State of Gujarat and Another

Vs

Vaghela Dayabhai Chaturbhai and Others

Civil Appeals Nos. 281-285 of 1970

(E. S. Venkataramiah, P. N. Shinghal JJ)

05.03.1980

JUDGMENT

VENKATARAMIAH, J. –

1. These five appeals by certificate are preferred by the State of Gujarat against the common judgment dated April 25/28, 1969 delivered in five petitions under Article 226 of the Constitution on the file of the High Court of Gujarat in which the constitutional validity of the Resolution of the Government of Gujarat bearing No. L.B.B. 3964/101585-G dated December 28, 1966 issuing directions regarding the procedure to be followed in the disposal of 'bhatha lands' with effect from January 1, 1967 inter alia providing for showing preference to harijans, adivasis, backward class persons and cooperative farming societies consisting of landless labourers or small holders in the matter of cultivation rights over bhatha land was challenged. The expression 'bhatha land' means land which forms part of the bed of a river on which vegetables, melon, cucumber etc. can be grown during the lean period after the rainy season is over when the level of the water in the river is quite low. The cultivation of this land is possible only till the next rainy season and when the river swells during the rainy season, the said land again gets submerged under the river water. The occupancy rights over such land cannot ordinarily be granted on a permanent basis as in the case of other cultivable lands in view of the land getting submerged under river water every year for 4-5 months. The lands in question are situated in the Bombay area of the State of Gujarat. Till the year 1951, the cultivation rights over bhatha lands in the area in question were being disposed of by public auction and the successful bidders were being treated as lessees of the lands for short periods. In the year 1951, the State Government ordered that the leasehold rights over bhatha lands should be disposed of by selection in the following order of priority :

> 1. Bona fide agriculturists who had cultivated the land personally for five years or more.
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> 2. Adjacent landholders who, in the Collector's opinion, had insufficient land for maintenance of their families.
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> 3. Cooperative farming societies and
>
> 4. Priority holders under the Waste Land Rules.

2. The above order was cancelled and superseded by the Government Resolution dated September 19, 1962 which provided that on the expiry of the then existing leases, not held by cooperative farming societies, bhatha lands should be disposed of on the basis of five years' lease by public

auction. Experience showed that only the moneyed people were able to purchase the leasehold rights at the public auction and persons belonging to scheduled castes, scheduled tribes and other weaker sections of society were not even able to participate in such auctions. In the year 1964 however, leasehold rights over bhatha lands were disposed of on eksal basis by public auction. The question relating to the procedure to be followed in the disposal of the leasehold rights over bhatha lands was discussed at the meeting of the Collectors held in 1965-66 and after taking into consideration all relevant matters and the suggestions made at the above said meeting, the State Government passed the following Resolution in supersession of all existing orders :-

> # Government of Gujarat Revenue Department No. L.B.B. 3964/101585-G Sachivalaya, Ahmedabad - 15Date : December 28, 1966RESOLUTION OF GOVERNMENT##

In cancellation of all existing orders in regard to disposal of Bet and Bhatha land by auction, government is pleased to direct that existing procedure of disposal of Bhatha land by auction should be disposed of according to instructions detailed below :

> 1. The existing leases held by cooperative society should be renewed on their expiry only to the members of cooperative society. Individually held land less than 16 acres excluding the Bet-Bhatha land and the total holding of the member including the land to be granted is not more than the member or members 16 acres.
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> 2. If condition (1) is fulfilled the lease in favour of the cooperative societies should be renewed for a further period of 10 years on payment of revised rent which should be fixed on the basis of the factors enumerated hereinafter instruction No. 6 below.
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> 3. As regards Bhatha lands which have been leased in favour of individuals such lease should not be renewed but on the expiry of such lease the lands should be disposed of to priority holders as enumerated in instruction No. 5 on payment of rent to be determined on the basis of facts enumerated in instruction No. 6. There will be no objection to renew the lease in favour of such individuals if he is otherwise eligible as per principles fixed in this G.R.
>
> 4. As regards new Bet-Bhatha lands which are to be disposed of for the first time they should also be granted to priority holders as mentioned in instruction No. 5 on the basis of rent charged for similar lands which have been disposed of as per instructions contained in the G.R. or which have been disposed of in the past by auction.
>
> 5. The priority for disposal of Bet-Bhatha land should be as under :-
>
> 1. Bona fide agriculturists of the village who are holding land less than 5 acres. Preference in this case will be given to harijan, adivasi and backward class people.
>
> 2. Holders of the land adjoining the Bet Bhatha land holding land less than 16 acres and who in the opinion of Collector have a genuine need of additional lands for maintenance of their families. Inter se preference in this case also will be as per (1) above.
>
> 3. Cooperative farming societies of harijans, adivasi and backward class persons.

4. Cooperative farming societies consisting of landless labourers or small holders.

5. Any of the priority holders under the waste land rules. The individuals as well as cooperative of the village in which the Bet-Bhatha lands are situated will have their first priority while the individuals and cooperative societies of neighbouring villages within a radius of 5 miles shall be given priority in the order of nearness from village where the Bet-Bhatha lands are situated. If there are claims of two equal priority holders for the same land the disposal will be by lots.

3. Thereafter twenty-two members belonging to Vaghari Harijan community were granted leasehold rights in respect of a bhatha land for a period of ten years pursuant to the above Government Resolution by the Collector of Ahmedabad on July 18, 1967. The relevant part of the aforesaid order of the Collector dated July 18, 1967 reads as follows :

No. C.B.A.R.E.V. 165 District Collector's Office Ahmedabad July 18, 1967 * * *ORDER##

It is hereby ordered that undermentioned twenty-two members of Vaghari Harijan Ganotia Samuha Kheti Mandali (unlimited) Santhal, have been granted lands for cultivation, out of the government BHATHA LANDS, for the period of ten years each member not to have more than four acres of land, on the conditions hereinafter mentioned.

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Names of members of the Vaghari Harijan Ganotia Samuha Kheti Mandali (unlimited).

* * *##

TERMS

1. These lands are granted on the condition that Vaghari Harijan Ganotia Samuha Kheti Mandali (unlimited) must get itself registered within one year.

2. Either the individual or a cooperative society shall not be granted BET-BHATHA LANDS at more than one place.

3. Within the period of fifteen days from the date of the harvest of the crop from BET-BHATHA LANDS, rent shall be paid up. Rules regarding suspension or remission of land revenue shall not be applicable to the realisation of this rent.

4. The land shall be cultivated personally by the Grantee, unless under exceptional circumstances. The decision of the Collector regarding the existence of such exceptional circumstances shall be final on this condition. Lease shall be terminated without granting any compensation.

5. Rent shall be fixed and payable according to Sections 6 and 7 of Government Resolution Revenue Department No. L.B.B. 3964-101585-G dated December 28, 1966.

6. All conditions mentioned in PATTA shall be complied with.

7. The Collector shall be authorised to revoke the lease deed before the expiration of the period of the lease.

8. Unless lease deeds are executed, the occupation of the land shall be treated as unauthorised one.

Besides conditions mentioned above, all conditions mentioned in Government Resolution Revenue Department No. L.B.B. 3964-101585-G dated December 28, 1966 shall be applicable to this grant.

This grant shall be valid for the period of ten years from the year 1967-68. This grant expires on May 31, 1977.

Lease deed to be executed and kept in record.

Sd./- Niranjan Singh, Collector, Ahmedabad.##

4. Aggrieved by the above grant, the petitioners in Special Civil Application No. 1079 of 1967 which was one of the writ petitions out of which dated December 28, 1966 and the order of the Collector granting the lease dated July 18, 1967 in favour of the said twenty-two persons. In the other four petitions also, the said Resolution and certain grants made by the Collector were questioned. The petitioners in all the petitions alleged that some of them were in possession of portions of the lands which had been disposed of by the order of the Collector by virtue of the eksal tenures created in their favour under auctions held in or about the year 1964 and they could not be disposed without following the procedure prescribed by Section 79-A read with Section 202 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as 'the Code'). One of them alleged that he was a permanent tenant of a portion of the land. They contended that the Government Resolution dated December 28, 1966 and the grants made by the Collector on the basis of the said Resolution were liable to be struck down on the ground that they were violative of Article 14 of the Constitution. Their main grievance was that they had been arbitrarily deprived of an opportunity to offer bids at public auctions and to acquire leasehold rights. They prayed for the issue of a writ in the nature of mandamus directing the State Government and the Revenue authorities not to dispossess them on the basis of the impugned resolution of the government and the orders of the Collector. The State Government and the other respondents in the writ petitions resisted with petitions. After hearing the parties, the High Court quashed the government resolution and the grants made by the Collector holding that they were ultra vires the scheme of the Code and were also violative of Article 14 of the Constitution. The State Government was directed not to take into consideration the Government circular issued pursuant to the impugned resolution while considering the question of renewal of leases or disposal of bhatha lands in question and not to dispossess the writ petitioners except in due course of law. The State Government has questioned the order made by the High Court in these appeals.

5. Before going into the question relating to the validity of the impugned resolution and the grants made by the Collector, it is necessary to deal with the question whether any of the writ petitioners were in possession of the lands in question. The allegation made by them in this regard was denied by the State Government. In the course of the counter-affidavits filed before the High Court, it was pleaded on behalf of the State Government that none of the writ petitioners was in possession of any portion of the lands in question on the date of the petition; that some of them who continued to remain in possession of certain portions of the land after the expiry of the eksal leases were dispossessed in accordance with law and that the land had been handed over to the grantees as per

kabza receipts. Dealing with the question of possession, the High Court observed in the course of its order as follows :

The petitioners claim in these petitions that they were cultivating these lands as tenants, except the petitioner in Sp. C.A. No. 1079 of 1967 who claims to be a permanent tenant. The case of the petitioners was that at the relevant time they had been given Eksali (of one year) leases on the expiry of which their right of renewal was completely taken away by the aforesaid circular. The circular had completely fettered the discretion of the competent authorities under the Bombay Land Revenue Code, 1879, hereinafter referred to as 'the Code' and had created on absolute rule excluding the petitioners so much so that they could not even now give a bid at any public auction for these lands. Even though in Sp. C.A. No. 1079 of 1967 the case of the petitioner was of a lease in perpetuity the State had controverted this allegation and no such grant was produced. The case of the State was that the petitioner was in illegal possession after the Eksali lease in 1964. Therefore, even that case also stands on the same footing. In view of the said disputed questions of facts which cannot be resolved by us, the petitioner therefore, challenged the impugned circular on the grounds (1) that it is ultra vires the Code, especially as it creates an absolute rule excluding the petitioners who would have been entitled under the provisions of the Land Revenue Code to get these leases by bidding at the public auction as per the relevant rules. The impugned order in this connection violates the policy of the Code which is to augment the government revenue and which does not contain any policy of excluding any person from the disposal of these unalienated government lands, (2) the petitioners, further challenge the impugned order on the ground that it is discriminatory and violates Article 14 and the inequality is writ large on the face of the entire order especially the so called reservations in favour of harijans, adivasis and backward class people are so excessive that all the 100 per cent lands would get reserved for them under this policy of priority and the petitioners would be completely excluded.

6. There is no reference to the question of possession of the land by the respondents in any other part of the judgment of the High Court. From the portion of the judgment extracted above, it is seen that the High Court did not record any firm finding on the question of possession of any part of the land by any of the writ petitioners. It, therefore, follows that the direction issued by the High Court to the State Government and the Revenue authorities not to dispossess the writ petitioners except in due course of law becomes unsustainable. What remains to be considered in these appeals is whether the impugned resolution and the orders of the Collector are valid or not.

7. There is no dispute that the writ petitioners were not eligible under the impugned resolution for any grant being made in preference to the grantees in these cases and if the impugned resolution is valid, the grants made by the Collector become unassailable. It is on account of the above position the writ petitioners challenged the validity of the resolution passed by the government on December 28, 1966. The High Court quashed the said resolution on two grounds : (1) that the act of the State Government in passing the resolution amounted to a fraud on the statute as the power of the State under the Code which was a taxation measure had been utilised for a collateral purpose of achieving a welfare scheme and (2) that the resolution was violative of Article 14 of the Constitution as there was no rational nexus between the object to be achieved by the Code viz., realization of land revenue and the classification of persons eligible for the grant of leasehold rights in respect of bhatha lands into several groups. On the first ground the High Court observed as follows :

> The Code in terms directs the statutory authority, the Collector to make disposal exercising his judicial discretion, of course, subject to the statutory rules or even subject to the orders of the government which have statutory force. The whole

> purpose and object of the Land Revenue Code is never to exclude any citizen, and such exclusion by way of an absolute rule leaving no discretion even to the statutory authority would be completely beyond the scope of a regulatory measure. This would be prescribing the end and not prescribing means to an end. The end has been laid down by the legislature in this case it is one of augmenting the land revenue, and for the purpose of revenue administration under this Code, if any disposal is made, the disposal would be ordinarily to augment and revenue. It may be that in exceptional cases, the authority may give remission as in famine years or on other grounds which are specified under the scheme of the Code or the Rules. The end which is envisaged to be achieved by the Code is one of getting revenue augmented which is the obvious end of any taxation measure. The end which the impugned regulation seeks to achieve is totally a different end.

8. From a reading of the above observations of the High Court, it becomes obvious that the High Court felt that the resolution which had been passed with a view to showing preference to members belonging to scheduled castes, scheduled tribes and backward classes, landless persons who belonged to the weaker sections of society and members of cooperative farming societies did not subserve the object of the Code i.e. realization of maximum revenue. The High Court also felt that there was no scope for the passing of any order or resolution in the nature of a welfare measure while administering the provisions of the Code. In order to examine the correctness of the above view of the High Court, it is necessary to refer to some of the relevant provisions of the code. The preamble of the Code provides that it had been passed as it was found expedient to consolidate and amend the law relating to Revenue officers and to the assessment and recovery of land revenue and to other matters connected with the land Revenue Administration. Chapters II and III of the Code deal with constitution and powers of Revenue officers and provisions relating to the security to be furnished by certain Revenue officers and the liability of principals and sureties. Chapter V of the Code is entitled 'Of Lands and Land Revenue' and contains Sections 37 to 59. Section 37 of the Code declares that 'all public roads, lanes and paths, the bridges, ditches, dikes, and fences, on, or beside, the same, the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams nallas, lakes, and tanks, and all canals, and watercourses, and all standing and flowing water, and all lands wherever situated, which are not the property of individuals, or of aggregates of persons legally capable of holding property and except insofar as any rights of such persons may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force are and are hereby declared to be, with all rights, in or over the same, or appertaining thereto, the property of the government and it shall be lawful for the Collector subject to the order of the State Government to dispose of them in such manner as he may deem fit or as may be authorised by general rules sanctioned by the government concerned, subject always to the rights of way, and all other rights of the public or of individual legally subsisting'. The aforesaid Section 37 of the Code vests the right in all properties referred to therein in the State Government and provides that it is lawful for the Collector subject to the orders of the State Government to dispose of them in such manner as he may deem fit or as may be authorised by the general rules sanctioned by the government. The State Government is thus constituted the proprietor of the several items referred to therein. While the Collector has been given the power of disposal of the land belonging to the government, he can do so only in accordance with the other provisions of the Code and the rules made thereunder and subject to any order or resolution passed by the State Government. The power of the State Government to make orders under Section 37(1) of the Code is not in the nature of appellate or revisional powers which are dealt with separately under Sections 203 and 211 of the Code but is in the nature of an administrative power enabling the State

Government to regulate the power of the Collector. Section 38 of the Code authorises the survey officers whilst survey operations are proceeding under Chapter VIII of the Code and at any other time the Collector to set apart lands which belonged to the State Government and not in the unlawful occupation of any person or aggregate of persons, in unalienated villages or unalienated portions of villages, for free pasturage for the village cattle, for forest reserves, or for any other public or municipal purpose; and lands assigned specially for any such purpose shall not be otherwise used without the sanction of the Collector. Section 39 of the Code restricts the right of grazing on free pasturage-lands to the cattle of the village or villages to which such lands belong or have been assigned. Section 44 of the Code recognizes the existence of certain privileges of villagers or of certain classes of persons to cut fire-wood or timber for domestic or other purposes even in the case of villages or lands in which the rights of the government to the trees have been reserved under Section 40 of the Code. Section 48 of the Code sets out the manner of assessment and alteration of assessment of any land. It provides that the land revenue leviable on any land shall be assessed with reference to the use of the land - (a) for the purpose of agriculture, (b) for the purpose of building and (c) for a purpose other than agriculture or building. Sub-section and (4) of Section 48 of the Code empowers the Collector or a survey officer, subject to any rules made in this behalf to prohibit the use for certain purposes of any liable to the payment of land revenue and to summarily evict any holder who uses or attempts to use the same for any such prohibited purpose. Chapter VIII lays down the procedure to be followed in the course of survey and settlement proceedings thus ensuring that there is an equitable classification of lands for purposes of levy of just assessment in the light of the relevant economic factors. The principles underlying the said procedure prohibit the levy of oppressive or excessive revenue. There is no scope for levy of extortionate revenue which may be termed as rack-rent.

9. Chapter VI of the Code deals with the provisions relating to the grant, use and relinquishment of land. Section 62 of the Code which lays down the conditions subject to which unoccupied land may be granted provides that the Collector may, subject to such rules as may from time to time be made by the State Government, require the payment of a price for unalienated land or to sell the same by auction or to annex such conditions as he may deem fit. Rule 37 of the Bombay Land Revenue Rules, 1921 (hereinafter referred to as 'the Rules) which are promulgated by the State Government in exercise of its powers under Sections 213 and 214 of the Code provides that any unoccupied survey number not assigned for any special purpose may, at the Collector's discretion, be granted for agricultural purposes to such person as the Collector deems fit, either upon payment of a price fixed by the Collector, or without charge, or may be put up to public auction. When land is granted under Section 62 read with Rule 37, the grantee acquires a heritable and transferable occupancy right over the land granted, subject to the lawful conditions imposed under the grant. The proviso to Section 68 of the Code. However, provides that notwithstanding any provision in the Code, it shall not be unlawful for the Collector at any time to grant permission to any person to occupy any unalienated occupied land for such period and on such conditions as he may, subject to rules made by the State Government in that behalf prescribe and in any such case the occupancy shall be held only for the period and subject to the conditions so prescribed. Rule 32 of the Rules provides that land may be given free of price and free of revenue, whether in perpetuity or for a term, for any of the purposes specified in column 1 referred to in the table given below that rule viz. for sites for the construction at the cost of a municipality, a panchayat or other local bodies of schools or colleges etc., for sites used or to be used in connection with any scheme under the Community Development Programme, for sites used or to be used as market yards under the management of market committees established under the Gujarat Agricultural Produce Markets Act, 1963 etc. Rule 35 of the Rules empowers the Collector to exempt from payment of land revenue without any limit lands used for sites of

hospitals, dispensaries, schools etc. Under Rule 41 of the Rules, land situated in the bed of a river and not included in a survey number can, save as otherwise provided in Sections 46 and 64, ordinarily be leased annually by auction to the highest bidder for the term of one year or such further period as the Collector may think fit and the accepted bid should be deemed to be the land revenue chargeable on such land. The language of this rule also enables the State Government to dispose of such lands in any other equitable way. This rule, however, does not apply to a land which is situated in the bed of a river and which is included in a survey number. Rule 42 of the Rules empowers the Collector to dispose of unoccupied land required or suitable for building sites or other non-agricultural purpose either by public auction or in his discretion by private arrangement either upon payment of a price fixed by him, or without charge, as he deems fit.

10. These and the other provisions of the Code and the Rules made thereunder show that it is open to the Collector to dispose of unoccupied lands belonging to the government either for cultivation or for any other purpose in favour of individuals or aggregate of individuals either free of charge or at an upset price to be fixed by him or by public auction. A historical review of the several government orders passed under the Code shows that lands belonging to government had been set apart free of charge for several public purposes such as free pasturage, burial grounds, roads, religious institutions, village sites, cattle stands, dhobies' ghats, potters' grounds, threshing floors etc. Land revenue was remitted when there were drought conditions. Forfeited holdings were often given back to defaulters who had not paid land revenue once again on payment of arrears out of compassion. Taqavi loans were given by government to occupants to improve lands. Some of the government orders relating to grants of lands to private individuals may be stated here by way of illustration. An order passed by the Government of Bombay in the year 1931 authorised grant of lands to Kolis and other wild tribes in jungle tracts without payment of any occupancy price. Another order passed in 1924 directed that grants of waste lands to members belonging to depressed classes should be liberally made. An order of the year 1925 provided for grants of lands to cooperative societies free of charge. Liberal grants of lands were made to military pensioners at concessional rates. All these orders were passed during the British rule by the State Government in exercise of its powers under the Code. The dominant purpose of the Code, therefore, appears to be public welfare, even though land revenue which was recoverable under the Code constituted an important source of revenue of the State Government.

11. After India became independent, land reforms measures had to be introduced by the States in India to prevent concentration of land in a few hands and to impose ceiling on the extent of land that could be held by an individual or a family, to take possession of land from individuals or families which was in excess of the ceiling so imposed and to distribute such excess land amongst persons belonging to scheduled castes, scheduled tribes and other weaker sections of society. All these laws were made in order to implement the Directive Principles of State Policy contained in Articles 38, 39 and 46 of the Constitution by strengthening agrarian economy. Never before was there a greater need as during the post-Constitution period for administering land revenue laws in an equitable manner so that the economic interests of the weaker sections of the society and in particular of members belonging to the schedules castes and scheduled tribes are protected and promoted. It has to be mentioned here that there is no provision in the Code or the Rules made thereunder which prohibits disposal of occupancy rights or leasehold rights in respect of unoccupied lands in any manner other then public auction. When it is felt that it is necessary to acquire excessive lands in the hands of private individuals for distribution amongst the landless and other deserving persons, it is equally necessary to observe the same rule while distributing the land which belongs to the State Government. In view of the foregoing, we are of the view that the conclusion reached by the High Court that the basic scheme of the Code was the realization of land revenue by disposing of

unoccupied lands by public auction alone appears to be baseless. We, therefore, find it difficult to agree that the impugned resolution which provides for the disposal of bhatha lands amongst bona fide agriculturists, harijans, adivasis and backward class people and other persons mentioned therein without resorting to public auction by having recourse to the procedure set out in it is contrary to the letter and the spirit of the Code. We, therefore, set aside the finding of the High Court on the above question.

12. We shall now proceed to examine the question whether the impugned resolution is violative of Article 14 of the Constitution. The grievance of the writ petitioners was that they were denied the opportunity to acquire the leasehold rights at the public auction as a consequence of the policy of disposal of bhatha lands contained in the resolution. The finding of the High Court on the above question appears to have been influenced by its view on the object with which the Code was enacted and this becomes obvious from the following observation of the High Court :

> As we have already pointed out, the object sought to be achieved is completely a collateral object and the criteria which are adopted for the alleged classification viz. the membership of the cooperative society and the persons being harijans, adivasis or backward class people have no rational nexus whatever to the object of augmenting land revenue, which would be the implicit object underlying the entire Code, including this statutory power of disposal of the said lands for the benefit of the public. The Code never contemplated any exclusion of persons when such statutory power was sought to be exercised by the State by an statutory order. Therefore, this statutory order clearly violates Article 14 of the Constitution and even on that ground it must be struck down.

13. For the purpose of determining the question whether the impugned resolution is violative of Article 14 of the Constitution or not, it is necessary to examine whether the classification adopted by the State Government is based upon some intelligible differentia which distinguishes individuals and cooperative societies in whose favour grants of leasehold rights in bhatha lands are required to be made by the Collector from others and whether the said classification bears any reasonable relationship to the object underlying the Code. The High Court has proceeded on the basis that the classification made by the resolution does not have any rational relation to the object of the Code which according to it was realization of revenue and nothing more than that. We have explained earlier that the object of the Code is to make provision for an equitable distribution of available land amongst persons who are in need of it. As mentioned earlier, the State Government is under an obligation to ensure that the ownership and the control of material resources of the community are so distributed as best to subserve the common good and the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. In India which is predominantly an agricultural country, land forms the most important means of production. It is well known that unemployment among the masses is on the increase because employment opportunities are not increasing at the same rate at which the population is increasing. Consequently we find in India today a large number of landless persons and persons with uneconomic holding in villages who are either unemployed or underemployed. It is also equally well known that persons belonging to scheduled castes and scheduled tribes form the bulk of such landless persons or owners of uneconomic holdings who are in need of special care. It is also the settled policy of the State of Governments to encourage cooperative movement, which is embarked upon with a view to preventing exploitation of economically weaker sections of society by others. The State Government in the instant case appears to have passed the impugned resolution in order to grant leases in respect of bhatha lands in favour of landless persons or persons having very small extents of land or persons

belonging to scheduled castes, scheduled tribes and backward classes and members of cooperative societies at a reasonable rent without being put to the necessity of offering bids at a public auction where it is well known that only moneyed persons can become successful bidders. The impugned resolution lays down the procedure to be followed in the disposal of leasehold rights in respect of bhatha lands. It does not relate to all unoccupied lands available in the State of Gujarat. The total extent of bhatha lands available in the State of Gujarat when compared with other available unoccupied lands may be a very small extent. The writ petitioners on whom lies the burden of proving that the impugned resolution is discriminatory have not furnished any information about the extent of bhatha lands available for disposal. Clauses (1) and (2) of the Resolution provide that the existing leases held by cooperative societies should be renewed on their expiry only in favour of the members of such cooperative societies subject to certain conditions for a further period of ten years on payment of revised rent which should be fixed on the basis of the factors referred to therein. Clause (3) of the Resolution provides that leases of bhatha lands granted in favour of individuals should not be renewed on their expiry but they should be disposed of in favour of bona fide agriculturists who belong to the weaker sections of society and cooperative farming societies on the basis of priority set out in clause (5) thereof. The rent payable by them should again be determined in accordance with the instructions given in the resolution. The resolution is designed to bring about distribution of agricultural lands as best to subserve the common good thus eliminating concentration of wealth and means of production to the common detriment. It helps persons, who are in need of lands for their bare maintenance and who have otherwise no chance of getting them, to acquire lands at a low rate of rent.

14. The classification made in the impugned resolution of persons or cooperative societies who are eligible to secure grants of leasehold rights, according to us, bears a reasonable to the object with which the Code is enacted. It cannot be characterised as arbitrary. We do not find that there is any infirmity in the above classification. The resolution aims at bringing about social and economic justice and assists people who are not strong enough to secure leasehold rights at a public auction for purposes of cultivation. The leases to be granted are not for any unlimited period. At the end of the period prescribed in the leases, it will be open to the Collector to dispose them of afresh. In the above circumstances, we hold that the High Court was in error in holding that the resolution was violative of Article 14 of the Constitution.

15. For the foregoing reasons, we allow these appeals, set aside the common judgment and order passed by the High Court and dismiss the writ petitions. We feel that in the circumstances of the case, the State Government should pay the costs of respondent 1 in Civil Appeal 284 of 1970. We order accordingly. The other parties shall bear their own costs.

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