent no. 3 forthwith along with interest the reopen.*
>
> *c. Pending notice, admission and final herein of this petition You lordship be pleased to direct the respondent no. 1 to refund the stamp duty and the registration fees paid by the petitioner on the land lease deed with the respondent No.3 on appropriate conditions/security as fit to Your lordship.*
>
> *D. Ex part ad interim relief in terms of prayer C granted.*
>
> *E. Such other relive (s) as deemed fit may be granted to the petitioner."*

3. Ms. Hetal Patel, learned Assistant Government Pleader appearing for the State appellant would submit that the learned Single Judge has committed an error of law in proceeding to allow the writ petition on two principles of promissory estoppel and legitimate expectation which cannot be invoked in a case which is governed by the statute. The submission is that there was no exemption of stamp duty and registration fee on a lease deed executed prior to 10.02.2004. An Ordinance to provide the operation, maintenance,

management and administration of a Special Economic Zone (SEZ) in the State of Gujarat and to constitute an authority and for matters connected therewith or incidental thereto was brought into force only with the notification in the Official Gazette on 10.02.2004. With the establishment of the Special Economic Zone Development Authority constituted under Section 4 of the said Ordinance, namely Gujarat Special Economic Zone Ordinance, 2004 (Gujarat Ordinance No.1 of 2004), the fiscal benefits incorporated in Chapter VIII Clause 21 of the Ordinance would prescribe for exemption of all taxes, cess, duties, etc. including stamp duty and registration fee payable on transfer of land for approved units in the SEZ (Special Economic Zone).

4. The submission is that the lease deed in question having been executed on 04.12.2003, prior to the promulgation of the Ordinance on 10.02.2004, cannot be said to be covered by the provisions of Clause 21 as contained in Chapter VIII of the said Ordinance. There was no question, as such, of refund of stamp duty and registration fee as paid by the petitioners at the time of the registration of the sale deed. For this reason alone, the judgment impugned cannot be sustained.

5. Dealing with these contentions of the learned advocate for the appellant, we may note the reasoning given by the learned Single Judge in the judgment impugned as under:-

> *"11. Therefore first contention which is sought to be raised by the respondent State that it is not a transfer since it is a lease agreement and therefore there is no transfer of land and therefore it is not leviable for the benefit of exemption is required to be considered. The Transfer of Property Act*

refers to the transfer of property and manner in which the right, title and interest in the property could be transferred. Section 5 of the Transfer of Property Act provides that "Transfer of property" defined. "transfer of property" means an act by which a living person conveys property, in present or in future, to another. Further the mortgaged which referred to transfer of an interest in an immoveable property is also provided and, therefore, lease by which the right, title or interest in the land is sought to be transferred would also amount to a transfer but may not be a sell as provided in Section 54. However, Section 105 of the Transfer of Property Act refers to 'a lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms'. Therefore any such agreement between the parties with regard to the intention to create interest in favour of the grantee or licensee is entitled to an interest for enjoyment of the property. The Legislature has provided that the lease of immoveable property for a period of more than one year should be made by the registered sale deed suggesting that the interest in the property is created. It is in this background, the provisions of the Ordinance dated 10.02.2004 are required to be considered visavis the policy of the Government at AnnexureH dated 10.02.2004. Thus it appears that the policy has been made by the Government earlier which culminated into Ordinance subsequently and, therefore, when there is a specific provision to give benefit, can such benefit be denied on the ground that there is no transfer of land. As stated above, the transfer of land does not necessarily mean by transfer of sale only and it can have a different form or there could be a transfer of interest for a long term, which can be termed as transfer of interest in the land. Therefore, the submission made by learned AGP Shri Vyas that since it is a lease deed, it is not a transfer of land cannot be accepted. The interpretation of the clause in the Ordinance or the policy has to be made with reference to the ultimate object for which it is created. Therefore when the policy is made and *the Ordinance for the Special Economic Zone has been made for giving a boost to the industries and invite the people for setting up the industries holding out to give the benefit including the fiscal benefit as stated above, same cannot be denied by such narrow interpretation that the transfer of land by way of lease is not covered as there is no transfer of land. As discussed above, the transfer of land does not necessarily mean that it should be by way of sell only and such a transfer of sell could be by other mode including the lease of agreement, by which, the interest in the land is transferred for the purpose of enjoyment for a duration. Therefore while interpreting the provision of the Ordinance visavis the policy and underlying object, submission with regard to narrow interpretation that it is not a transfer and lease is not a transfer of land cannot be accepted. By way of lease agreement, there is a transfer of an interest in the land for a duration. It is well accepted that even institution like GIDC which have been set up for the purpose of permitting the industrialization, encouraging and facilitating an entrepreneur to put up and set up the industries, plots/shades are given by such Government Corporation by GIDC by way of lease. It is on the basis of such allotment of the plot by way of lease, the industrial units get necessary power connection as well as finance from the financial institution like banks. Further it is well accepted rule of interpretation that there has to be purposive interpretation which has consonance with the purpose and which is sought to be achieved by the Legislature or the Ordinance or the policy. Therefore once it is accepted that the submission that it is not a transfer of land as provided in the Ordinance and, therefore, the lease agreement is covered cannot be accepted.*

12. Therefore once it is accepted that even limited transfer of interest in the land by way of lease agreement would also amount to transfer of land for the purpose of fiscal benefits as provided in the Ordinance, which would make the units like the petitioner for the entitle for the benefit.

13. Another facet of argument that the Ordinance was issued on 10.02.2004 and the policy has been made in 2007 and the *lease agreement is dated 04.12.2003 and, therefore, the agreement is prior to date of Ordinance and the benefit under the Ordinance could be availed from the date on which Ordinance is brought into force is required to be considered on principles of promissory estoppel. It is well accepted that normally when such policies are drawn which is suggestive of the probable road map or broad guidelines for the proposed development and such policy then, it can shape in the form of notification, Ordinance or the registration. However the moot question which is required to be considered is whether there was any such policy floated by the Government for the purpose of attracting the investment for the purpose of industrial development. If such policy has been made for establishment of Special Economic Zone in Gujarat with an object of attracting investment and development of the industries and pursuant thereto subsequently, it has been culminated into an Ordinance dated 10.02.2004, it is like giving the final shape to the policy. The broad preamble of the Ordinance referred to these aspects and, therefore, such argument made that lease agreement is prior to the date of Ordinance and, therefore, is not covered also cannot be accepted on the ground of promissory estoppel. It is on the basis of the promise as per the policy of the Government at AnnexureA dated 19.07.2002, person like the petitioner has moved in that direction seeking to establish the industrial unit, for which, as stated in letter dated 19.04.2004 at AnnexureJ by Special Economic Zone clearly suggesting that such a policy decision for the SEZ was taken on 19.07.2002 and the actual Ordinance came to be issued on 10.02.2004 which took time in processing of the papers and getting clearance. However the intention and promise of the Government which has led to such establishment of Special Economic Zone and the investment in such economic zone would certainly have a bearing. It is required to be stated that the Rules or the Bylaws for observations of the allottees and the preamble state that they were framed in the year 2003. All these would lead to establish that the policy and the promise of the Government for attracting the investment for the purpose of industries in such Special Economic Zone to be set up was already there. Therefore merely because such a policy culminated into an Ordinance in the year 2004 by itself* *may not be a ground to deny the benefits under the Ordinance to the investors like the petitioner on the ground of promissory estoppel. Law regarding promissory estoppel is well settled and useful reference can be made to the judgment of the Hon'ble Apex Court in case of* ***Mahabir Vegetable Oils (P) Ltd. & Anr. Vs. State of Haryana & Ors., reported in (2006) 3 SCC 620****. Therefore, when the promise has been held out on the ground of policy to provide fiscal benefit and the purposes were altered by making their investment, it cannot be declined on the ground of promissory estoppel. Further in case of Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer & Ors., reported in (2005) 1 SCC 625, the Hon'ble Apex Court has made observation as under :*

> *"In order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking and doctrine the bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the fundamental principles of equity must for ever be present in the mind of the Court."*

14. Therefore even considering these aspects that promissory estoppel mere assertion or claim itself would not be a ground but it has to be considered with reference to the circumstances, which are the basis for the equal and fair play. Therefore considering the aforesaid broad observations and the facts, the present petition deserves to be allowed.

6. It may be seen that the learned Single Judge has taken note of the fact that the policy of the State Government framed by the Industries and Mines Department Resolution

No. SEZ-2001-1456-G dated 19.07.2002 regarding establishment of SEZ in the State of Gujarat has been culminated into Ordinance promulgated on 10.02.2004. The said policy has been announced by the Government of India for setting up Special Economic Zone with a view to augmenting infrastructure facilities for export protection. The policy states that a concept of SEZ is expected to bring large dividends to the State in terms of economic and industrial development and the generation of new employment opportunities. The SEZs are expected to be engines for economic growth and the State of Gujarat remained in the forefront of industrial development. The establishment of first SEZ in the country, thus, has been approved in the State of Gujarat under the SEZ policy of the Government of India.

7. It was resolved that the existing Free Trade Zones namely Kandla Free Trade Zone and Surat Export Processing Zone have to be converted into Special Economic Zones as these are/were in operation in the State besides the new proposal to establish SEZs in the State. The State Government has offered various incentives to both the developer as well as industrial unit coming in the SEZ. All kinds of units namely manufacturing, trading or service activities are permitted in SEZ. The State Government was called upon under the Scheme to offer specialized facilities and concessions for establishment of units in SEZ. The Central Government has given guidelines for establishment of SEZ and in the matter of formulating a policy regarding the dispensations which the State Government will accord to promote the development of

SEZ.

8. It was decided that the Policy will apply to all SEZ in the State including the existing ones, subject to framework of SEZ determined by the Government of India from time to time. Clause 6 of the policy dated 19.07.2002 as per the Resolution of Industries and Mines Department of the State provides for complete exemption of stamp duty and registration fee including sales tax, VAT, etc.

9. The reasoning given by the learned Single Judge that when the policy was made and the Ordinance for Special Economic Zone has been promulgated for giving a boost to the industries and invite the people for setting up the industries holding out to give the benefits including the fiscal benefits as stated above, same cannot be denied on the contention of the respondent no.2 that the transfer of land by way of lease is not covered as there was no transfer of land.

10. Dealing with the argument of the learned counsel for the respondent that the lease agreement is prior to the date of Ordinance and the benefit under the Ordinance could be availed only from the date on which the Ordinance was brought into force, it was noted that the moot question which was required to be considered was whether there was any such policy floated by the Government for the purpose of attracting the investment for the purpose of industrial development. If such policy has been made for establishment of SEZ in Gujarat with an object of attracting investment and development of industries and pursuant thereto, subsequently

it has been culminated into an Ordinance dated 10.02.2004, it is like giving the final shape to the policy.

11. Looking to the broad preamble of the Ordinance as well as the provisions contained therein, it was opined that it is on the basis of the promise as per the policy of the State Government dated 19.07.2002, persons like the petitioners had moved in that direction seeking to establish the industrial unit. The learned Single Judge has also taken note of the letter dated 19.04.2004 filed as Annexure 'J', which clearly suggest that such a policy decision for SEZ was taken on 19.07.2002 and the actual Ordinance came to be issued on 10.02.2004 which took time in processing of papers and getting clearance.

12. Looking to the intention and promise of the Government which has led to establishment of Special Economic Zone and the investment in the SEZ area, it was opined that merely because a policy framed by the Government culminated into an Ordinance in the year 2004, that by itself cannot be a ground to deny the benefits under the Ordinance to the investors like the petitioners. The fiscal benefits as promised in the policy are, thus, to be accorded to the petitioners.

13. Taking note of the content of the policy of Industries and Mines Department vide Resolution No. SEZ-2001-1456-G dated 19.07.2002 regarding establishment of SEZ in the State of Gujarat and the fact that the said policy was given shape by way of the Gujarat Ordinance No. 1 of 2004 dated 10.02.2004, we do not find any substance in the submission of the learned

counsel for the appellant to attach any illegality to the judgment impugned on the premise that the lease deed was executed prior to promulgation of the Ordinance.

14. There is one more aspect of the matter and that is if we accept the contentions of the learned counsel for the appellant about the strict implementation of the date for grant of exemption being the date of promulgation of the ordinance, it would result in a hostile discrimination between two sets of persons who had proceeded to establish their units in a Special Economic Zone even a day prior to 10.02.2004 and those who executed deeds on or after 10.02.2004. Looking to the laudable object of growth of Indian economy for which the SEZ policy has been promulgated by the State Government in the year 2002, we do not find any error in the reasoning given by the learned Single Judge.

15. The refund as directed in the judgment impugned shall be processed and paid within a further period of six weeks from today.

16. The present appeal is found devoid of merit and is dismissed, accordingly. No order as to cost.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

SAHIL S. RANGER