

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**  
**WESTERN ZONE BENCH, PUNE**  
**AT PUNE**

**APPEAL NO. 161 OF 2024 (WZ)**

**MAKWANA NARANBHAI RAMBHAI & ORS**

**... APPELLANTS**

**V/S**

**UNION OF INDIA & ORS**

**... RESPONDENTS**

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PUNE

DATE : 23/01/2026



**ADVOCATE FOR RESPONDENT NO.5**

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN  
ZONE BENCH AT PUNE

Appeal No.161 of 2024 (WZ)

In the matter of:

Makwana Naranbhai Rambhai & Ors. -- Appellants

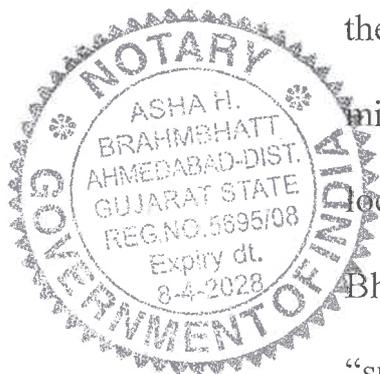
Versus

Union of India and Ors. -- Respondents

**REJOINDER ON BEHALF OF RESPONDENT NO. 5, NIRMA LIMITED TO THE AFFIDAVIT IN REPLY FILED BY RESPONDENT NO. 3, NARMADA WATER RESOURCES, WATER SUPPLY AND KALPSAR DEPARTMENT.**

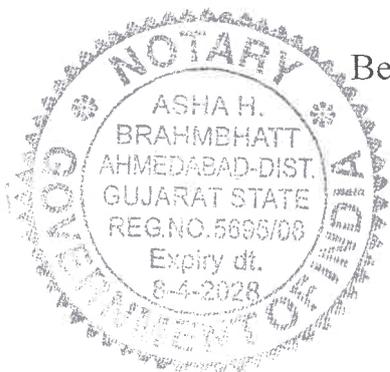
The Respondent No.5, Nirma Limited, most respectfully states and submits as under:

1. The Respondent no. 5 (hereinafter referred to as the “Answering Respondent”) is the Project Proponent in whose favour the Environment Clearance dated 16.9.2024 (hereinafter referred to as the "subject EC") granted by the Respondent No.1 in respect of mining of Limestone in mining lease area of 612.1336 hectares located in Village Vangar & Madhiya, Taluka Mahuva, District Bhavnagar in the state of Gujarat (hereinafter referred to as the “subject ML”) as also for other areas. The present Appeal along with allied matters have been filed challenging the legality and validity



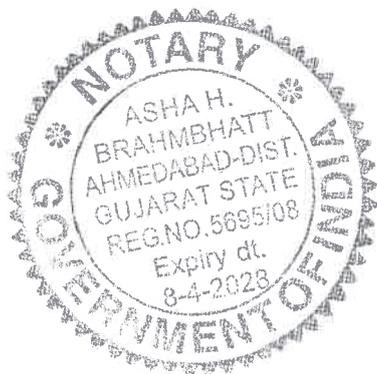
of the subject EC and the environmental clearances granted for other two mining leases. The Answering Respondent has filed its reply to the subject Appeal.

2. The Answering Respondent has been served with the Affidavit in Reply dated 15.10.2025 (hereinafter referred to as the “said Reply”) in response to which the present rejoinder is being filed.
3. At the outset, the Answering Respondent submits that the stand of the Respondent No. 5 is contrary to record and misconceived and all contentions, statements and averments made therein, unless specifically admitted to be true hereunder, are denied as of the same are set out herein and traversed.
4. The Answering Respondent submits that the Reply filed by the Respondent No.5 is contrary to record, hence false, contrary to the Judgment and Order dated 26.4.2010 (hereinafter referred to as the “PIL Order”) passed by Hon’ble High Court of Gujarat at Ahmedabad in Special Civil Application No. 3477 of 2009 and Judgment dated 14.1.2015 passed by the Hon’ble the Principal Bench of this Hon’ble Tribunal and therefore, contemptuous and



clearly partisan and with ulterior motive which is evident from what is stated hereinbelow:

- (a) It is submitted that the subject EC is granted with respect to proposed mining operations which is part of the composite cement manufacturing complex to be set up by the Answering Respondent.
- (b) At the time of grant of land for the Cement Plant, the Respondent No.5 vide letter dated 18.1.2005 sought clarification and confirmation from the Answering Respondent regarding steps to be taken towards for use of the land for purposes other than Samadhiyala Bandhara. Copy of the letter dated 18.1.2005 is annexed hereto and marked **Annexure – R-1.**
- (c) By a letter dated 7.2.2005, the Answering Respondent provided the clarifications as sought vide letter dated 18.1.2005. Copy of the letter dated 7.2.2005 is annexed hereto and marked **Annexure – R-2.**



(d) Based on the above, the respondent No.5 vide communication dated 23.7.2009 written to the Revenue Department, Gandhinagar, issued a No Objection for allotment of land to the Answering Respondent for setting up of Cement complex, subject to the conditions mentioned therein. Copy of the communication dated 23.7.2007 is annexed hereto and marked **Annexure – R-3**.

(e) The Answering Respondent vide letter dated 13.8.2007 undertook that the conditions mentioned in the communication dated 23.7.2007 would be binding and will be complied. Copy of the letter dated 13.8.2007 is annexed hereto and marked **Annexure – R-4**.

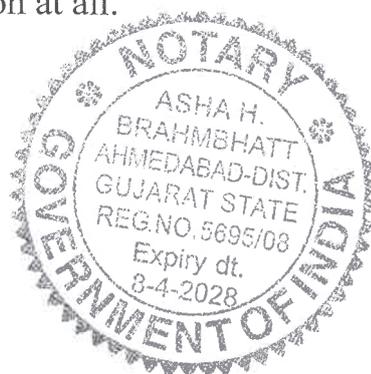
(f) Thereafter on 15.2.2008, three Letter of Intent (“LoI”. For short) were issued to the Answering Respondent for being granted mining leases including the subject ML for which the subject EC has been issued.

(g) Thereafter, by an Order dated 16.04.2008, the Collector, Bhavnagar allotted land to the Answering Respondent for the cement plant. The said Order refers to the positive opinions



received from various departments including the Executive Engineer, Salinity & Control Department, Bhavnagar for such allotment. Such allotment is subject to the conditions imposed by the Narmada, Water Resources, Water Supply and Kalpasar Department i.e. the Respondent No.5 herein. Copy of the Order dated 16.04.2008 is annexed hereto and marked **Annexure – R-5.**

In light of the aforesaid facts, it is apparent that the Respondent No. 5 has itself given no objection to the project of the Petitioner and has now taken a directly contradictory stand in the said Reply. Such volte face is impermissible in law and is malafide. The Answering Respondent is estopped from changing its stand, more so when such stand was given to the State Government itself. The contents of the said Reply are therefore false to the knowledge of the deponent and amount to perjury. It is submitted that it will be in the fitness of things that the said Reply is ordered to be sent to the Chief Secretary, State of Gujarat and an explanation be called for such unwarranted change of position. In any case, the said Reply does not deserve to be taken into consideration at all.



(h) The Answering Respondent further submits that the stand taken in the said Reply is also contrary to contrary to record and to the Judgment and Order dated 26.4.2010 (hereinafter referred to as the “PIL Order”) passed by Hon’ble High Court of Gujarat ah Ahmedabad in Special Civil Application No. 3477 of 2009 in a Public Interest Litigation filed in respect of the cement complex project in question. It is submitted that the mining project does not any threat to the Samadhiyala Bandhara as a water source for irrigation and farming and on the contrary, the Answering Respondent has been directed and has undertaken steps to strengthen / improve water flow into the bandhara. The relevant extract whereof is as under:

“21. *Question is whether all the measures provided by the Government coupled with the surrender of additional 46 hectares of land is sufficient safeguard to protect and preserve the Samadhiyala Bandhara reservoir so as to permit respondent No.4 Company to carry on with the further construction of the cement factory. In our view, with certain minor fine tuning and further conditions, it would be so.*

22. *Firstly, further surrendering of 46 hectares of land would ensure that against total allotment of 100 hectares of submergence land of Samadhiyala Bandhara Reservoir, the Company would have surrendered equal area. We are conscious that it will*





not be exactly the same land. However, we have considered the fact that the Reservoir was created by construction of wasteweir in the year 1999 and is thus an artificial Manmade lake. Without in any manner affecting its water carrying capacity or the total inflow of water, if by minor modifications, a major industry can be sustained in a rural area, in our view the Court should not interject by ignoring and discarding the reports of several agencies comprising experts in the field. **Secondly**, in addition to restoring 100 hectares of land, 75 hectares of additional Government land is to be excavated to increase the water carrying capacity of the reservoir. **The Company has also agreed to excavate further approximately 40 hectares of land out of 54 hectares to be surrendered under order dated 8<sup>th</sup> December 2009 passed by the Government. Thirdly**, pursuant to our suggestion, **as accepted by the Company, further 46 hectares of land will be returned**. This can also be ordered to be excavated as per the suggestions of the Government Agencies. **Fourthly, the Company is required to construct and maintain three canals which will act as drains into the Reservoir of rainwater from surrounding area. Fifthly**, the Company is prevented from using any part of water of reservoir for its consumption.



23. Considering the above measures and taking into account the reports of various agencies, there is nothing before us to hold that even after implementation of these measures, either the water carrying capacity of the Reservoir would reduce or the availability of water during rainy season will in any manner be adversely affected. Significantly, surrendering of total 100 hectares of land by the Company is one of the alternatives suggested by the



Shelat Committee Report also. Here also, we are aware that the location of the land to be returned differs.



In the present case, we do find that though initially substantial portion of the land which was part of submergence area of the Samadhiyala Bandhara was sought to be alienated in favour of respondent No.4 Company, by combination of orders passed by the Government, undertaking given by respondent No.4 Company and the directions that we are in the process of issuing in this order, virtually the entire area would stand restored to the Government. In addition to return of 100 hectares of land to the Government, various measures directed by the Government as well as by us in the present order, we feel would, to a large degree restore the original position. In that view of the matter, we find that there would be substantial compliance with the directions of the Division Bench in the case of S.R.Shah (supra). Nothing stated in this order is, however, meant to dilute the said directions in any manner. However, when we find that by substantial compliance with the said directions and while simultaneously preserving the waterbody, if an industry in which substantial investment has already been made can be allowed to be set up, such project should not be stalled. **By preserving waterbody, if industrial development can still be achieved, surely the same should not be objected to. The cement plant would bring in substantial investment in addition to generating employment in the region and would also sustain ancillary and incidental industries and businesses.”**

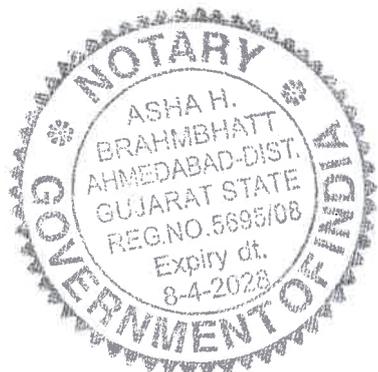


“26. Under the circumstances, this petition is disposed of with following directions:





- 1) Respondent No.4 Company shall, in addition to 54 hectares of land ordered to be surrendered by the Government in its order dated 8th December 2009, surrender further 46 hectares of land indicated in the map at Annexure I to the affidavit dated 16<sup>th</sup> April 2010, copy of which map is attached to this judgment at Exh.A and shall form part of this judgment. No part of this 46 hectares will include any land to be occupied by canals which the Company is obliged to construct;
- 2) Respondent No.4 Company shall strictly adhere to its obligation to construct canals A, B and C shown in the official maps and maintain the same as directed by the Government and further ensure that it is desilted periodically, so that the flow of rain water from the surrounding areas to the Reservoir is not obstructed;
- 3) Respondent No.4 Company shall excavate and deepen 75 hectares of Government waste land as directed by the Government;
- 4) Respondent No.4 shall excavate and deepen part of 54 hectares of land returned by it under the Government order dated 8<sup>th</sup> December 2009;
- 5) Respondent No.4 shall excavate and deepen any part of the additional 46 hectares of land as may be suggested by the Government. For this purpose, the Government shall have a survey carried out and make suggestions for excavation of the land as per the topography of the area to ensure that this additionally surrendered land also forms part of Samadiyala Bandhara and



*increases the water carrying capacity of the Reservoir.*

- 6) *Respondent No.4 Company shall not use any water from the reservoir for its activities.*
- 7) *Respondent No.4 Company shall ensure that its activities shall not pollute or contaminate the Reservoir water in any manner.*

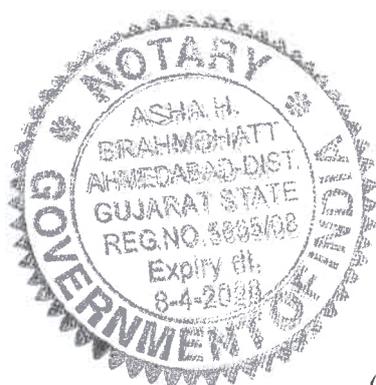
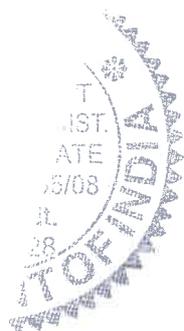
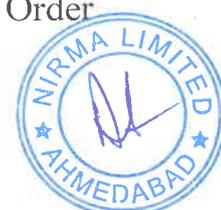
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- 10) *The Government shall, on the basis of the records of rainfall in the region and the total amount of water collected in the Reservoir immediately after the monsoon, judge whether on account of setting up of the factory there has been any significant reduction in income of the fresh water in the Reservoir. If so, the Government shall require respondent No.4 Company to take such remedial measures as may be found necessary.”*

(Emphasis Supplied)

A Copy of the PIL Order dated 26.4.2010 is annexed hereto and marked **Annexure – R-6**.

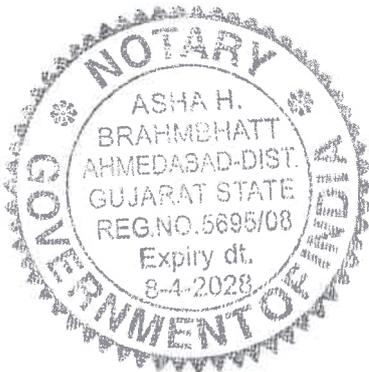
- (i) It is pertinent to point out that the petitioners in the said PIL applied for review of the PIL Order, which came to be dismissed by the Hon'ble Gujarat High Court vide Order



dated 27.9.2010. A Copy of the Order dated 27.9.2010 is annexed hereto and marked **Annexure – R-7**.

- (j) It is further submitted that the claim of the Respondent No. 3 with respect to the impact of Answering Respondent's mining project on the water quality or salinity ingress is also contrary to the Judgment dated 14.1.2015 passed by the Hon'ble the Principal Bench of this Hon'ble Tribunal by which the cancellation of the environmental clearance for the proposed Cement plant of the Answering Respondent was set aside. The relevant observations of the Judgment dated 14.1.2015 read as under:

*“42. Visit of the Expert Members twice to the project site, firstly in the first week of June 2013 and secondly in the month of September 2013 brought to light some material facts concerning the water body. On the first visit of the Expert Members it was noticed that the Bandhara was totally dry despite good rains over short period (“75 mm false” recorded at Bhavnagar) and on second visit it was noticed that the Bandhara was almost at full level with shallow water depth all over in submergence and no part of the proposed project land was under submergence and the adjoining areas beyond the boundaries of the proposed project land was having shallow water accumulation. Expert Members also noticed during their second visit that there was growth of aquatic*



vegetation and the presence of few migratory birds around the water body. One wonders how Prof. Babu Committee could document exhaustive list of birds, presence of endangered vulture and Asiatic lions and could give soil type extra in two hours of field visit without any backing of any specific scientific study in relation to the project site. On visits to site in question the Expert Member had made pointed enquiry and asked for data/information as regards month wise rainfall pattern over the years, month wise water levels in the Bandhara, month wise irrigation area provided from the reservoir, soil type and its characteristics in the project area and adjoining area, lay out maps of the area in question along with superimposition of project boundaries from the parties to the Appeal. This information/data was made available to us and was exchanged between the parties. **Having gone through the entire information/data thus made available we are of the considered opinion that the Samdiyala Bandhara serves as a temporary storage of water, which gets used by farmers or gets evaporated due to its large spread or gets percolated due to fairly high porosity of soil and as such cannot be called as a productive wetland having all perennial features of a wetland.**

43. *As noted above, the revenue records described the area in question as a 'waste Land' and it was never, even till today, identified as wet land by the Central Wetlands Regulatory Authority and so notified by the Central Government under the provisions of the Act for the purposes of Wetland (Conservation & Management) Rules, 2010."*

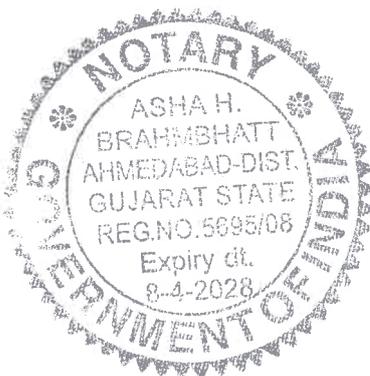
(Emphasis Supplied)



A copy of the Judgment dated 14.1.2015 is annexed hereto and marked **Annexure – R-8**. The Judgment dated 14.1.2015 is subject matter of challenge before Hon'ble Supreme Court in Civil Appeal Nos. 8302 – 8303 of 2015, which pending. However, the Plant EC Revival Order is not stayed.

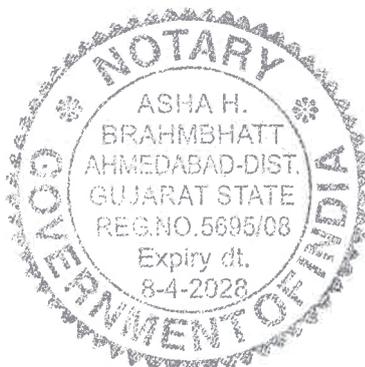
- (k) A perusal of the above and a co-joint and harmonious reading of the PIL Order and the Judgment dated 14.1.2015, clearly demonstrate that the Samadhiyala Bandhara reservoir which is at a distance of about 2.3 to 4.3 kilometres from the Subject ML is not a wetland. Nor the same has been declared a wetland. Further, as recorded in the PIL Order and the Judgment dated 14.1.2015, the issue of Samadhaliya Bandhara being a wetland or the issue of the catchment area being affected or salinity ingress do not survive.

The contents of the said Reply are directly contrary to the findings in the PIL Order and the Judgment dated 14.1.2015 passed by the Hon'ble Principal Bench of this Hon'ble Tribunal and is contemptuous. The said reply therefore does not deserve to be taken into consideration.

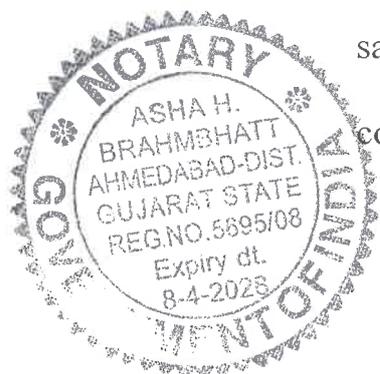


5. The Answering Respondent now deals with the said Reply in seriatim:

- (a) The contents of paragraph nos. 1 and 2 of the said Reply are formal in nature and do not warrant any comments.
- (b) With reference to the contents of paragraph no. 3 of the said Reply, it is true that the Samadhiyala Bandhara is located at distance of 2.3 to 4.3 km from the mining project. This itself discloses that the mining activity is unlikely to lead to salinity ingress or impact the catchment area of the Samadhiyala Bandhara.
- (c) The contents of paragraph no. 4 of the said Reply are formal in nature and do not warrant any comments.
- (d) With reference to the contents of paragraph no. 5 of the said Reply, it is denied that that arises any issue, much less a serious issue involving salinity ingress, destruction of cultivable land and threat to bio diversity or wetlands in the present Appeal, as alleged or at all.



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- (e) With reference to the contents of paragraph no. 5.1 of the said Reply, the contents thereof are a matter of record and do not warrant any comments.
- (f) With reference to the contents of paragraph no. 5.2 of the said Reply, it is denied that the mining project of the Answering Respondent has the potentiality to disrupt the water, as alleged or at all. It is submitted that such a claim is vague and unsubstantiated. The Answering Respondent reiterates what is stated in paragraph no. 4(a) to 4(k) above.
- (g) With reference to the contents of paragraph no. 5.3 of the said Reply, it is denied that the mining activity will have any effect, much less disrupt the limestone acting as a natural barrier against salinity ingress, as alleged or at all. Such a statement is contrary to record, hence false. The Limestone mining is at a distance of 2.3. to 4.3 kms from the bandhara and the barrier will remain intact.
- (h) With reference to the contents of paragraph nos. 5.4 and 5.5 of the said Reply, the contents thereof are denied and I reiterate the contents of Paragraph nos. 4(a) to 4(k) above.





(i) With reference to the contents of paragraph no. 5.6 of the said Reply, it is denied that limestone mining is in the catchment area, as alleged. It is denied that mining activity will contaminate the water or the water will run off with dust particles or suspended particles or sediments causing higher water turbidity, as alleged or at all. Since no mining is in the catchment area, the question of generation of sediments leading to accumulation does not arise. It is denied that there is any chance of reduction of storage capacity or affecting water flow or decrease efficiency of the same, as alleged or alter natural drainage pattern, as alleged or at all. All these issues are not only academic in light of the PIL Order and the Judgment dated 14.1.2015 passed by the Hon'ble Principal Bench of this Hon'ble Tribunal but have been examined and considered threadbare by the Respondent No.1 before grant of the subject EC. It is submitted that the statement and claims in the paragraph under reply are stated to be an apprehension. There is no basis pleaded or provided for such apprehension. The Respondent No. 3 has taken a position adversarial to the Respondent No.1 for reasons best known to it.



(j) With reference to the contents of paragraph no. 5.7 of the said Reply, it is submitted that the Notification dated 13.8.2024 is issued under the Gujarat Irrigation and Drainage Act, 2013. The said act applies





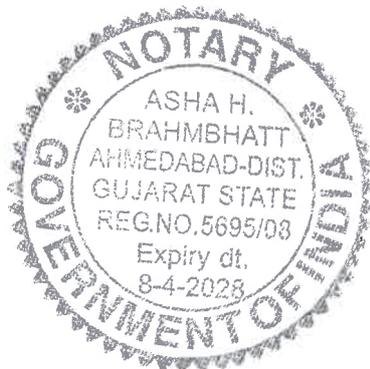
to works constructed or maintained in relation to irrigation, *inter alia*, by the State Government. Section 4 of the said Act, reads as under:

“4. *Whenever it appears expedient or necessary to the Government that the water of any river or stream flowing in a natural channel, or of any lake or any other natural collection of still water, should be applied or used by the State Government for the purposes of any existing or projected canal, the State Government may, by notification in the Official Gazette, declare that the said water shall be so applied or used after such date as may be specified in the said notification, not being earlier than three months from the date thereof.*”

(Emphasis Supplied)

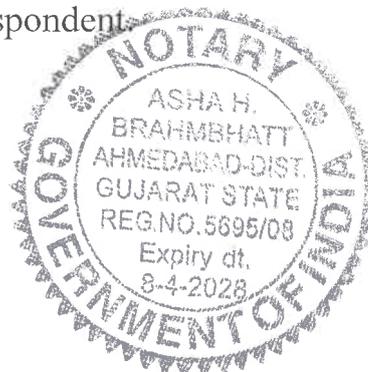
Firstly, the mining leases of the Answering Respondent do not fall within the area of the Samadhiya Bandhara or its catchment area and, therefore, the said notification is irrelevant for the purposes of the present Appeal.

Secondly, the said Notification is under the Act, which deals with irrigation and not with declaring any area as a wetland or a water body. Declaration of a wet land is the function of the Principal Chief Conservator of Forest, Government of Gujarat and Samadhiyala Bandhara has not been declared to be a wetland.



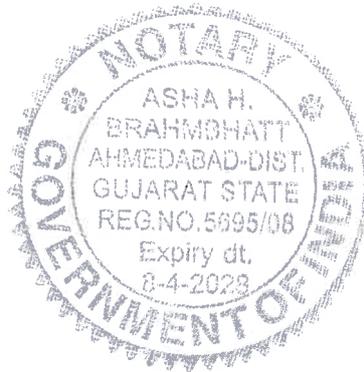
Thirdly, under Section 4 of the said Act, water can be utilized or applied for the purposes of a canal. This will lead to diversion of water from the Samadhiya Bandhara and may infact lead to salinity ingress.

- (k) With reference to the contents of paragraph no. 6 of the Reply, the purport and intent of the statements made in the said Reply are apparent. No objection was raised by the Respondent No.3 before the Respondent No.1 prior to the grant of the subject EC. In so far as the assurances given by the Answering Respondent and the conditions of the subject EC are concerned, the Answering Respondent is duty bound to adhere to the same in letter and spirit.
- (l) With reference to the contents of paragraph no. 7 of the Reply, it is denied that the Answering Respondent has not justified or submitted or produced any details with regard to the ground level work carried out to protect the Samadhiyala Bandhara and the catchment area, as alleged or at all. The present proceedings relate to the grant of the subject EC and not its implementation. In any case, the Respondent No. 3 has no authority or role in seeking any explanation regarding work done by the Answering Respondent.



(m) The contents of Paragraph no. 8 are denied. It is denied the subject EC is required to be reconsidered or reviewed, as alleged or for the reasons alleged or at all.

5. In light of what is stated hereinabove, it is submitted that the issues raised by the Respondent No. 3 in the said Reply are devoid of merit and the said Reply is ostensibly a partisan attempt on part of the authority to raise false, frivolous and misconceived. In the circumstances, the present Appeal deserves to be dismissed in limine with cost.



**For, NIRMA LIMITED**

*[Signature]*  
**Authorized Signatory**  
DEPONENT

VERIFICATION

I, Ajay B. Khushu, son of Sh B.L. Khushu, adult, Occu: service, having my office at Nirma House, Ashram Road, Ahmedabad-380009, the Deponent above named do hereby verify that the contents of the foregoing affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at Ahmedabad on this \_\_\_\_\_ day of January 2026.

Sr. No. 203 /2026

SOLEMNLY AFFIRMED  
BEFORE ME

*[Signature]*  
DEPONENT

*[Signature]*  
ASHA H. BRAHMBHATT  
NOTARY  
GOVT. OF INDIA

*[Signature]*  
ASHA H. BRAHMBHATT  
NOTARY  
GOVT. OF INDIA

23 JAN 2026



**ANNEXURE-R-1**

ક્રમાંક:-એસઆઈપી/૨૦૦૪/૧૫૩૮/૮૫/ક.૨

ગુજરાત સરકાર,  
નર્મદા, જળસંપત્તિ, પાણી પુરવઠા અને  
કલ્પસર વિભાગ,  
સચિવાલય, ગાંધીનગર.  
તારીખ:-

પ્રતિ,  
શ્રી વી. એન. દેસાઈ,  
વાઈસ પ્રેસિડન્ટશ્રી,  
નિરમા લિ.,  
નિરમા હાઉસ,  
આશ્રમરોડ,  
અમદાવાદ-૩૮૦ ૦૦૦.

વિષય:-સમઢીયાળા બંધારા માટે તબદિલ કરાયેલ જમીન અન્ય હેતુ માટે  
છૂટી કરવા બાબત.

ઉપરોક્ત વિષય અન્વયેના આપના તા.૨૭/૧૧/૨૦૦૪ના પત્ર ક્રમાંક:  
એનએનએલ/સીપી/વીએનડી/૨૦૦૨/૧૦૨/૦૪-૦૫ના અનુસંધાને નીચે જણાવેલા  
મુદ્દાઓ અંગેની વિગતો આપવા વિનંતી છે.

- ૧.૦ પ્રશ્ન હેઠળની ડૂબમાં જતી જમીનને યોજનાના એફ.એસ.એલ. ૩.૮૨મી. સુધી  
માટીકામ કરી ઉંચા લાવવા નિરમા કું.એ ખર્ચે કરવા જણાવેલ છે. પરંતુ  
અત્રેના અભિપ્રાય મુજબ આ વિસ્તારમાં પૂરનાં સંજોગો ધ્યાને લઈને આ  
વિસ્તારને માટીકામ કરી ૬.૫૦ મી. સુધી ઉંચો લેવાનો રહેશે. તો તેના કારણે  
થનાર ખર્ચની જવાબદારીઓ ઉપાડવા અંગે.
- ૨.૦ વરસાદી પાણીના કુદરતી આવરાને બેઝીનમાં વાળવા માટે બાંધકામથી થતાં  
અડચણને નિવારવા માટે નિરમા કંપનીએ ત્રણ જેટલી જુદી જુદી ચેનલ કરી  
આપવા જણાવેલ છે. પરંતુ આવી ચેનલો ટૂંકાગાળામાં જ સીલ્ટીંગ થવાની  
સંભાવના અને તેની જાળવણી પ્રમાણમાં ખર્ચાળ બનશે તે આ જવાબદારી  
નિભાવવા માટે ખર્ચની જવાબદારી ઉપાડવા અંગે.

- ૩.૦ ભવિષ્યમાં જળાશયમાંથી આસપાસના કૂવા/બોર કરી પાણી ઉપાડવાના પ્રસંગો ઉપસ્થિત થવાની સંભાવનાને ધ્યાને લેતા ભવિષ્યમાં પાણી વપરાશના પ્રશ્નો ઉભા થાય નહીં તેને અનુલક્ષી કંપની ધ્વારા તેમની જરૂરીયાત સંતોષવા થયેલ આયોજનની પ્રમાણિત વિગતો.
- ૪.૦ કંપની ધ્વારા દુષિત પાણી જળાશયમાં છોડવાની સંભાવનાથી જળાશયમાં સંગ્રહ થયેલ પાણીની ગુણવત્તા પર અસર થશે. જેનાં કારણે હાલમાં રીચાર્જ થવાથી જે આડકતરો લાભ થાય છે તેને માઠી અસર થશે. તો દુષિત પાણીના નિકાલ અંગે કરેલ વ્યવસ્થાના પ્રમાણિત આયોજનની વિગતો.
- ૫.૦ યોજનાની સંગ્રહશક્તિમાં થનાર ઘટાડો સરભર કરવા તથા ઉપરવાસની સિંચાઈ સુવિધા યથાવત રહે તે પ્રમાણેની વ્યવસ્થા ઉભી કરવા માટેના ખર્ચની જવાબદારી ઉપાડવા અંગે.
- ૬.૦ વિભાગ ધ્વારા સંપાદન થયેલ ખાનગી જમીનો અંગે જે ભાવો ચુકવવામાં આવેલ છે તે ભાવોના આધારે છૂંટી થતી જમીનોના ભાવો ચકાસી દરખાસ્ત હેઠળની છૂંટી કરવાની જમીનની કિંમત ગણતરીમાં લેવાની રહેશે આ બાબતની સંમતિ.
- ૭.૦ અંદાજે રૂ.૧.૦૦ કરોડ જેટલી રકમ સહભાગીના ધોરણે ૬૦:૪૦ની યોજના હેઠળ આપવા અંગે કરેલ કાર્યવાહી માટેના આયોજન અને વિગતો.

આપનો વિશ્વાસુ,



(કે.એ.અહલુવાલીયા )

ઉપસચિવ(સૌ.યો.)

નર્મદા, જળસંપત્તિ, પાણી પુરવઠા અને  
કલ્પસર વિભાગ.



**NIRMA LIMITED**

REGD. OFFICE : NIRMA HOUSE, ASHRAM ROAD, AHMEDABAD-380 009. • PHONE : 27546565-74 • FAX : (079) 27546605-27546603 • Email : nirma@nirma.co.in

NNL/CP/KAP/2002/125/04-05  
February 7, 2005

The Executive Engineer  
Salinity Control Division  
Bhavnagar

**ANNEXURE-R-2**

**Kind Attn: Shri Keswani**

**Sub: Allotment of land for the purpose of construction of Cement Complex**

**Ref: Letter No. SIP/2004/1538/85/62 dated 18.01.2005, which was collected by us on 24.01.2005 from Under Secretary, Government of Gujarat**

Dear Sir,

With reference to the above referred letter and subsequent letter No. PB-2/Samadhiala/land related/249 dated 25.01.2005 received from Superintending Engineer, Rajkot, the point wise clarifications and reply is forwarded herewith:

**1.0 Site grading**

F.S.L indicated is 3.82 mtrs. Keeping in view floods etc., you have recommended to consider plinth level of the buildings at 6.50 mtrs.

We confirm that after carrying out detailed site survey, the plinth level for the buildings and facilities will be decided. We will decide the F.S.L and plinth levels to avoid any affect of floods or any kind of water accumulation. The levels will be 6.5 mtrs. The expenditure required for building up the levels will be incurred by Nirma Limited.

**2.0 Storm Water Canals**

We confirm that 3 Nos. storm water drains for handling the rain water will be constructed by Nirma Limited. The regular maintenance and house keeping (i.e., removal of accumulated silt) will be carried out by Nirma. This is with the view to see that during rainy season water flow takes place. Further, kindly refer point No. 2 of our letter No. NNL/CP/VND/2002/102/04-05 dated 27.11.2004 vide which we have already confirmed these points and in support of design, SMPS report was enclosed.

**3.0 Sweet Water for Nirma's Proposed Plant**

As per the terms of allotment of demanded land, Nirma will have to deepen identified land between "Samadhiala Bandhara and Western Boundary of the Nirma's Cement Plant" (Refer plan dated 23.11.2004).

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# 2 #

We hereby confirm that Nirma will not demand any sweet water from the above defined water collection ponds or any wells constructed by Government in this water collections ponds.

We will like to inform you that in order to meet sweet water requirement, we will resolve to one of the following two:

- (a) Against our application No. NNL/CP/VND/2001/034/04-05 dated 26.08.2004 Government has allotted us sweet water from Bhavnagar water transmission main line vide letter No. GWIL/Indutries/Bhav/Nirma/2067 dated 03.09.2004. We have to enter into long term agreement.
- (b) Alternatively we will draw sea water and set up RO-DM plant to meet Nirma's plant requirement.

**4.0 Discharge of Effluent**

Depending on the source of sweet water as outlined above, we will be developing an appropriate waste water management strategy. In case of water being made available by GWIL, we will design our systems such that waste water, after treatment, is used for greenbelt. But in case we are required to go for a Sea Water RO-DM plant, we will have a marine discharge of waste water at a point identified by National Institute of Oceanography (NIO) and approved by GPCB. However, only storm water arising out of plant land during rainy season will be desilted and discharged

**5.0 Rain water collection and water pond capacity**

We, vide our letter No. NNL/CP/VND/2002/102/04-05 dated 27.11.2004, have already submitted (copy enclosed herewith) the calculations that by deepening the 14,40,911 sq. mtrs. area by 0.5 mtrs. the overall sweet water collection capacity gets increased by 9% i.e., the presently estimated water collection capacity increases from 18.22 lacs CMT to 19.89 lacs CMT.

We undertake to do the said job by deploying our manpower and machineries at our cost. We, however, request you to extend all the guidance and co-operation when the job is planned and executed.

**6.0 Land Price**

The Collector, Bhavnagar vide letter No. Land/3/1424/2004 dated 17.06.2004 had indicated the price of the land under consideration. We vide our letter No. NL/Cement Plant/Land/3842/04 dated 21.06.2004 have already given an undertaking to abide.

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# 3 #

We further state that in order to promote the Industrial activity in the town of Padhiarka, the waste land has been demanded by Nirma. This land allotment is under consideration of Government's Revenue department. We are confident that based on rules and various considerations, the Government will fix the price reasonable. The company will agree to pay the price.

## 7.0 Check dam under 60:40 Scheme

We enclose herewith our letter No. NNL/CP/VND/2002/096/04-05 dated 23.11.2004, which is self explanatory. We have given undertaking to supervise construction of check dam and also contribute upto Rs. 1.00 crore, under 60:40 scheme for the purpose of construction of check dam.

We hope we have provided all possible clarifications against all the points under reference.

This industry will not only generate the employment for local people but will also uplift the Mahuva's other commercial activities. The revenue collection as a result of limestone and laterite mining will be additional income to the Government.

We wish to mention that IEM for this venture was signed under "Vibrant Gujarat Celebration of 2003". Nirma has already got completed detailed engineering and has established purchase orders for critical equipments.

We once again request you to expeditiously allot the land.

Thanking you,

Yours faithfully,  
For **Nirma Limited**

  
**Kalpesh Patel**  
**Executive Director**



Encl. A/a

Copy to: Shri Makwana  
Superintending Engineer  
Office of the Superintending Engineer  
Salinity Control Division, Rajkot

The copy of above letter along with attachments are enclosed herewith

The Under Secretary  
Narmada, Water Resource & Kalpasar Division  
Sachivalaya, Gandhinagar

The copy of above letter along with attachments are enclosed herewith



1419

ક્રમાંક: સસઆઈપી-૨૦૦૪-૧૫૩૮-(૫૮)-ક-૨  
નર્મદા, જળ સંપત્તિ, પાણી પુરવઠા અને કલ્પસર વિભાગ,  
સચિવાલય, ગાંધીનગર.  
તારીખ: ૨૩ - ૯ - ૨૦૦૭

૨૨૮

પ્રતિ,  
અગ્રસચિવશ્રી  
મહેસુલ વિભાગ,  
ગાંધીનગર.

## ANNEXURE-R-3

વિષય : નિરમા લીમીટેડને સીમેન્ટ ઉદ્યોગ માટે જમીન ફાળવવા અંગે.  
વાઇબ્રન્ટ ગુજરાત કાર્યક્રમ હેઠળ એમઓયુ થયેલ પ્રોજેક્ટ.

સંદર્ભ : (૧) કલેક્ટરશ્રી, ભાવનગરનો પત્ર ક્રમાંક જમીન-૩-૭૧૬-૨૦૦૪ તા.  
૧૩-૪-૨૦૦૪

(૨) મહેસુલ વિભાગના પત્રાંક : જમન - ઇન્ડસ્ટ્રી - ૫૪૦૪ - ૧૨૯૬ -  
અવ તા. ૬/૧૦/૨૦૦૪

ઉપરોક્ત વિષયનાં આપનાં વિભાગનાં તા. ૬/૧૦/૨૦૦૪ નાં પત્રાંક : જમન - ઇન્ડસ્ટ્રી -  
૫૪૦૪ - ૧૨૯૬ - અવ પરત્વે જણવવાનું કે વાઇબ્રન્ટ ગુજરાત કાર્યક્રમ હેઠળ નિરમા લીમીટેડને  
સમઢીયાળા બંધારા યોજનાનાં ડુબ વિસ્તારની જમીન તબદીલ કરવાની બાબત વિચારણા હેઠળ હતી.  
આ બાબતે સરકારના વિવિધ વિભાગોનાં અધિકારીઓની બેઠક યોજવામાં આવેલ તથા સુચિત ફેક્ટરી  
થવાથી સમઢીયાળા બંધારાની સંગ્રહ શક્તિમાં સમઢીયાળા ગામનાં સર્વે નં. ૨૭ અને ૧૭૯ ની અનુક્રમે  
૧૫-હેક્ટર તથા ૧૧૬-હેક્ટર જમીન જે સરકારી ખરાબા / ગૌચરની છે તેમા જરૂરી ખોદાણકામ  
કરીને તે સરભર કરવાથી કોઇ ઘટાડો થતો નથી તે ધ્યાને લઇ વિવિધ પાસાઓની ચર્ચા વિચારણા  
થયેલ.

વોટર બોડીઝ પ્રીઝર્વેશન અંગે ગુજરાત હાઇકોર્ટમાં થયેલ સ્પે.સી.એ. ૧૬૨૧/ ૨૦૦૦માં  
નામ. ગુજરાત હાઇકોર્ટનાં તા. ૨/૮/૨૦૦૨ નાં ચુકાદાને ધ્યાને લઇને સરકાર કક્ષાએ કાયદાકિય  
અભિપ્રાય મેળવવાનો થતો હોઇ એડવોકેટ જનરલશ્રીનો અભિપ્રાય કાયદા વિભાગ મારફતે લેવામાં  
આવેલ.

એડવોકેટ જનરલશ્રીએ આપેલ અભિપ્રાય એનેક્ષ-૧ મુજબ છે.

ઉપરોક્ત સમગ્ર બાબતોને અનુલક્ષીને નિરમા લી. ને તેમની માંગણીવાળી જમીનો નીચે  
દર્શાવેલ શરતોને ઓધીન ફાજલ કરી શકાય તેમ છે.

(૧) નિરમા લી. ને તેમની માંગણીવાળી જમીન ફાજલ કરતા સમઢીયાળા જળાશયમાં થતા  
પાણીની ઘટને સરભર કરવા માટે સમઢીયાળા ગામનાં સર્વે નં. ૨૭ અને ૧૭૯ ની અનુક્રમે

૧૫-હેક્ટર તથા ૧૧૬-હેક્ટર જમીન જે સરકારી ખરાબા / ગૌચરની છે તેમા જરૂરી ખોદાણાકામ કરીને તે સરભર કરી શકાય. તેથી તે જગ્યા ઉપર ઔદ્યોગિક ગૃહે પોતાના ખર્ચે પાણીની ઘટ સરભર કરવા માટે અધિક્ષક ઇજનેરશ્રી, મધ્યસ્થ આલેખન તંત્ર જે સુચવે તે પ્રમાણે કામગીરી કરી આપવાની રહેશે

- (૨) વરસાદી આવરાને સમઢીયાળાનાં જળાશયમાં વાળવા માટે ત્રણ ચેનલો વિભાગ સુચવે તે મુજબ કરવાની તેમજ આ ચેનલોની મરામત અને નિભાવણી નિરમા ઔદ્યોગિક ગૃહે પોતાના ખર્ચે કરી આપવાની રહેશે. તદઉપરાંત વરસાદી પાણીનાં કારણે કોઈ પણ જાતનું નુકશાન થાય તો તે અંગેના કામો પોતાના ખર્ચે કરી આપવાની સઘળી જવાબદારી પણ નિરમા લી.ની રહેશે.
- (૩) જળાશય ઉંડુ કરતાં હાલમાં જે રીવર્સ કેનાલો કરવામાં આવેલ છે કે આયોજન હેઠળ છે તેમાં મધ્યસ્થ આલેખન તંત્ર, ગાંધીનગર સુચવે તે પ્રમાણે વધારાની કામગીરી નિરમાં ઔદ્યોગિક ગૃહે તેઓના ખર્ચે કરવાની રહેશે.
- (૪) જળાશયમાં સંગ્રહ થયેલ પાણી સીધી કે આડકતરી રીતે દુષિત ન થાય તે જોવાની જવાબદારી નિરમા લી.ની રહે છે. ( ઔદ્યોગિક ગૃહનાં દુષિત પાણીની નિકાલ અંગેની કરેલી કાર્યવાહી / આયોજનની વિગતો વિભાગને આપવાની રહેશે.)
- (૫) નિરમાં ઔદ્યોગિક ગૃહ જરૂરી એવા પીવાના તથા ઉદ્યોગ માટે જરૂરી એવા પાણીના જથ્થા માટે અલાયદી વ્યવસ્થા કરવાની રહેશે. સમઢીયાળા બંધારાના આવરા કે જળાશયનો સીધી કે આડકતરી રીતે ઉપયોગ કરશે નહી.
- (૬) ઉપરોક્ત તમામ કામગીરી નિરમા લી. એ વિભાગના સીધા નિયંત્રણ હેઠળ કરવાની રહેશે.

ઉપરોક્ત શરતોને આધીન નિરમા લીમીટેડ ને સમઢીયાળા બંધારાનાં ડુબ વિસ્તારની જમીન તબદીલ કરવા મહેસુલ વિભાગને "ના વાંધા પ્રમાણપત્ર" આપવા વિભાગે નિર્ણય લીધેલ છે.

પ્રસ્તુત બાબતમાં આગળ કાર્યવાહી હાથ ધરવા મહેસુલ વિભાગને વિનંતી છે.

(સી.વી.નાદપરા)

૨૩/૭/૧૭

મુખ્ય ઇજનેર (સૌ) અને અધિક સચિવશ્રી

નકલ સાદર રવાના...:-

અગ્ર સચિવશ્રી, ઉદ્યોગ અને ખાણ વિભાગ, સચિવાલય, ગાંધીનગર

રવાના કર્યા

તારીખ: ૨૩-૭-૨૦૧૭

સહી: 





7014

Laws  
Contract & MCNirma  
16/18

રેકૉર્ડ્સ નંબર: NNL/CP/VND/૨૦૦૨/૧૭૨/૦૭-૦૮

પ્રતિ,

**ANNEXURE-R-4**

તા.૧૩-૦૮-૨૦૦૭

મુખ્ય ઈજનેર (સૌરાષ્ટ્ર) અને  
અધિક સચિવશ્રી,  
નર્મદા જળ સંપત્તિ, પાણી પુરવઠા  
અને કલ્પસર વિભાગ,  
સચિવાલય, ગાંધીનગર.

વિષય - "ના વાંઘા પ્રમાણપત્ર" માં જણાવેલ શરતો અંગે બાંહેધરીપત્ર  
આપવા બાબત.

મે. સાહેબ,

આપના વિભાગ દ્વારા અમો નિરમા લિમિટેડને સિમેન્ટ ઉદ્યોગ માટે જમીન ફાળવવા અંગે આપના વિભાગ દ્વારા મહેસુલ વિભાગને આપવામાં આવેલ. "ના વાંઘા પ્રમાણપત્ર" ક્રમાંક : એસ.આઈ.પી.-૨૦૦૪-૧૫૩૮-(૫૮)-ક-૨ તા.૨૩-૦૭-૨૦૦૭ માં દર્શાવેલ શરતો અંગે અમો નીચે મુજબની બાંહેધરી આપીએ છીએ.

- ૧) અમારી માંગણીવાળી જમીન ફાળવ કરતાં સમઢીયાળા જળાશયમાં થતાં પાણીની ઘટને સરભર કરવા માટે સમઢીયાળા ગામના સર્વે નંબર ૨૭ અને ૧૭૬ ની અનુક્રમે ૧૫-હેકટર તથા ૧૧૬-હેકટર જમીન જે સરકારી ખરાબા ગૌચારની છે તેમાં જરૂરી ખોદાણકામ કરીને તે સરભર કરી શકાય. તેથી તે જગ્યા ઉપર અમો પોતાના ખર્ચે પાણીની ઘટ સરભર કરવા માટે અધિક્ષક ઈજનેરશ્રી, મધ્યસ્થ આલેખન તંત્ર સુચવે તે પ્રમાણે કામગીરી કરી આપવાની ખાત્રી આપીએ છીએ.
- ૨) વરસાદી આવરાને સમઢીયાળાનાં જળાશયમાં વાળવા માટે ત્રણ ચેનલો વિભાગ સુચવે તે મુજબ કરવાની તેમજ આ ચેનલોની મરામત અને નિભાવણી અમો પોતાના ખર્ચે કરી આપવાની ખાત્રી આપીએ છીએ. તદઉપરાંત વરસાદી પાણીના કારણે કોઈ પણ જાતનું નુકસાન ચેનલોને થાય તો તે અંગેના કામો અમો પોતાના ખર્ચે કરી આપવાની ખાત્રી આપીએ છીએ.
- ૩) જળાશયમાં ઉંડુ કરતાં હાલમાં જે રીવર્સ કેનાલો કરવામાં આવેલ છે કે આયોજન હેઠળ છે તેમાં મધ્યસ્થ આલેખન તંત્ર, ગાંધીનગર સુચવે તે પ્રમાણે વધારાની કામગીરી અમો પોતાના ખર્ચે કરી આપવાની ખાત્રી આપીએ છીએ.

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- ૨ -

- ૪) જળાશયમાં સંગ્રહ થયેલ પાણી સીધી કે આડકતરી રીતે અમારા એકમ થકી દુષિત ન થાય તે જોવાની જવાબદારી અમારી રહેશે. (ઔદ્યોગિક ગૃહનાં દુષિત પાણીના નીકાલ અંગેની કરેલી કાર્યવાહી / આયોજનની વિગતો વિભાગને મોકલી આપવાની ખાત્રી આપીએ છીએ.)
- ૫) અમો અમારા ઉદ્યોગને લગતા પીવાના તથા ઉદ્યોગ માટે જરૂરી એવા પાણીના જથ્થા માટે અલાયદી વ્યવસ્થા કરીશું, તેમજ સમઢીયાળા બંધારાના આવરા કે જળાશયનો સીધી કે આડકતરી રીતે ઉપયોગ કરીશું નહિ તે અંગેની ખાત્રી આપીએ છીએ.
- ૬) ઉપરોક્ત તમામ કામગીરી અંગે આપના વિભાગ ઢ્વારા આપવામાં આવેલ અંદાજીત ખર્ચ રૂપીયા ૩૨૭ લાખ અમોને મંજૂર છે.

આભાર સહ.

આપનો વિશ્વાસુ,  
નિરમા લિમિટેડ વતી,

*Handwritten signature*

( વી. એન. દેસાઈ )  
વાઈસ પ્રેસીડેન્ટ

*Handwritten signature*  
23/8/07



**NIRMA**

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E 8 MAR 2009 - 8 MAR 2009

No.Land/3/883/2008

Office of the Collector

Revenue Branch

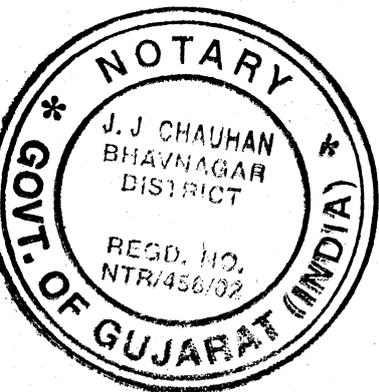
Bhavnagar Dt.16/4/2008

**ANNEXURE-R-5**

Sub : Land at Village : Vangar, Padhiyarka, Doliya [Ta. Mahuva,  
Dist. Bhavnagar]

Regarding allotment of Government Waste Land, Gauchar  
total admeasuring 268-86-52 sq.mts. to Nirma Limited for  
Cement Plant.

- Read: [1] Application of Nirma Limited, Ahmedabad  
dtd. 24/2/2004.
- [2] Mamlatdar, Mahuva letter No. Land/Vashi/724/2004  
dtd.5/4/2004, letter No. Land/Vashi/1769/04 dtd.  
23/4/04.
- [3] Environment Engineer, Gujarat Pollution Control  
Board, Environment Bhavan, Gandhinagar letter No.  
NA/BHV-1/12357 dtd.30/4/04.
- [4] Executive Engineer, Salinity & Control Department,  
Bhavnagar letter No. CB/Land/Transfer/Samadhiyala/  
Padhiyarka/1116/04 dtd.22/4/04 and letter No.  
CB/Land/Transfer/Nirma/ 2009/04 dtd.9/7/04.
- [5] Dy. Industries Commissioner [Infa.], Udyog Bhavan,  
Gandhinagar letter No. UK/Infa/Land/F.No.331/1367  
dtd.29/4/04 & Letter No. UK/Infa/Land/F.No.331/  
1521 dtd.21/6/04.
- [6] Minutes of District Evaluation Committee dtd.  
2/6/2004.
- [7] This office proposal No.Land-3/1490/2004 dtd.  
22/6/2006 and letter No. Land/3/2078/2004 dtd.  
21/8/04, Letter No. Land/3/2308/04 dtd.9/9/04, Letter  
No. Land/3/905/06 dtd.29/4/2006.
- [8] Approval Resolution No. JMN/Industr/5404/1296/A.1  
dtd.27/12/2007 of the Section Officer, Revenue  
Department, Gandhinagar.
- [9] Application dtd.28/2/2008 of the applicant unit Shri  
Nirma Limited, Ahmedabad alongwith original  
challan dtd.25/2/08 of having paid the amount of  
adhoc possession price and original challan  
dtd.25/2/08 of having paid the amount of conversion  
tax and copy of receipt dtd.27/2/08 for having paid  
non-agriculture assessment, tax, cess of the first year  
and copy of the challan dtd.15/2/08 for having paid



the amount of land measurement fee and copy of challan dtd.25/2/08 for having paid the amount of gauchar improvement.

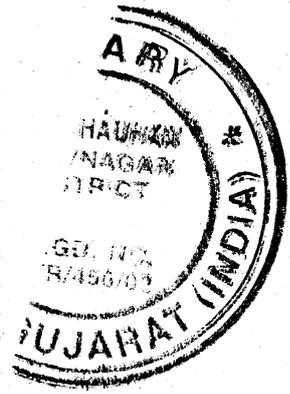
- [10] Government in Revenue Department Resolution No.1970/45 dtd.17/10/47 and No. LND/3956-75116/B dtd.7/8/1956.
- [11] Government in Revenue Department Consolidated Resolution No. JMN/392003/454/A dtd.6/6/2003.

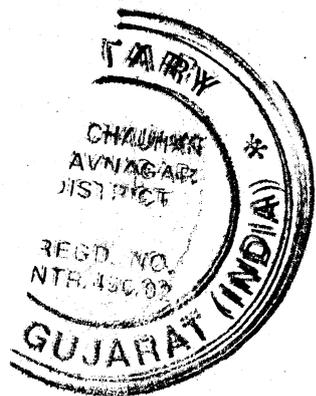
ORDER :

[1] The applicant company Nirma Limited, Ahmedabad by application referred at [1] dtd.24/2/2004 has requested to grant total land admeasuring Hector 280-89-42 sq.mts. of different survey numbers of Villages Padhiyarka, Doliya and Vangar of Mahuva Taluka of Bhavnagar District for industrial purpose of captive power project at possession price.

[2] On calling for opinion with inspection-investigation of concerned departments/offices in respect of the demand of applicant company, positive opinions of Competent Authorities referred at [2] to [5] have been received. The Mamlatdar, Mahuva by report referred at [2] has described that land admeasuring 268-86-52 sq.mts. is available as per revenue record, therefore, in view of these opinions, the demand of applicant company for land admeasuring 268-86-52 sq.mts. has been considered reasonable.

[3] On taking up the procedure of assessment of present market price of land in question, the present market price of land in question has been estimated at Rs.27/- per sq.mt. in the meeting of District Evaluation Committee dtd.2/6/2004.



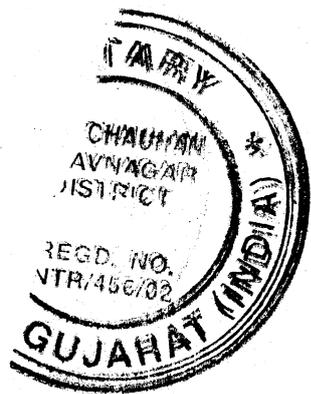


[4] In light of the standing instruction of the Government, considering the measurement and possession price of demand of land in question, as the decision is to be taken with Government powers, a proposal was made by this office to the Government vide letter referred at [7].

[5] In reference to the proposal submitted to the Revenue Department of the Government, the Section Officer, Revenue Department, Gandhinagar has granted permission by approval resolution dtd.27/12/2007 referred at [8] hereinabove for allotting land as per the following details in the matter of demand of applicant company Nirma Limited for industrial purpose in view of the conditional permission of Narmada, Water Resources, Water Supply and Kalpsar Department.

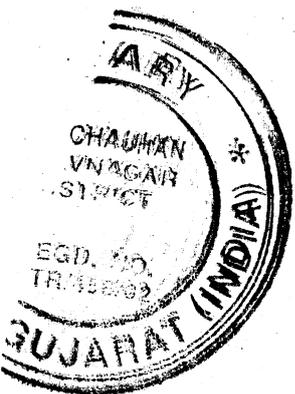
No.	Vilage	Survey Number	Land Allotted [Hect.Are.Sq.Mts.]
1	Padhiyarka	80/A/1 part	98-98-68
		80/A/2	16-18-75
		80/B	44-51-57
		80/K	20-48-74
2	Doliya	67 part 1	48-18-82
		67 part 2	00-40-47
		67 part 3	09-47-97
3	Vangar	200/A, 200/B	30-61-52
		Total	268-86-52

The State Evaluation Committee has decided the rate of the demand land at Rs.30/- per sq.mt. as on position of dt.2/6/04 under



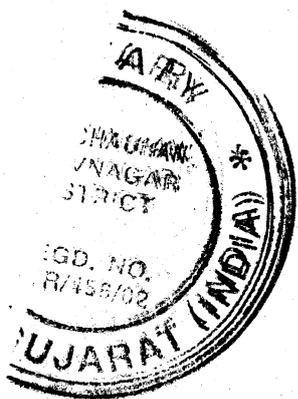
the approval resolution. Accordingly, the price of 22,88,652 sq.mts. land at Rs.30/- per sq.mt. comes to Rs.8,06,59,560/-. Out of this land, including 30% additional amount for cow graze land admeasuring Hect. 26-44-64 sq.mts. Rs.23,80,1786/- comes to total Rs. 8,30,39,736/-. But, as two years have passed after this price was decided, the price of land requires to be decided again, after getting evaluated from District Evaluation Committee on the date of order, the permission has been granted for sending to the Government by recovering Rs.8,30,39,736/- at the present stage, subject to recovering the amount of difference decided on the date of order including 30% amount of gauchar and subject to conditions of Narmada, Water Resources, Water Supply and Kalpsar Department and by recovering other taxes, subject to the provisions of Resolution of the Department referred at [10] and other prevalent orders, subject to new undivise and sale control conditions and subject to conditions prescribed by Narmada, Water Resources, Water Supply and Kalpsar Department under letter dtd.23/7/07.

[6] In respect of the demand of applicant company Nirma Limited, Ahmedabad for obtaining land of Village Padhiyarka, Vangar, Doliya, Ta : Mahuva, total admeasuring Hect. 268-86-52 at possession price for industrial purpose of cement plant subject to undivise and sale control condition, as per approval resolution of Revenue Department of the Government, on informing the applicant company to remit the amount of adhoc possession price of land in question Rs.8,06,59,560/- [Rupees Eight Crores Six Lacs Fifty Nine Thousand Five Hundred Sixty only] and single possession price for disposal of Gauchar land of R.S.No.200/B of

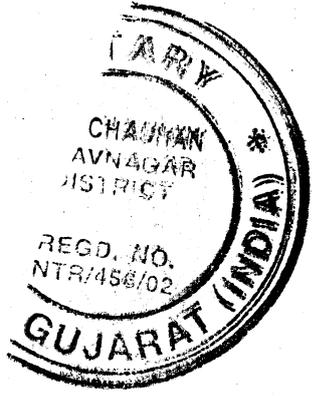


Village Vangar admeasuring Hect. 26-44-64 sq.mts. plus the amount of additional possession price as per 30 percentage Rs.23,80,176/- [Rupees Twenty Three Lacs Eighty Thousand One Hundred Seventy Six only] and the amount of conversion tax at Rs.6/- per sq.mt. Rs.1,61,31,912/- [Rupees One Crore Sixty One Lacs Thirty One Thousand Nine Hundred Twelve only] being the amount of Conversion tax as per Section 67[K] of Land Revenue Code-1879 while granting Government Waste Land for Non-agriculture purpose as per the provisions of consolidated resolution of the Government dtd.6/6/2003 and Non-agriculture Assessment, Local Fund and Education Cess of the first year for Revenue Year 2007-2008, totaling Rs.2,01,648-90 and in addition to pay District Panchayat Cess etc. and measurement fee of land in question and produce the copy of original challan, the applicant unit has produced original challan alongwith application referred at [9] by paying the amount of adhoc possession price, conversion tax and Gauchar Improvement Fund at State Bank of Saurashtra, Darbargadh, Bhavnagar on dt.25/2/08. Simultaneously, it has produced the copy of receipt by paying the amount with Talati record on dt.27/2/08 payable for Non-agriculture Assessment and other tax, cess and District Panchayat Cess of the land in question for the Revenue Year 2007-08 and has produced copy of challan by paying the amount of fee on dt.15/2/2008 as per rules for measurement of land in question.

Therefore, as per the above details, in the matter of demand of applicant, as per the details of approval resolution of the Government, as the amount of adhoc possession price of land in question Rs.8,06,59,560/- paid on dt.25/2/2008, the amount of



conversion tax Rs.1,61,31,912/- paid on dt.25/2/08, the amount of gauchar improvement fund Rs.23,80,176/- and the amounts of non-agriculture assessment and other tax, cess of the land in question for the Revenue Year 2007-08 and District Panchayat Cess paid on dt.27/2/08 and the amount of measurement fee of land in question Rs.82,200/- paid on dt.15/2/2008, it is ordered to grant land in question admeasuring Hect. 268-86-52 as per the details of survey numbers of Village Padhiyarka, Vangar, Doliya, Ta : Mahuva described in paragraph [4] hereinabove to Nirma Limited, Ahmedabad for industrial purpose of cement plant as per the details of statement annexed to this order subject to new undivisive, sale control condition as per Government in Revenue Department Resolution referred at [8], subject to payment of amount of difference of possession price of land in question liable to be paid by calculating the price decided by State Level Evaluation Committee on the date of order, whichever is more out of both, with directive to adhere the conditions prescribed by all concerned Competent Authorities and Narmada Water Resources Water Supply and Kalpsar Department and conditions of Annexure-1 enclosed herewith, subject to making payment of non-agriculture assessment, tax, cess as prescribed by the Government from time to time regularly on First of August of every Revenue Year, by preparing the plans of land as per measurement on completion of measurement of land in question for the land under demand by the applicant company in this matter - Nirma Limited, Ahmedabad and subject to Resolution No. 1970/45 dtd.17/10/47 and No. LND/3956-75117-B dtd.7/8/1956 of the Revenue Department of Government and the provisions of Resolution No. JMN/392003/454/A dtd.6/6/03 and subject to the conditions of



other prevalent standing orders and subject to completion of procedure as per conditions ordered by Narmada, Water Resources Water Supply and Kalpsar Department under the control of Revenue Department, subject to new undivisive and sale control, on payment of adhoc possession price, subject to payment of amount of difference decided as per the final possession price to the Government.

On specific boundary measurement of land granted as per this order as described in Government Resolution No. JMN/3984/1615/A dtd.27/3/1984 and No.JMN/3982/50828/A dtd.24/4/1981 and completing the procedure of Panch evaluation within 30 days by handing over the physical possession to the concerned company with boundary measurement, and by obtaining receipt of possession of land granted in prescribed form 'K' and taking up the procedure of issuing sanad of land allotted in prescribed form as per Government in Revenue Department Circular No. Land/3989/601/A dtd.13/12/1989 and on recovering the stamp duty as per rules on completion of other 15 days, Mamlatdar, Mahuva should make entry in Village Form No. 6 as per order and send the copies of V.F.No. 6,7/12,8/A to this office.

Despatched:  
Sd/-illegible  
Chitnis to Collector  
Bhavnagar

Sd/-[Pradip Shah]  
Collector  
Bhavnagar District  
Bhavnagar

Round Seal of the Collector, Bhavnagar District  
Bhavnagar

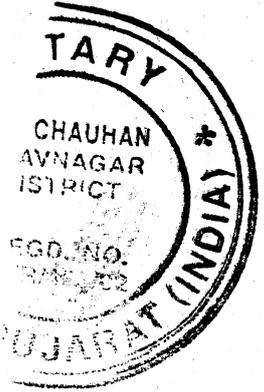
## ANNEXURE-1

Additional conditions as per Collector Office, Bhavnagar Order  
No. Land/3/883/2007 dtd.16/4/2008.

- [1] The land cannot be sub-divided and any such divisions cannot be sold or transferred without permission of the Government.
- [2] The Government will have the right on 50% amount of 'unearned profit' in case of direct total sale, sale as a result of not releasing from mortgage or transfer with prior permission of the Government and if such land is to be used for any other purpose than the original industrial purpose, prior permission will have to be obtained from the Government and additional premium will have to be paid as prescribed by the Government.
- [3] In eventuality of sale etc., if the Government feels that any information has been concealed or false fact has been produced in respect of sale price, the Government will declare such sale as null and void.
- [4] This land is granted for industrial purpose, any other use cannot be made without prior permission of the Government.
- [5] The construction on this land will have to be carried out in compliance of the provisions of Line Rule after obtaining prior permissions from the Competent Authority and thereafter the plan will have to be got approved from Local



Institution and construction will have to be carried out in compliance thereof.

- 
- [6] The use of land will have to be commenced by completing the construction related to building within two years from the date of issuing order for the purpose for which the land has been granted.
- [7] This land is granted with non-transferable right type i.e. the land or construction thereon cannot be mortgaged or leased or transferred in any other way without prior permission of the Collector.
- [8] The measurement fee of the land has been paid by the applicant. The measurement accordingly will have to be got carried out within 30 days and the plans of grant land will have to be got approved by submitting before the Collector.
- [9] If any construction will be carried out in contravention of the conditions of order and without necessary prior permission of the Competent Authority, the District Collector will be entitled to order for removing or changing the same within prescribed time and if the work of so removing or shifting will not be carried out within prescribed time, he will get implemented accordingly and if any expense will be incurred for doing so, it will be recovered as land revenue dues and if illegal construction is demolished, the compensation of any nature will not be paid for the same.

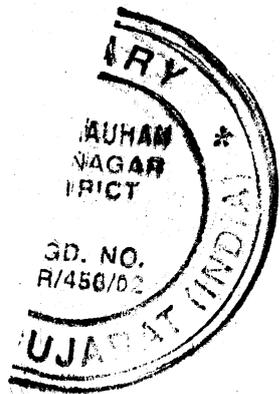


- [10] On violation of any conditions, the permission granted will be cancelled and the Collector will again take over the possession of the said land without encumbrance, with construction without granting any compensation and the grantee will not be entitled to take any dispute for the same.
- [11] The construction of buildings will have to be carried out for industrial purpose subject to the provisions of construction rules and further conditions laid down hereunder.
- [1] The above land will not be used for storage of goods, scattered elements for any other purpose. No permanent or temporary encroachment in the form of permanent or temporary "overhanging" platform or in any other manner will have to be made in the land kept open.
- [2] The construction of industrial building will have to be carried out as per the construction rules and after obtaining necessary prior permissions from the Competent Authorities and especially the construction will have to be carried out so that the same is with air and light. It should be arranged that there should not be less than 20 feet space between buildings of two group related to industry, so that in eventuality of fire or other accident, the fire extinguishers can pass from that place.
- [12] As the amount of possession price has been paid, the possession will have to be taken accordingly on completion of measurement of the land in question, and accordingly by

getting prepared the plans of land in question, the same will have to be got sanctioned from this office. If the possession will not be taken, the steps will be initiated to cancel the order.

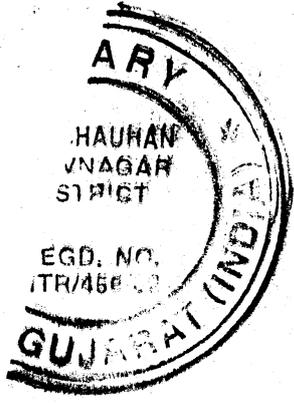
- [13] No inflammables which can easily catch fire, can be used in construction on the land in question.
- [14] The Government will be entitled to take back the land in question in eventuality of necessity of the same land on the issue of national security.
- [15] The undertaking in form 'H.H' as prescribed in Land Revenue Rules and for the above conditions will have to be provided before the concerned Mamlatdar. Thereafter, after obtaining the permission letter from the Mamlatdar in Form 'K', the applicant will have to enter in the land in question.
- [16] The remaining amount of difference between the price ordered by the State Level District Evaluation Committee on the date of order of land in question, including 30% of Gauchar, whichever is more, will have to be paid after deducting the amount paid earlier.
- [17] The Department of Narmada, Water Resources Water Supply and Kalpsar by its letter dtd.23/7/2007 has granted permission to allot the land admeasuring Hect. 222-06-25 sq.mts. transferred in Bandhara Scheme under the said Department, which includes in total land, as per the





following conditions. The said conditions will have to be fulfilled.

- [1] On declaring the land in question as surplus, to equalize the shortage of water in Samadhiyala lake, it can be equalized by necessary digging the land of Samadhiyala Village S.No. 27 and 179 admeasuring Hect. 15 and Hect. 116 respectively, which is Government waste/gauchar land. Therefore, the industrial house will have to carry out the work at that place at own expense as suggested by the Superintending Engineer, Central Drawing Department to equalize the shortage of water.
- [2] Three channels will have to be made as suggested by the Department to draw the rainy water in Samadhiyala lake and the repairs and maintenance of these channels will have to be made by Nirma Industrial House at own expense. Further, if any damage is caused due to rainy water, Nirma Ltd. will be solely liable to carry out the works in that regard at own expense.
- [3] Nirma Industrial House will have to carry out additional work as suggested by the Central Drawing Department, Gandhinagar in reverse canals at present made on deepening the lake or under plan.
- [4] Nirma Ltd., will be responsible to see that water stored in the lake does not become polluted directly or indirectly. [The details of procedure/plan for disposal of polluted water of Industrial House will have to be provided to the Revenue Department.]



- [5] Nirma Industrial House will have to make separate arrangement for necessary quantity of water necessary for drinking and industry. The flow or lake of Samadhiyala Water storage cannot be used directly or indirectly.
- [6] Nirma Ltd., will have to carry out all the above works under control of Revenue Department.

[18] For breach of any condition out of the above described conditions, the Collector will be entitled to pass orders including taking over the land back under Government as deemed fit as per Land Revenue Code, Rules and Standing Instructions of the Government.

Despatched:  
Sd/-illegible  
Chitnis to Collector  
Bhavnagar

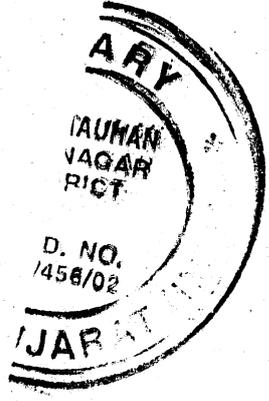
Sd/-[Pradip Shah]  
Collector  
Bhavnagar District  
Bhavnagar

Round Seal of the Collector, Bhavnagar District  
Bhavnagar

To:  
The Vice-President  
Nirma Limited  
'Nirma House' Ashram Road  
Ahmedabad [By Regd. AD]

Copy submitted with compliments to :

- [1] The Section Officer  
Revenue Department, "A.1" Branch  
New Sachivalaya, Gandhinagar  
For information with reference to your Approval Resolution  
No. JMN/Industr/5404/1296/A.1 dtd.27/12/2007.



- [2] The Section Officer  
Narmada Water Resources Water Supply and Kalpsar  
Department, K-2 Branch, Sachivalaya, Gandhinagar  
For information.

Copy for information and necessary action :

- [1] The Prant Officer, Mahuva  
[2] The Mamlatdar, Mahuva  
It is requested to implement as per order.  
[3] The Taluka Development Officer, Mahuva  
[4] The D.I.L.R., Bhavnagar  
[5] The Regional Manager, Gujarat Pollution Control Board,  
Bhavnagar  
[6] The Executive Engineer, Salinity & Control Department,  
Bhavnagar  
[7] Talati-cum-Mantri, Padhiyarka, Vangar, Doliya, Ta :  
Mahuva





IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3477 of 2009

**ANNEXURE-R-6**

For Approval and Signature:

HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA  
HONOURABLE MR.JUSTICE AKIL KURESHI

=====

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

=====

**SHREE MAHUVA BANDHARA KHETIWADI PARIYAVARAN BACHAV  
SAMITTEE & 1 - Petitioner(s)**

**Versus**

**UNION OF INDIA & 5 - Respondent(s)**

=====

**Appearance :**

MR BHUSHAN B OZA for Petitioner(s) : 1 - 2.MR AJ YAGNIK for Petitioner(s) : 1 - 2.

None for Respondent(s) : 1, 5,

MR RITURAJ M MEENA for Respondent(s) : 2,

MR KB TRIVEDI, AG with MR PK JANI, GP and MS SANGITA VISHEN, AGP for Respondent(s) :

6.

MR.DA DAVE, SR. ADV. for M/S. TRIVEDI & GUPTA for Respondent(s) : 4,

=====

**CORAM : HONOURABLE THE CHIEF JUSTICE MR. S.J.  
MUKHOPADHAYA**

**and**

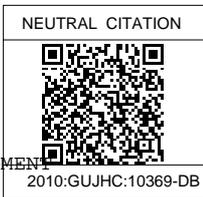
**HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 26/04/2010**

**CAV JUDGMENT****(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. With ever expanding cities and urbanization at a pace not imaginable before, constant need for growth and desire of citizens in general to reach higher end of income brackets, man - animal conflict sometimes spills over to man and man conflict. Requirement of growth, urbanization and industrialization on one hand, preservation of environment and common resources of the community on the other, has given rise to the concept of sustainable growth, a concept which is as difficult to define as it is often times difficult to implement due to the very nature of complex, varying and for-ever conflicting interests. One such issue of considerable importance has reached this Court for resolution of the legal issues arising therein by way of present public interest litigation.

2. Petitioners who are claiming to be espousing the interests of large number of agriculturists and other residents of cluster of villages around and including Samadhiyala village of Mahuva Taluka have filed this petition opposing setting up of a cement plant with captive electricity generation plant proposed by respondent No.4, M/s. Nirma Limited. The main grievance of the petitioners is that the land allotted by the Government for setting up of such a plant is situated right in the middle of sweet-water reservoir created by construction of 250 meters long wastewear called Samadhiyala Bandhara. It is the case of the petitioners that the proposed site of the plant consists of part of land of Bandhara Reservoir. It is also the allegation of the petitioners that rest of the land falls in the catchment area of the reservoir and construction of the cement plant would in short time destroy the entire reservoir.



3. On the other hand, the case of the respondents is that apprehensions of the petitioners are ill-founded. Series of reports have been collected by the Government from expert bodies. Certain safeguards have been provided. There is no danger to the reservoir. In fact, the capacity of the reservoir upon implementation of the recommendations of the Expert Committees as directed by the Government would increase. Setting up of cement plant would provide employment to many people in the region.

4. Looking to the fact that the outcome of this litigation, one way or the other, would affect large number of people, we have invested considerable time in hearing the arguments of the learned advocates for the parties. Various issues have been presented before us for our consideration. Our prime concern, however, has been to protect the sweet water reservoir created by construction of Samadhiyala Bandhara. Undoubtedly, progress and development would require construction of factories. Such factories would inevitably increase production and generate employment in a remote rural area which is dependent mainly on agricultural activities, which in turn depends on unpredictable and erratic monsoons and inadequate other sources of irrigation. It will also mean perennial source of income for many. However, such development or generation of income cannot be at the cost of permanent damage to common community resources. It will be sad if a small farmer deprived of his rightful source of irrigation is turned overnight into land-less unskilled labourer forced to seek employment in some factory constructed on the land which till the other day was his agricultural field. At the same time, if without affecting the reservoir in any significant manner, it is possible to set up the factory, surely in the name of environment or any such similar slogan, such development cannot be stopped.



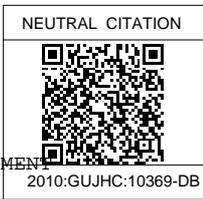
5. With the above parameters in mind, before adverting to the rival submissions, some facts need to be noted.

5.1 Petitioner No.1 is an Association of persons formed for the protection of Samadhiyala Bandhara Reservoir. Petitioner No.2 is an agriculturist in the locality. As already noted, the petitioners are opposing the setting up of cement plant by Nirma Limited in Mahuva Taluka. They have made following substantive prayers :-

“(A) To issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents, their agents and servants to restore that part of the land with Samadhiyala Check-dam of Padhiyarka and Doliya Villages of Mahuva Taluka and Gaucher Land containing with two check-dams and a natural lake of Vangar Village of Mahuva Taluka of Bhavnagar District to the respective Panchayats from the possession of the respondent No.4, Private Company.

(B) To issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent no.3 to make the necessary changes in the record to incorporate the water reservoir, lakes and dams as per the application of the petitioner No.1, dated 9<sup>th</sup> March 2009;”

It is the case of the petitioners that Nirma Limited has been granted land by the Government which forms part of the Samadhiyala Reservoir. Such allotment of land is without proper inquiry and construction of cement factory would effectively destroy the catchment area of the reservoir and thereby dry up the lake in a short time. It is the case of the petitioners that Samadhiyala Bandhara Reservoir is a water body and no part of the water body can be divested for any purpose as directed by a Division Bench of this Court in the case of **Shailesh R. Shah v. State**

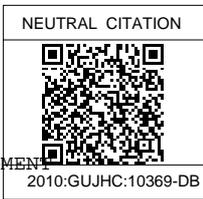


**of Gujarat & ors., 2002(3) GLH 642.**

6. From the material on record, it can be gathered that near Samadhiyala village in Mahuva Taluka, there is a creek through which the sea-water during high tide used to enter the main land. This caused persistent problem of salty water entering in the region causing salinity problem in the area. This is also an area where during monsoon, through rivulets or other small tributaries, excess rain water would drain into the sea. The Salinity Division of the State of Gujarat, therefore, envisaged a plan to construct a wastew weir of 250 meters. This according to the proposal would on one hand prevent sea-water from entering the creek and on the other side of the weir, the rain water through rivulets and other minor sources would get collected. This construction of weir would not only arrest the sea water entering the main land and thereby solving the salinity problems, but would also create a sweet water reservoir with an estimated capacity of 62.31 million cubic feet (M.C.Ft.). The report further suggested that there is very fertile land in the region, but due to salinity ingress and less rainfall, the water table has gone down and water has become salty. With the above purpose in mind, Samadhiyala Bandhara was constructed. It had water storing capacity of 62.31 M.C.Ft.

6.1 The land going in submergence mainly came from the Government waste land, part of gaucher land of surrounding villages, which the Village Panchayats agreed to surrender to the Government and small portion came from private lands. The Bandhara was constructed in the year 1999.

7. In the year 2004, respondent No.4, Nirma Limited, approached the Government with a request to allot 280-89-42 hectares of land for its

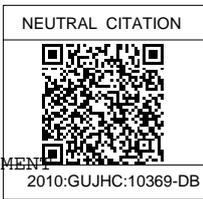


cement plant and captive power project in Padhiyarka, Dodiya and Vanger villages of Mahuva Taluka of Bhavnagar District. The Government vide its order dated 16.4.2008 allotted a total 268-86-52 hectares of land on certain conditions.

7.1 There was resistance to the said allotment. Since admittedly nearly 100 hectares of land allotted to Nirma Limited was part of the Bandhara Reservoir, the Government decided to obtain a report from the Salinity Division on the impact of construction of factory on the Bandhara Reservoir. A detailed report, a copy of which is produced at Annexure U at page 198 of the compilation was submitted. The report notes that due to handing over 100 hectares of reservoir land to the Company, there would be reduction of capacity of reservoir to the extent of 21.18 million cubic feet. In view thereof, the report recommended taking following measures.

“4.1) During the spot visit carried out on 21.09.2005 as clarified in the recommendations placed forward, on both the sides of the drowning down land drain “A” and drain “B” any flow does not seem to be obstructed in any way. Besides, the rain water from area situated in the middle of the above area can easily be brought by connecting drain “C” in the dam.

4.2) As per the previous recommendations the water that gets stored in the above land from that there is very much likely possible that there can be decrease in the strength of the dam and that can be compensated with the excavation work that can be carried out in areas which are shown in “X” in the map enclosed herewith, details thereof have been clarified in above paragraph-3.



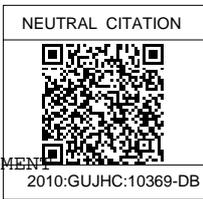
4.3) It does not seem that there will be any kind of obstruction in the flow towards the dam on account of construction work of Nirma Company liable to be carried out for their cement factory in the above land in question.

4.4) As the suggested factory is adjoining to the dam, a consent letter will be required to be taken from the Nirma Company Ltd. that it will not release its industrial polluted water in the above stated dam.

4.5) As the above suggested factory is adjoining to the Nirma Company Ltd., the company shall not utilize the potable water through the dam or bore directly or indirectly in any way and regarding the same an assurance shall be obtained from the Nirma Company Ltd. Besides before making any bore in this area the company shall obtain permission from the department well in advance.

4.6) Whatever construction work that are liable to be carried out pertaining to the storing capacity of the dam on account of the suggested cement factory all such kind of construction work shall be carried out under the discussion of this department and under its direct supervision.

4.7) The responsibility of maintenance, investigation, examination and preserving and repairing of suggested drain A, B, C and the work of D-salining etc. shall be borne by the Nirma Company Ltd. And each year the Nirma Company shall carried out the above work and regarding the same the final decision will

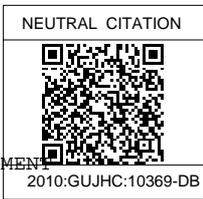


be of the Executive Engineer, Saline Control Division, Bhavnagar.

4.8) The Company will have to keep its land surface at maximum 0.5 meter high from the dam level i.e. of 5.42 meter so that at the time of flood situation the company existing construction does not come under drowning down land and according the company will have to make arrangement for its roads and etc. in order to obtain maximum level of 6 meters instead of necessary basin regarding the dumping work the material shall be obtained outside rather than from the dam itself.

4.9) The face to face surface is 3.82 meters hence, by dumping with necessary sand and mud in the land in question, in suggested land and on reaching 3.82 meters level the perry ferry of the water bodies will come out and as per the directions given by the Honourable High Court of Gujarat in Special Civil Application No.10621/2000 dated 02.08.2002 regarding the water bodies perseverance at page No.48 para No.24(G) of the said judgment after prescribing the areas of he water bodies perry ferry decision can be taken. Further an assurance shall be obtained from the company that in the land within 60 meters nearer to the banks of the dam the company will use the land only for forestation or for residential purpose only.

Thus, in this way after taking the above matters for consideration as per the previous recommendations restricted to the terms and conditions as mentioned hereinabove in paragraph No.4 and taking the above possibilities at Paragraph No.3 into consideration it is hereby opined that, there is no difficulty in making recommendation to the appropriate department for releasing the



land for allotting the same to the industrial house.”

8. Above measures did not satisfy the opponents of the Project. There was considerable resistance from certain quarters. The entire issue was referred to a High Level Committee constituted for the said purpose headed by Shri S.K.Shelat, Adviser to the Chief Minister as the Chairman. The Committee consisted of :

1. Shri S.K.Shelat  
Chairman  
Advisor to Chief Minister, Sachivalaya  
Gandhinagar.
2. Shri S.J.Desai  
Member  
Secretary  
Narmada Water Resources  
Water Supply & Kalpsar Department.
3. Shri C.L.Meena (IAS)  
Member  
Chairman  
Gujarat Pollution Control Board
4. Shri A.B.Panchal  
Member  
Ex.Collector  
Bhavnagar.
5. Shri K.N.Patel  
Member  
Retired Additional Director  
Geology & Minerals Department
6. The Commissioner  
Convener  
Geology & Minerals Department.

The Committee held public hearings of interested persons to



present their cases. Eventually, the Committee submitted its report dated 4.8.2009, copy of which is produced at page 582 of the compilation. The report is based on voluminous material collected by the Committee including technical data and reports submitted by various agencies. The Committee recorded that out of the land of Samadhiyala Bandhara, total 222.0624 hectares has been reclaimed out of which 100 hectares of land forms part of the submergence area of Bandhara whereas 122.0624 hectares of land was being kept open looking to the inflow of the water. The committee considered the representations, suggestions and objections from various quarters and gave its conclusions as under:

“9.0 Conclusions of Committee:

Considering the submissions of Hon'ble MLA, submissions of representatives of public, submission of M/s.Nirma Ltd., various technical opinions and procedures done by various departments, Committee has reached to following conclusion.

1. With reference to the submission of Hon'ble MLA regarding the inclusion of Technical Experts, Committee is empowered by the provisions of Government Resolution to take help of experts. Accordingly, for questions regarding agriculture, Director, Agriculture is included as an expert of agricultural field. Over and above, with regard to technical issues raised in submissions, opinions of established technical institutions have been obtained.
2. The scheme of Irrigation Department about increasing the depth in certain areas of dam for balancing the water storing capacity of dam which has reduced because of allotment of part of land of submerged area of Samdhiyada dam to Industrial Department and for transporting the water from catchment area to the dam, has been certified to be just and proper by the technical institution of Government of India, “Wapcos Limited”, Gandhinagar. Further, the institution has stated that by digging upto the depth of 2.4 meter R.L. At the noted place in dam area,



there is no possibility of sea water ingress in dam from the bottom and by making depth in proposed area, storing capacity can be increased upto 21.23 million cubic foot.

3. As per the study of Director (Agriculture), water level of wells of surrounding areas have increased due to Nikol, Kalsar and Samdhiyada dams. There is change in cultivation of crops, cultivation area has increased but no considerable improvement in reduction of salinity of water of wells has been noted. Over and above that, through lift irrigation, maximum 23 hectares of land is irrigated at village Dodiya, which as compared to planned area of 150 hectares of dam is only 15%.

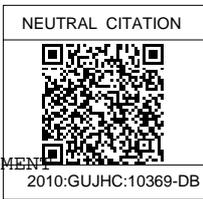
Land of no private land holder / farmer is included in the factory area so, there is no possibility of agriculture getting affected in that area. Out of the 3460 hectare area of mining under LOI, 2871 hectare area is of the private land holder/farmers which Nirma has to purchase from the private farmers as per their willingness. Government will not have to acquire these lands. If the farmers think it proper then they may sell these lands to Nirma as per the existing rules of the State.

4. As per the primary report of NEERI for mining area, M/s.Nirma Ltd. Have to conduct the procedure. It is the opinion of the committee that maintenance of environment should be done as MOEF guidelines as well as EIA/EMP compliance and suggested by NEERY on following points.

- (1) Prevention of salinity ingress
- (2) Restoration of mines area
- (3) R and R Plan (Rehabilitation and Resettlement Plan).

5. Committee recommends to include the study in EIA report about threat to existence of various wild animals in mining area. It is hereby instructed to include this issue in the public hearing with regard to environment.

6. As stated in para 7.2, 120 hectares of mining lease area of Kalsar and Naip village, the principle approval of which has been granted, is away from the plan of Nirma Ltd. And it being small as compared to the area, if it is cancelled then there is no chance of arising of reduction in capacity of plant to be established.



7. Considering the availability of limestone in sea belt area of Saurashtra and development of small ports, there are ample opportunities of transportation and export of cement to other States, which cannot be overlooked. Thus, if cement industry is developed on this sea belt then there are ample opportunities of local employment and as a result there are circumstances that may lead to fast development of this area. So, in this context, along with development of cement industry, newly establishing industries will have to follow the legal provisions of prevention of environment. In past there had come opportunity of establishing cement industry but because of local objection the said industry was shifted to other place Kodinar/Rajula area. Committee has also noted in industrial development in talukas of Kodinar and Rajula.

8. In cement industry, indirect employment arises more as compared to direct employment and considering the fact that financial condition of surrounding areas also get improved, the Committee recommends for establishment of cement industry. So, it instructs the industries to strictly follow the legal provisions of prevention of environment along with the establishment of industries.

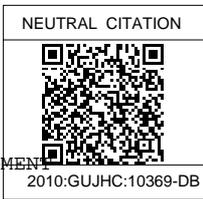
9. Committee recommends to make arrangement so that sweet water can be stored against the sea water ingress into mines because of mining work in mining area. By doing this, the salinity proportion in wells of this area will reduce and there are possibilities of increase in fertility of remaining land of mining area. “

#### 8.1 The Committee suggested following alternatives:

“10. As a result of study conducted by the Committee, it submits the following three alternatives for consideration of Cabinet Committee of the Government.

(A) Alternative of establishing cement plant in 268 hectare area as per the submission of M/s.Nirma Ltd.

Following are the conclusions of the Committee with regard to alternative of establishing cement plant in 268 hectares of area.



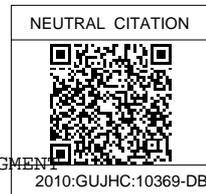
Wapcos Ltd. has given the technical opinion that there will not be any major change with regard to water storing capacity and salinity ingress by this plant. Advocate General has given legal opinion that water body is not notified as water body. Considering the opinion of Director (Agriculture) with regard to crops, quality of water and irrigation, agriculture would not be affected by the land of factory. Agriculture in lands of private land holders of 2,871 hectares of land out of 3460 hectares of mining area will be affected. But the concerned farmers will have to willingly sell the land to M/s.Nirma Ltd. Company will have to follow the conditions of MOEF Environment Clearance obtained for the plant, for prevention of environment. MOEF Clearance is pending for mining area. The conditions that may be imposed in that will have to be followed by the Company. Over and above that, NEERI will have to fill the deficiencies shown in its report.

But, 100 hectare land of submerged area of Samdhiyada dam does not get open by this alternative therefore, public agitation is likely to continue. Feeling of public satisfaction for project does not arise with the help of this alternative. S.C.A.No.3477/2009 filed by Shri Mahuva Dam Agricultural Environment Protection Committee in Hon'ble Gujarat High Court is pending.

(B) Alternative suggested by Nirma Company to establish cement plant in remaining 214 hectare area after deducting 54.295 hectare area from 268 hectare area.

M/s.Nirma Ltd. has shown consent for establishing cement plant on remaining part of land after deducting 54.295 hectare land out of the allotted 268 hectare land which is attached with area of dam, as a result of which construction of cement plant can be done on the decided place. As also balancing the water storing area, area that of original area can be maintained.

100 hectare land of submerged area of Samdhiyada dam does not get open by this alternative. By giving back of 54.295 hectare area by the company, surrounding farmers will not have any benefit because on all its three sides there is plant and mining lease area of M/s.Nirma Ltd. So, in future this area will be useful for the company itself. Further, the main issue in Special C.A. filed before the Hon'ble Gujarat High Court is of reservoir which will continue.



(C) Alternative suggested by NCCBM to establish the cement plant in 168 hectar area:-

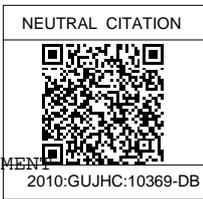
Renowned institution like NCCBM, after detailed study, has given technical opinion to establish plant in 168 hectar area after deducing 100 hectar area.

Nirma Ltd. has shown its incapability to accept this alternative because financial arrangements for project, raising of experience and other facilities, they after starting with 1.5 million ton at first stage want to take it to 6.0 million ton stage wise. Over and above that, Company has clarified that there being chances of direct effect on financial capacity of the project by change in plan lay-out, it is really difficult to implement the request because the project with the proposed request can only be established after purchasing land for noted railway line and after removing existing electricity line, water pipeline, school, etc. which will halt the entire project for a considerable period of time.

Committee believes that considering the alternative given by renowned institution like NCCBM, company can start the plant of 1.5 million ton at first stage and because of that naturally public objections will decrease and there are possible chances for the company to get land willingly for mining purpose. The entire agitation against the project and the present public feelings for Samdhiyada dam will also get reduced. NCCBM after examining all aspects have given its opinion. It also requires to be taken into consideration that there is no mention with regard to coke oven plant in the land given by the Collector, Bhavnagar. So, Company shall think to establish the coke oven plant near soda ash project of Nirma Ltd.

Out of these alternatives, whichever is decided, the principle approval which has been granted for 120 hectare area of Naip/Kalsar under the mining lease, is recommended to be cancelled as shown in the conclusions above.”

9. The Government acted upon the report of the Shelat Committee and by its order dated 8.12.2009 directed the Company to return 54 hectares of land which formed part of Samadhiyala Bhandara. The order also requires the Company to deepen 40 hectares of the said land



which according to the Government would ensure increase in the water carrying capacity of the Reservoir by 22.7%. The order requires the Irrigation Department to demarcate the remaining 214 hectares of land to be allotted to the Company.

10. The Company has accepted the said formula and agreed to accept the land minus 54 hectares which the Government has cancelled from its allotment. The Company has also agreed to deepen the land as per the order of the Government dated 8<sup>th</sup> December 2009. It may be noted that this is in addition to 75 hectares of Government waste land, which the Company is required to deepen as part of the Reservoir, the Company has also agreed to provide for three different channels of approximately 13 meters wide from three sides of the proposed site of the factory to ensure free flow of water from surrounding areas into the Reservoir.

11. Learned counsel Shri AJ Yagnik for the petitioners vehemently submitted that the allotment of land to the Company for cement factory is wholly illegal. Taking us through various documents, maps and satellite images of the area in question, he contended that the land allotted to Nirma Limited is part of the waterbody and in view of the decision of the Division Bench in the case of **Shailesh R. Shah (supra)**, no part of such land can be alienated much less granted to private companies. He further contended that satellite images clearly show that water gets collected during monsoon where the land has been allotted to the Company. He contended that alternative suggested by the respondents to compensate for the loss of land and inflow of water are not adequate. He further contended that applying the doctrine of public trust and access to community resources requires that the allotment of land be cancelled. He further contended that contrary to the directions



issued by the Division Bench of this Court in the case of Shailesh R. Shah (supra), the State has not even notified Samadhiyala Bandhara as a water body.

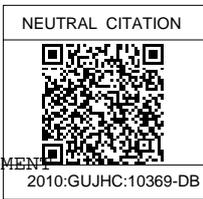
11.1 Counsel on both sides have cited several decisions before us. However, not to make this judgment bulky and to avoid citations of several decisions on the same issue, in this order we refer only those decisions on which the counsel laid more emphasize.

11.2 Much stress has been put on the decision of this Court on waterbodies in the case of Shailesh R. Shah (supra) wherein the Division Bench has directed, inter alia, that the State Government or its Area Development Authorities, Local bodies will protect, maintain and preserve all the waterbodies in the State and further that they will not alienate or transfer or put to any use other than as waterbodies.

11.3 Reliance was also placed on a decision of the Supreme Court in the case of **M.C.Mehta v. Union of India**, (1997) 3 SCC 715 herein the Apex Court stressed the requirement to protect and improve forest, lakes, wildlife, etc. stating and reiterating that principle of sustainable development and precautionary principle.

11.4. Reliance was placed on a decision in the case of **M.C.Mehta v. Kamal Nath and others**, (1997) 1 SCC 388 where the Apex Court stressed the importance of ecology and public trust doctrine. On that basis, lease granted by the Government on various land for commercial purpose to a private company was quashed.

11.5 Reliance was placed on a decision in the case of **Intellectuals Forum v. State of A.P.**, (2006) 3 SCC 549 wherein the

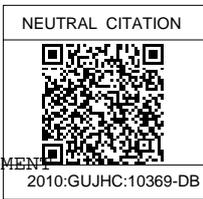


Apex Court set aside the allocation of tank bed land by the State Government for construction of houses. The Supreme Court stressed the requirement of conservation of natural resources. Reliance was also on a decision of the Hon'ble Supreme Court in the case of **Vellore Citizens' Welfare Forum v. Union of India**, (1996) 5 SCC 647 pertaining to the issue of pollution caused by industries wherein it has been observed that while industries are vital for country's development, principle of Sustainable Development has to be adopted as a balancing concept. The counsel also relied on a recent decision of the Apex Court dated 5.4.2010 in Civil Appeal No.52 of 2008 in the case of **M/s. Jayabheri Properties Pvt. Ltd v. State of Andhra Pradesh and others** wherein the issue of construction outer ring road connecting Hyderabad and Secunderabad cities disturbing waterbodies was involved.

12. Learned Advocate General appearing for the State Government stated that only after collecting proper reports from experts, the land was allotted to respondent No.4. Even thereafter, required safeguards have been provided. Further reports were called for. Acting on S.K.Shelat Committee's report, allotment of 54 hectares of land has been cancelled. Several measures required to be taken by the Company would ensure the capacity of the reservoir would increase.

12.1 He relied on a decision of the Apex Court in the case of **Susetha v. State of T.N. And others**, (2006) 6 SCC 543 wherein the Apex Court observed in para 20 as under:

“20. The Court has not, in the aforesaid decisions, laid down a law that alienation of the property held as a public trust is necessarily prohibited. What was emphasised was a higher decree of judicial scrutiny. The doctrine of sustainable development



although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on ipse dixit of the court.”

13. Learned counsel Shri Dushyant Dave appearing for Nirma Limited opposed the petition contending, inter alia, that no part of the allotted land to Nirma Limited is part of waterbody. He further contended that the Company has invested crores of rupees and at this belated stage, the petitioners have raised objections which should not be entertained. Reservoir was constructed only for controlling salinity and for ground water recharge. Our attention was drawn to the following decisions:

- (1) In the case of **D.L.F. Universal Ltd v. Prof. A. Lakshmi Sagar & Ors.**, (1998) 7 SCC 1 wherein the Supreme Court relied on the assessment of the expert body in development of land which was opposed on the ground that approval of scheme would adversely affect the quality and quantity of water.
- (2) In the case of **Delhi Development Authority v. Rajendra Singh & Ors.**, (2009) 8 SCC 582 wherein also the Apex Court relied on the expert opinion, such as, National Environmental Engineering Research Institute (NEERI) for approving change in use of land for Commonwealth Games.
- (3) In the case of **T.N. Godavarman Thirumulpad v. Union of India** (2006) 1 SCC 1, wherein the Apex Court discussed the issues of compensatory afforestation charges for loss of natural forests for other purposes.
- (4) The case of **R and M Trust v. Koramangala Residents Vigilance Group**, AIR 2005 SC 894 was cited to contend that delay would



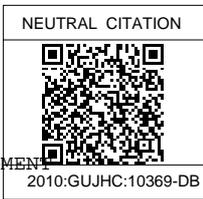
be fatal in case of public interest litigation.

14. At the outset, we find that objection to the petition by the respondent No.4 on the ground of delay and laches must be rejected. Soon after the allotment of land to respondent No.4 Company, there was resistance from villagers and others. This forced the Government to seek further reports on the likely impact on the reservoir. Last report of the S.K.Shelat Committee was available in 2009 and the Government acted upon it in December 2009. Entire issue was thus alive. Land allotment in favour of the Company had thus not achieved finality. We see no inordinate delay on part of the petitioners. We must view the delay in the background of likely impact of the project on large number of people.

Since long right to pollution free water and right of access to water have been recognized by the constitutional courts in the country as an integral part of right to life under Article 21 of the Constitution of India. It is also considered as human right.

In the case of S.R.Shah (supra), the Division Bench stressed the importance of water for the mankind and nature as well in the following manner:

“9. Water is essential to many of the mankind's most basic activities, such as agriculture, forestry, industry, power generation and recreation. Water being an integral part of the environment, its availability is indispensable to the efficient functioning of the biosphere. Without a safe, reliable and stable water supply, human and economic development would not be possible. Nearly every decision whether about housing, transportation, economic growth or developmental work is linked to the use of the water resources of the community. Fresh water is as essential to sustainable development as it is to life and water beyond its geographical,



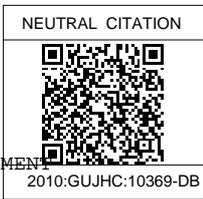
chemical, biological functions in the hydrological cycle, has the social, economic and environmental values that are interlined and mutually supportive. Safe water, adequate sanitation and education about hygiene are basic human rights that protect health, increase the sense of well-being and improve productivity. Water related leisure activities, such as water sports, contribute to a healthy life style. Human habitation near water resources was essential to the very existence of the human race and the ancient civilizations thrived near the vicinity of fresh water.”

In the book “Reforming Institutions in Water Resource Management – Policy and Performance for Sustainable Development” by Lin Crase and Vasant P. Gandhi, the importance of water resource management in India has been explained as follows:

“Water resource management is also critically important in India because of growing demand for food and because the incomes and employment of 60-70 per cent of the population depend directly or indirectly on agriculture. Small-sized private farms dominate Indian agriculture and the problem of water management is becoming increasingly serious as development proceeds. Local scarcities are now common and frequent. In the context of the challenges of water resource management in India, standard neoclassical theories usually have little to offer in terms of practical and durable solutions.”

Such an important issue, therefore, cannot be scuttled on the ground of delay and laches which even otherwise we do not find exists in the present case.

15. Coming to the main challenge, from the material on record, it is clear that out of total 268 hectares of land initially allotted to Nirma Limited, 100 hectares comprise of land which was part of submerged area of Samadhiyala Bandhara. Upon submission of Shelat Committee Report, the State Government accepted one of the three alternatives suggested by the Committee and by its further order dated 8<sup>th</sup> December



2009 directed respondent No.4 Company to return 54 hectares of land out of 100 hectares falling part of Bandhara submergence area. Nevertheless, another 46 hectares remained with the Company which is part of Bandhara land.

16. Though it has been contended on behalf of the respondents that the sole purpose of construction of wastew weir was to control salinity by arresting sea water, the same flies on the face of the official records. In order dated 25<sup>th</sup> June 1999 passed by the Collector, Bhavnagar, produced at page 769/A to the compilation, by which gaucher land of various villages were transferred to the salinity control department for the Samadhiyala Bandhara scheme, it is clearly recorded that “the land in question is required to be transferred for the purpose of scheme of Samadhiyala Bandhara. The main object by way of this scheme of Bandhara is to restrict the increase of salinity of sea and for maintaining agriculture land as the salinity of the land may be minimized and to resolve the problem of drinking water. It is proper to transfer the land in question to the salinity control department under the beneficial scheme which is going to give advantage to the large number of people of the society”. Even in the communication dated 19.5.2006 from the Superintending Engineer, Salinity Entrance Redress Circle, Rajkot, it is recorded that upon construction of three drains as suggested, there will be sufficient flow of water into the bed and 250 hectares of land in the region and 35 wells which depend on Bandhara there would be no adverse impact. Even in the report submitted by the Office of the Executive Engineer, Salinity Control Division, Bhavnagar to the S.K.Shelat Committee, which the Committee has exhibited as document M-1, it is stated that “Samadhiyala Bandhara Project near Samadhiyala village of Rajula Taluka of Amreli District on a local rivulet has been completed in July 2000. In this scheme 62.31 M.C.Ft. sweet water is



stored. From this project, 1000 hectares of lands of Dolia, Padhiyarka and Vangar villages of Mahuva Taluka of Bhavnagar District, Samadhiyala and Patva villages of Rajula Taluka of Amreli District benefit by re-charge and lift irrigation”. This report also gives the break up of such benefits to agriculture lands in the annexure. It is stated that 700 hectares of land benefit out of ground water recharge and 300 hectares by lift irrigation. The season of irrigation however shown is Rabi meaning thereby that water for irrigation from the reservoir is available for only one season after monsoon and water does not last till summer season.

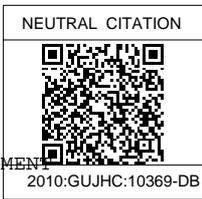
17. It can thus be clearly seen that as per the official records, construction of wasteweir serves three different purposes. First and foremost, arrest spread of salinity by preventing sea-water from entering the main land. However, it simultaneously arrests the sweet water flowing in monsoon season from draining into the see. This creates a reservoir with a maximum capacity of 62.31 million cubic feet. This collection of sweet water improves the sub-soil water quantity and quality. It also permits irrigation of nearby fields through lift irrigation. Existence of Samadhiyala Bandhara, therefore, cannot be viewed as serving a narrow purpose of only prevention of salinity. It's irrigation potential is however limited to Rabi season only.

18. It is true that the Government has suggested various measures to ensure that the reservoir is not adversely affected. As already noted, firstly, 75 hectares of Government waste land is to be excavated at the cost of the Company to add to the capacity of the reservoir to compensate for the loss of 100 hectares of land which was initially allotted to the Company out of submergence area of the reservoir. Since indisputably, the land allotted to the Company would under normal



circumstances obstruct the natural flow of water into the reservoir through different slopes of low lying areas, the Government has directed the Company to construct and maintain three drain canals shown as Canal A, B and C in the maps presented before us (and more particularly referred to in report Annexure U) which are of on average approximately 13 meters width. This according to the reports of Salinity Control Department would ensure that the inflow of rainwater in the reservoir will not be reduced. As per the calculations of the respondents, after the Company returns 54 hectares of land, excavates approximately 40 hectares out of it as directed by the Government order dated 8<sup>th</sup> December 2009, and also upon excavation of 75 hectares of Government waste land, the total water holding capacity of the reservoir, if at all, would increase.

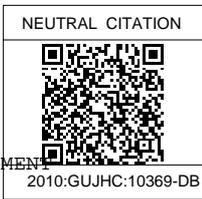
19. Despite such measures suggested by the Government and presented before us, we were of the view that under no circumstances, the Company can be parted with 100 hectares of land out of the submergence area of the reservoir. We are also clear that out of the land allotted to the Company, 100 hectares of land was out of the submergence area of Samadhiyala Bandhara. This is unequivocally clear from the several reports of the Salinity Control Department as well as from the Shelat Committee Report. On this fact, there is neither a dispute possible, none raised. We had, therefore, put to the counsel whether the Company would surrender additional 46 hectares of land so that the total 100 hectares of land which the Company was allotted forming part of the reservoir would be restored. Counsel for the Company readily agreed to the suggestion and also agreed to file an undertaking to this effect with only one rider that the Company cannot afford to return such 46 hectares of land in one block adjacent to 54 hectares already ordered to be returned.



20. Accordingly, an affidavit dated 16<sup>th</sup> April 2010 has been filed by one V.N.Desai, Vice President of Nirma Limited, in which it is stated that in addition to surrender of 54 hectares of land pursuant to the Government order dated 8.12.09, respondent No.4 is willing to surrender further 46 hectares of land as demarcated in green colour on the map attached to the affidavit at Annexure I to the said affidavit. It is clarified that this 46 hectares of land does not include any area comprising of the canals to be constructed by the Company.

21. Question is whether all the measures provided by the Government coupled with the surrender of additional 46 hectares of land is sufficient safeguard to protect and preserve the Samadhiyala Bandhara reservoir so as to permit respondent No.4 Company to carry on with the further construction of the cement factory. In our view, with certain minor fine tuning and further conditions, it would be so.

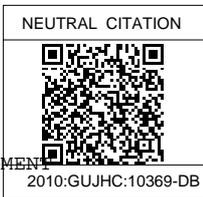
22. Firstly further surrendering of 46 hectares of land would ensure that against total allotment of 100 hectares of submergence land of Samadhiyala Bandhara Reservoir, the Company would have surrendered equal area. We are conscious that it will not be exactly the same land. However, we have considered the fact that the Reservoir was created by construction of wasteweir in the year 1999 and is thus an artificial man-made lake. Without in any manner affecting its water carrying capacity or the total inflow of water, if by minor modifications, a major industry can be sustained in a rural area, in our view the Court should not interject by ignoring and discarding the reports of several agencies comprising experts in the field. Secondly, in addition to restoring 100 hectares of land, 75 hectares of additional Government land is to be excavated to increase the water carrying capacity of the reservoir. The



Company has also agreed to excavate further approximately 40 hectares of land out of 54 hectares to be surrendered under order dated 8<sup>th</sup> December 2009 passed by the Government. Thirdly, pursuant to our suggestion, as accepted by the Company, further 46 hectares of land will be returned. This can also be ordered to be excavated as per the suggestions of the Government Agencies. Fourthly, the Company is required to construct and maintain three canals which will act as drains into the Reservoir of rainwater from surrounding area. Fifthly, the Company is prevented from using any part of water of reservoir for its consumption.

23. Considering the above measures and taking into account the reports of various agencies, there is nothing before us to hold that even after implementation of these measures, either the water carrying capacity of the Reservoir would reduce or the availability of water during rainy season will in any manner be adversely affected. Significantly, surrendering of total 100 hectares of land by the Company is one of the alternatives suggested by the Shelat Committee Report also. Here also, we are aware that the location of the land to be returned differs.

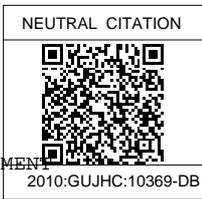
24. In the case of Shailesh R. Shah (supra), the Division Bench was considering the question of protecting, preserving and maintaining the waterbodies in the State and safeguarding them against encroachments. The issues raised by the petitioners pertained to Chandola Lake and the encroachments surrounding in the city of Ahmedabad as also another lake called Lakhudi Talavadi in Vastrapur area of the city of Ahmedabad. In the said decision, the Division Bench considered various judgments of the High Court and the Supreme Court and stressed on the responsibility of the Government and other Governmental agencies such



as Municipalities and Panchayats to preserve and maintain waterbodies. It was observed that without removing the encroachments, the waterbodies under encroachments can hardly be rejuvenated. In this back ground, several directions were issued including to the Government to notify all lakes and ponds as may have been shown in the areas covered by the Town Planning Scheme and the Development Schemes as also those in the areas not covered throughout the State. The Government, Area Development Authorities and Local Bodies were directed to protect, maintain and preserve all waterbodies in the State which are identified as per the development plans, town planning schemes and the Government records and which will be notified in the official gazette as water bodies and they will not be alienated or transferred or put to any use other than as waterbodies.

In the present case, we do find that though initially substantial portion of the land which was part of submergence area of the Samadhiyala Bandhara was sought to be alienated in favour of respondent No.4 Company, by combination of orders passed by the Government, undertaking given by respondent No.4 Company and the directions that we are in the process of issuing in this order, virtually the entire area would stand restored to the Government.

In addition to return of 100 hectares of land to the Government, various measures directed by the Government as well as by us in the present order, we feel would, to a large degree restore the original position. In that view of the matter, we find that there would be substantial compliance with the directions of the Division Bench in the case of S.R.Shah (supra). Nothing stated in this order is, however, meant to dilute the said directions in any manner. However, when we find that by substantial compliance with the said directions and while

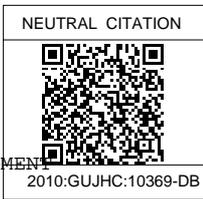


simultaneously preserving the waterbody, if an industry in which substantial investment has already been made can be allowed to be set up, such project should not be stalled. By preserving waterbody, if industrial development can still be achieved, surely the same should not be objected to. The cement plant would bring in substantial investment in addition to generating employment in the region and would also sustain ancillary and incidental industries and businesses.

25. Despite such optimism, we would like to trade cautiously and therefore, we are of the view that certain further guidelines and directions are required to be issued to ensure that the Company implements its obligations fully and further that the effect of construction of factory on the Reservoir is closely monitored.

26. Under the circumstances, this petition is disposed of with following directions:

- 1) Respondent No.4 Company shall, in addition to 54 hectares of land ordered to be surrendered by the Government in its order dated 8<sup>th</sup> December 2009, surrender further 46 hectares of land indicated in the map at Annexure I to the affidavit dated 16<sup>th</sup> April 2010, copy of which map is attached to this judgment at Exh.A and shall form part of this judgment. No part of this 46 hectares will include any land to be occupied by canals which the Company is obliged to construct;
- 2) Respondent No.4 Company shall strictly adhere to its obligation to construct canals A, B and C shown in the official maps and maintain the same as directed by the Government and further ensure that it is desilted periodically, so that the flow of rain water from the surrounding areas to the Reservoir is not obstructed;



- 3) Respondent No.4 Company shall excavate and deepen 75 hectares of Government waste land as directed by the Government;
- 4) Respondent No.4 shall excavate and deepen part of 54 hectares of land returned by it under the Government order dated 8<sup>th</sup> December 2009;
- 5) Respondent No.4 shall excavate and deepen any part of the additional 46 hectares of land as may be suggested by the Government. For this purpose, the Government shall have a survey carried out and make suggestions for excavation of the land as per the topography of the area to ensure that this additionally surrendered land also forms part of Samadiyala Bandhara and increases the water carrying capacity of the Reservoir.
- 6) Respondent No.4 Company shall not use any water from the reservoir for its activities.
- 7) Respondent No.4 Company shall ensure that its activities shall not pollute or contaminate the Reservoir water in any manner.
- 8) It will be open for the respondent No.4 Company to recommence its construction of the factory on condition that within four weeks from today, the Company after proper measurements by the DILR surrenders further 46 hectares of land as already directed hereinabove;
- 9) The Government shall ensure that respondent No.4 Company has complied with all the above directions before issuing certificate of completion of construction or before granting permission to start the factory;
- 10) The Government shall, on the basis of the records of rainfall in the region and the total amount of water collected in the Reservoir immediately after the monsoon, judge whether on account of setting up of the factory there has been any significant reduction



in income of the fresh water in the Reservoir. If so, the Government shall require respondent No.4 Company to take such remedial measures as may be found necessary.

27. With the above directions, the petition is disposed of.

(S.J.Mukhopadhaya, C.J.)

(Akil Kureshi, J.)

28. At this stage, counsel for the petitioner prayed for stay of this judgment for a period of four weeks. He has also requested that a certificate of fitness under Article 133 read with Article 134A of the Constitution that the case involves substantial question of law of general importance which needs to be decided by the Supreme, be granted.

29. We find that in the present petition stay against further construction was granted only on 16<sup>th</sup> March 2010 before which, during the pendency of this petition, no stay was granted by the High Court. In this judgment even while permitting further construction of the factory of respondent No.4, necessary safeguards have been provided. Request for stay of the judgment therefore is refused. With respect to certificate of fitness as prayed for, we do not find that the case involves substantial question of law of general importance which needs to be decided by the Supreme Court. Said request is also rejected.

(S.J.Mukhopadhaya, C.J.)

(vjn)



(Akil Kureshi, J.)

**ANNEXURE-R-7**

MCA/1473/2010 Application No.: O/42045/2010 Order Date: 27/09/2010 Page 4/11

MCA/1473/2010

1/8

JUDGMENT

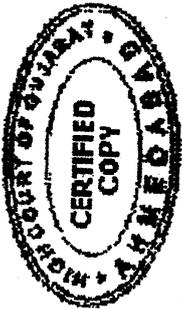
IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLICATION No. 1473 of 2010

In

SPECIAL CIVIL APPLICATION No. 3477 of 2009

For Approval and Signature:

HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA  
HONOURABLE MR. JUSTICE AKIL KURESHIselh  
selh

=====

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

no

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**SHREE MAHUVA BANDHARA KHETIWADI PARIYAVARAN RACHAV**

**SAMITTEE & 1 - Applicant(s)**

Versus

**UNION OF INDIA & 5 - Opponent(s)**

=====

Appearance :

MR SB VAKIL, SENIOR ADVOCATE, WITH MR AJ YAGNIK for Applicant(s) : 1 - 2.

MR PS CHAMPANERI for Opponent(s) : 1,

MR RITURAJ M MEENA for Opponent(s) : 2,

MR KAMAL TRIVEDI, AG WITH MS SANGITA VISHEN, AGP for Opponent(s) : 3, 6,

MR DUSHYANT DAVE, SR. ADVOCATE WITH MR RAKESH GUPTA, MR RAMESH SINGH & MR

ABHISHEK MEHTA FOR M/S TRIVEDI & GUPTA for Opponent(s) : 4,

MR MD PANDYA for Opponent(s) : 5,

=====

**CORAM : HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA**

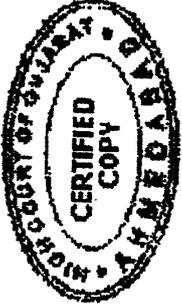
and

**HONOURABLE MR. JUSTICE AKIL KURESHI**

Date : 27/09/2010

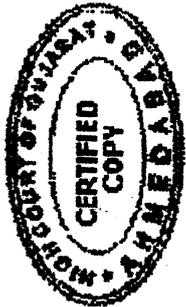
## CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)



1. Applicants are the original petitioners. They seek review of judgment dated 26<sup>th</sup> April 2010 passed in Special Civil Application No.3477 of 2019.
2. In the writ petition filed in public interest, the applicants had prayed for a direction to restore possession of the land given to respondent No.4 Company which formed part of Samadhiyala Check-dam and the gaucher land of the villages and the natural lake. It was also prayed that the authorities should incorporate in records the existence of water reservoir. The petition was disposed of by this Court by the judgment and order dated 26<sup>th</sup> April 2010 giving certain guidelines and directions to ensure that the Company implements its assurances and to closely monitor the effect of construction of factory on the Reservoir.
3. Aggrieved by the said decision, the petitioners have approached the Apex Court. Pending SLP, they also filed the present review application. We have heard learned counsel for the parties at length.
4. Learned Senior Advocate Shri SB Vakil for the applicants, painstakingly took us through the entire judgment under review. He contended that certain contentions raised by the petitioners were not decided. In particular, he argued that the question of canceling environmental clearance was not dealt with. He pointed out that as per the applicants, the Company had obtained environmental clearance from

the Ministry of Environment and Forest by supplying inaccurate details. He further argued that the petition was disposed of without notice to Union of India.



4.1 He submitted that there was no basis to hold that after the Company returns 54 hectares of land and excavates approximately 40 acres out of this land as directed by the Government as also upon excavation of 75 hectares of land, total water holding capacity of the reservoir if at all would increase.

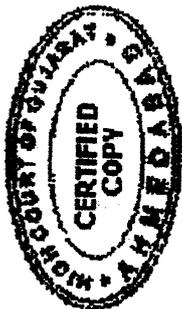
4.2 He contended that the decision is contrary to the ratio laid by the judgment of this Court in the case of **Shailesh R. Shah v. State of Gujarat & ors.** 2002(3) GLH 642 wherein this Court has prohibited the Government from divesting any part of the land forming part of waterbodies of the State.

5. On the other hand, learned Advocate General appearing for the State opposed the review petition. He contended that the applicants have produced bulky records and the counsel have made lengthy arguments and that itself would suggest that error, if any, in the judgment is not apparent on the face of the record.

6. Counsel for the Union of India stated that environmental clearance was given to the project after following due process.

7. Counsel for respondent No.4 Company also contended that this is not a case for review. The Company had agreed to several terms suggested by the Court. Previously before the Government also, the Company had surrendered 54 hectares of land. The Company will take all steps as directed in the judgment.

8. Counsel for the petitioners referred to number of judgments mainly on the point that review power is available both on procedural and substantive review. Since this aspect is not in dispute, it is not necessary to refer to these judgments. On behalf of the respondents, judgments were cited to show cases in which review would be permitted. We do not propose to refer to all such judgments to avoid repetition except the following:



8.1 In the case of *A.T.Sharma v. A.P.Sharma*, AIR 1979 SC 1047, the Apex Court observed as follows:

"It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* (AIR 1963 SC 1909) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Sub-ordinate Court."

8.2 In the case of *Smt.Meera Bhanja v. Smt.Nirmala Kumari Chaudhury*, AIR 1995 SC 455, the Supreme Court observed as under:

"Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that

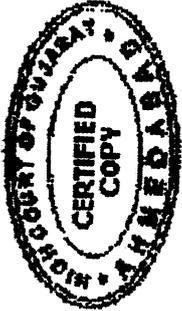
they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137, wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

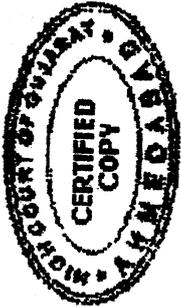
"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

8.3 In the case of *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715, the Apex Court observed as under:

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise"."

9. Bearing in mind the above parameters and adverting to the contentions raised on behalf of the applicants, we find that:





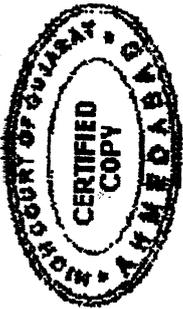
1) In the main petition, no prayer was made against Union of India. As already noted two-fold prayer made in the petition was (i) with respect to cancellation of allotment of land in favour of respondent No.4 Company which formed part of Bandhara and the reservoir or the gaucher land and (ii) for notification of the land forming part of the water-body. There was no prayer for cancellation of environmental clearance granted by the Union of India. Question of notice to respondent No.1 would arise only when any order is to be passed against it. Since obviously we had no intention of issuing any direction or to pass any order adverse to the Union of India, there was no necessity of issuing any notice to such respondent. In any case, the petitioners cannot make any grievance of non-issuance of notice to respondent No.1.

2) With respect to the question of increased capacity of the reservoir, in para 18 of the judgment, we had recorded that the Company has been directed to take steps by the Government such as excavating 75 hectares of Government waste land at their costs and also to construct and maintain three drain canals. In this context, it is observed as under:

"This according to the reports of Salinity Control Department would ensure that the inflow of rainwater in the reservoir will not be reduced. As per the calculations of the respondents, after the Company returns 54 hectares of land, excavates approximately 40 hectares out of it as directed by the Government order dated 8th December 2009, and also upon excavation of 75 hectares of Government waste land, the total water holding capacity of the reservoir, if at all, would increase."

These observations were based on the Government order dated

8.12.09 wherein it is recorded that "upon surrender of 54 acres of land (by the Company) of the periphery approximately 40 hectares of land will be available for storage of water upon excavation where ground level is six meters. If such land is excavated down to 2.82 meters, water storing capacity can be increased 14.12 million cubic feet. This would result in increase of 22.7 per cent in the existing capacity of 62.31 million cubic feet. For this purpose, Nirma Company shall have to undertake necessary steps at its own cost in 40 hectares of land under the guidance of the Irrigation Department."

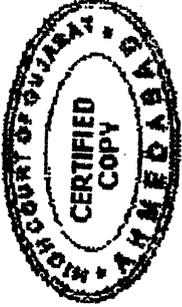


10. With respect to the ratio of the Division Bench judgment in the case of Shailesh Shah (supra), we had taken note of the said judgment in para 24 of the judgment and observed as under:

"In addition to return of 100 hectares of land to the Government, various measures directed by the Government as well as by us in the present order, we feel would, to a large degree restore the original position. In that view of the matter, we find that there would be substantial compliance with the directions of the Division Bench in the case of S.R.Shah (supra). Nothing stated in this order is, however, meant to dilute the said directions in any manner. However, when we find that by substantial compliance with the said directions and while simultaneously preserving the waterbody, if an industry in which substantial investment has already been made can be allowed to be set up, such project should not be stalled. By preserving waterbody, if industrial development can still be achieved, surely the same should not be objected to. The cement plant would bring in substantial investment in addition to generating employment in the region and would also sustain ancillary and incidental industries and businesses."

Since we have noticed the decision in the case of Shailesh Shah and also discussed its application to the present case, this is no ground for review.

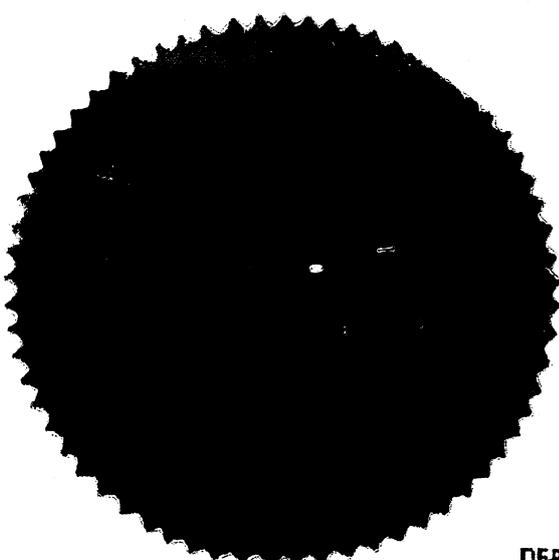
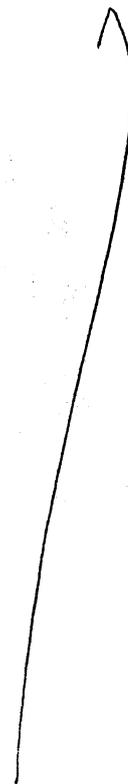
11. In the result, we find no merit in the application for review. The same is therefore dismissed.



(vjn)

*Sd/-*  
(S.J. Mukhopadhaya, C.J.)

*Sd/-*  
(Akil Kureshi, J.)



By Order of the Court  
*Sd/- U. J. J. Adega*  
Deputy Registrar 4/10/10

TRUE COPY  
DEPUTY / ASSISTANT REGISTRAR  
THIS DAY OF

*11/10/10*



**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH AT NEW DELHI,  
NEW DELHI**

**Appeal No. 04 of 2012**

**ANNEXURE-R-8**

**In the matter of:**

1. Nirma Ltd.  
Nirma House  
Ashram Road,  
Ahmedabad



..... Applicants

Versus

1. Ministry of Environment & Forests  
Government of India  
Parayavaran Bhawan,  
CGO Complex,  
Lodhi Road, New Delhi- 110003
2. Revenue Department  
(Through: Secretary)  
State of Gujarat  
Sachivalaya, Gandhi Nagar,  
Gujarat
3. Gujarat Pollution Control Board  
Through its Member Secretary  
Sector 10-A, Parayavaran Bhawan  
Opp. Bij Nigam  
Gandhinagar-382010
4. Shree Mahna Bandhara Khetiwadi  
Pariyavaran Bachav Samittee,  
Through its Secretary  
At SPO Madhiya  
District Bhavnagar,  
Gujarat

..... Respondents

**Counsel for appellant:**

Mr. Dushyant Dave, sr. advocate along with  
Mr. Ramesh Singh, Mr. Prashanto sen, Mr. Ashish  
Goel and Ms. Anushruti, Advs. for appellant

**Counsel for Respondents:**

Mr. Vikas Malhotra and Mr. M.P. Sahay Advs.  
for respondent No. 1

Ms. Preeti Bhardwaj and Mr. Dhruve Pal Adv.  
for Ms. Hemantika, Advs. for respondent no. 2 & 3.

Mr. Anand Yagnik and Mr. Abhimanue Shrestha,  
Advs. for Respondent no. 4

**Present:**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**

**Hon'ble Mr. Justice U.D. Salvi (Judicial Member)**

**Hon'ble Dr. D.K. Agrawal (Expert Member)**

**Hon'ble Mr. Dr. G.K. Pandey (Expert Member)**

**JUDGMENT**

**Per U.D. Salvi J.(Judicial Member)**

**Dated: 14<sup>th</sup> January, 2015**

1. The Present Appeal is preferred against the order dated 1<sup>st</sup> December, 2011 issued by the Respondent No. 1- Ministry of Environment and Forest (shortly referred to MoEF) under section 5 of the Environment (protection) Act, 1986 ("hereinafter referred to as the Act") to revoke the Environment Clearance dated 8<sup>th</sup> December, 2008 to the cement plant (Cement plant 1.91MTPA, 1.50 Clinker), Coke oven plant (1.5 LTPA), and Captive Power Plant (50 MW) to be established and operated near village Padhiyarka Taluka, Mahuva, District Bhavnagar, Gujarat.
2. Briefly, speaking it is the case of the appellant that the Environment Clearance granted after detailed and

transparent enquiry in accordance with the provision of Act/Rules has been reviewed and recalled on account of extraneous and political considerations. A glance at the impugned order dated 1<sup>st</sup> December, 2011 gives panoramic view of respondent's case. It appears that the Expert Committee of five independent reputed scientists was constituted by the Hon'ble Supreme Court of India vide order dated 18<sup>th</sup> March, 2011 in special leave to appeal (civil) no. 14698/2010 from the Judgment and order dated 24<sup>th</sup> June, 2010 in 3477/2009 of the High Court of Gujarat at Ahmadabad disposing of the petition (PIL opposing setting up of the cement plant with captive electricity generation plant in question) to visit the site and answer the following issues:

- a. Whether the lands in question were wet lands/water bodies?
  - b. Whether the project could come up on such wetlands/water bodies and if so what would be its impact on Environment? Would it lead to Environmental degradation?
  - c. If at all the project could come up what steps the user agencies would take in the interest of Environment Protection;
  - d. Prescribed current situation of the project may also be indicated by the Expert body.
3. In pursuance to the report of the Expert Committee, the impugned order further reveals, the **EAC** recommended **revocation** of the **environment clearance** on the ground that it was initially accorded on **undisclosed** and

**incorrect postulates;** Acting on the order dated 9<sup>th</sup> September, 2011 of the Hon'ble Supreme Court in the said SLP, the MoEF on examination of the material on record, namely, the Expert Committee report and the record of hearings given to the project proponent and the additional documents submitted by the project proponent revoked the environment clearance granted to the project of the appellants referred to herein-above.

4. Some of the facts giving the background of the land allotted to the project proponent, admeasuring 268-86-52 Ha. of villages Vangar, Padhiyarka and Doliya for total consideration of Rs. 8,30,39,736/- by the State Government vide order dated 27<sup>th</sup> December, 2007 can hardly be disputed. Topo sheet of the year 1952 of the land in question described the terrain as a waste land. On 17<sup>th</sup> July, 1978 the Government of Gujarat appointed a High Level Committee for the purpose of chalking out programme for fixing priority of works to be undertaken to arrest salinity ingress in the coastal areas of Saurashtra and Kutch. On 2<sup>nd</sup> March, 1983 the Committee recommended the construction of Bandharas and indicated detail regulation amongst other measures to arrest salinity ingress from flooding the areas of cultivation. On 25<sup>th</sup> May, 1999 the Collector, Bhavnagar passed an order transferring Government waste land and Gaucher land totalling to the tune of 222-06-24 Ha.(58-

07-26 Ha. of village Doliya and 163-98-98 Ha. of village Padhiyarka) to Executive Engineer, Salinity Control Department, Bhavnagar for the purposes of developing Samadhiyala Bandhara. On 17<sup>th</sup> June, 1999 the collector Amreli passed an order transferring Government waste land as well as Gaucher land totalling to the tune 178-55-03 Ha. (103-55-03 Ha. of village Samadhiyala and 75-00-00 Ha. of village Patva) of Taluka, District Amreli to the Executive Engineer Salinity Control Department, Bhavnagar. Thus, the total land transferred in favour of Executive Engineer, Salinity Control Department for the aforesaid purpose was 400-61-27 Ha. Necessary order of transfer was passed after the order of resumption was passed in respect of Gaucher land as per the provisions of 108 of Panchayats Act. The construction work of Samadhiyala Bandhara was over in the July, 2000.

5. According to the appellant an application for grant of land of Vangar, Padhiyarka and Doliya was made to the Collector on 24<sup>th</sup> April, 2002. On 5<sup>th</sup> April, 2004 the Mamladar, Mahuva gave his report in respect of demand of the land referred to above with following recommendations;

- I. The land in question is not claimed by any Government or Private Body and is also not useful for agricultural.
- II. Gram Panchayat of village Vangarhas passed resolution agreeing to allot land in question including the Gaucher land to M/s Nirma Ltd.

- III. Part of the land in question was transferred to the Salinity Control Department, but the said Department does not require the land anymore and so the same may be transferred to M/s Nirma Ltd.
- IV. Mahuva Taluka it is not a developed area having no industry and hence the proposed plants will provide job opportunities to local villagers who may not have to migrate to other places seeking jobs which will also help for overall development of the area.
6. The Gujarat Pollution Control Board (**GPCB**), the respondent no. 3, opined on 30<sup>th</sup> April, 2004 that the Board has **no objections** for the allotment of proposed land to the project proponent, **provided**, it shall **obtain environment clearance** from MoEF, New Delhi as per the EIA Notification dated 27<sup>th</sup> January, 1994. The Executive Engineer, Salinity Control Department, Bhavnagar gave his report on 22<sup>nd</sup> April, 2004 favouring the proposed transfer of land of Samadhiala Bandhara to the company. The Salinity Control Department on 13<sup>th</sup> December, 2005 gave a report in the matter of releasing some of the Bandhara land for industrial purposes subject to certain terms and conditions. Following a public hearing held the Executive Engineer, Salinity Control Department, Bhavnagar gave a positive report for allocation of the land in question to the project on 16<sup>th</sup> May, 2006.
7. It is an undisputed fact that the policy regarding the Conservation of wet land was issued by MoEF on 2<sup>nd</sup> February, 2007; and an application for grant of

Environmental Clearance to the project was made by the appellants to MoEF on 5<sup>th</sup> September, 2007.

8. On this backdrop, admittedly, the Government of Gujarat passed resolution approving the grant of land ad measure 268-52-5 Ha. of the said villages to the Company on some material terms and conditions. Which are reproduced herein below:

*“iv) For equalizing the storage of rainwater, the company would undertake necessary digging of the lands of S.Nos. 27 and 179 of Samadhiyala village, which is Government waste/gaucher land at its own expense as suggested by the Superintending Engineer, Central Design Organisation Gandhi Nagar.*

*v) Three channels i.e. two approach channels with one connecting channel, will have to be made as suggested by the NWRWS&K Department to draw the rain water in Samadhiyala Bandhara and the repairs and maintenance of these channels will have to be made by the company at its own expenses. Further, in case of any damage caused due to rainy water, the company will be solely responsible to carry out the works in that regard at its own expense.*

*vi) The company will have to make separate arrangement for necessary quantity of water required for drinking and industrial use and that it would not make use of the bandhara water, directly or indirectly.*

*vii) The company will have to carry out the additional work as suggested by the Central Design Organisation, Gandhi Nagar by making reverse small channels, i.e. reverse gradient channels for conveying water at the field locations.*

*Viii) The company will have to carry out all the above works under Control of NWRWS&K Department.*

9. The Collector Bhavnagar passed consequential order allotting the aforesaid land to the company for setting up the said project on 16<sup>th</sup> April, 2008.

10. Chronology of events leading to the grant of environment clearance in question is as under:
1. On 5<sup>th</sup> September, 2007 an application for environment clearance was made to MoEF.
  2. On 27<sup>th</sup> February, 2008 terms of Reference (TOR) was issued by the MoEF.
  3. On 14<sup>th</sup> July, 2008 draft EIA report was submitted to GPCB.
  4. On 1<sup>st</sup> August, 2008 Notice of Public Hearing was given by the GPCB in Gujarati as well as English newspaper.
  5. On 9<sup>th</sup> September, 2008 the GPCB conducted public hearing in the matter of Environment Clearance to the project and the minutes are sent to MoEF.
  6. On 6<sup>th</sup> October, 2008 the final EIA report submitted to MoEF.
  7. On 8-11<sup>th</sup> December, 2008 the MoEF granted environment clearance to the appellants.
  8. On 17<sup>th</sup> December, 2008 a newspaper advertisement regarding the grant of environment clearance appears in Indian Express and Aaj Kal.
  9. On 17<sup>th</sup> December, 2008 Collector Bhavnagar conducted a public hearing in respect to the land allotted to the Nirma Ltd.
11. The Respondent No. 4 Shree Mahuva Bandhara Khetiwadi Pariyavaran Bachav Samittee filed PIL-SCA 3477/2009 opposing the said project before the Hon'ble Gujarat High Court on 25<sup>th</sup> March, 2009. This was followed by grant of consent to establish the said cement and captive power plant by the GPCB on 25<sup>th</sup> May, 2009. On the representation made by Dr. Kanubhai Kalsariyad, the State Government appointed an expert committee headed by Shri S.K Shelat,

then learned Advisor to Hon'ble Chief Minister and other experts in the field to visit the site, hear representations of the affected persons, consider the suggestions and objections, obtain reports/opinions source from various experts in the field and to report to the Government on the issue, on 29<sup>th</sup> May, 2009. The Hon'ble High Court directed the appellants to place their grievances before the said Committee and the Committee was directed to take note of the same including the note of other aspects in the matter and to take proper decisions accordingly, vide order dated 26<sup>th</sup> June, 2009. The Shelat Committee accordingly gave its report on 4<sup>th</sup> August, 2009. The State Government formed a sub-committee of the ministers to consider the said report and the said sub-committee gave its report and made following recommendations on 19<sup>th</sup> November, 2009:

- (i) Out of the initial allotment of 268 hectares of land to the company for its proposed cement project, 54 hectares of land from the south should be returned back to the State Government and that the company should give consent in writing about the same.
- (ii) Out of the aforesaid 54 hectares of land, after leaving periphery area, the company should deepen 40 hectares of land so as to increase the water capacity to the extent of 22.7 %.
- (iii) As per the expert opinion of the Government of India undertaking called WAPCOS, the company should deepen about 62 hectares of land out of the available area of 75 hectares, so as to increase the

capacity of Bandhara water by 21.23 mcft (million cubic feet). The company shall have to undertake the said activity under the guidance of the Irrigation Department.

12. According to the appellant there occurred heavy monsoon in the year 2005 resulting in temporary submergence of Bandhara land for a few months; and the sub-committee had taken into considerations the record figures in respect of submergence of land in the said year into consideration as benchmark for calculating the rain water conservation capacity of Bhandhara land for the purposes of making the aforesaid recommendations. The State Government issued a GR dated in terms of the recommendations made by the sub-committee in its report dated 19<sup>th</sup> November, 2009. The appellants gave a written consent to surrender admeasuring 54 Ha. as per the GR 8<sup>th</sup> December, 2009 on 9<sup>th</sup> December, 2009.
13. The Hon'ble Gujarat High Court vide order dated 16<sup>th</sup> December, 2009 directed the appellants to demarcate 54 Ha. of land; and accordingly on the 54 ha. of land of village Doliya was demarcated and surrendered by the appellant on 23<sup>rd</sup> December, 2009.
14. After hearing the parties and considering the facts and material on record, particularly, the Government order dated 16<sup>th</sup> April, 2008 allotting 268.86.56 Ha. of land on certain conditions, detailed report of the salinity division on the

impact of construction of factory on the Bhandhara reservoir, Shelat Committee report GR- 8<sup>th</sup> December, 2009. Shailesh R Shah's Case, various pronouncement of the Apex court and appellants willingness to surrender additional 46 Ha. of land, the Hon'ble High Court of Gujarat disposed off the PIL-SCA3477/09 with the following directions:

*26. Under the circumstances, this petition is disposed of with following directions:*

- 1) Respondent No. 4 Company shall, in addition to 54 hectares of land ordered to be surrendered by the Government in its order dated 8<sup>th</sup> December 2009, surrender further 46 hectares of land indicated in the map at Annexure I to the affidavit dated 16<sup>th</sup> April 2010, copy of which map is attached to this Judgment at Exh. A and shall include any land to be occupied by canals which company is obliged to construct;*
- 2) Respondent No. 4 Company shall strictly adhere to its obligation to construct canals A,B and C shown in the official maps and maintain the same as directed by the Government and further ensure that it is desilted periodically, so that the flow of rain water from the surrounding areas to the Reservoir is not obstructed;*
- 3) Respondent No. 4 Company shall excavate and deepen 75 hectares of Government waste land as directed by the Government;*
- 4) Respondent No. 4 shall excavate and deepen part of 54 hectares of land returned by it under the Government order dated 8<sup>th</sup> December, 2009;*
- 5) Respondent No. 4 shall excavate and deepen any part of the additional 46 hectares of land as may be suggested by the Government. For this purpose, the Government shall have a survey carried out and make suggestions for*

*excavation of the land as per the topography of the area to ensure that this additionally surrendered land also forms part of Samadiyala Bandhara and increase the water carrying capacity of the Reservoir.*

6) *Respondent No. 4 Company shall not use any water form reservoir for its activities.*

7) *Respondent No. 4 Company shall ensure that its activities shall not pollute or contaminate the Reservoir water in any manner.*

8) *It will be open for the respondent no. 4 Company to recommence its construction of the factory on condition that within four weeks from today, the company after proper measurements by the DILR surrenders further 46 hectares of land as already directed herein above;*

9) *The Government shall ensure that respondent no. 4 Company has complied with all the above directions before issuing certificate of completion of construction or before granting permission to start the factory;*

10) *The Government shall, on the basis of the records of rainfall in the region and the total amount of water collected in the Reservoir immediately after the monsoon, judge whether on account of setting up of the factory there has been any significant reduction in income of the fresh water in the Reservoir. If so, the Government shall require respondent No.4 Company to take such remedial measures as may be found necessary.*

15. Order disposing of SCA No. 3477/2009 was challenged by the respondent no. 4 and one Khimja Bhai Barariya by preferring a two separate SLP's into (SLP No. 1501/10 and SLP No. 14698/10 respectively) before the Hon'ble Apex Court in the Month of May, 2010. A Review Petition seeking review of the Judgment and order dated 26.04.2010 being MCA No. 1473 of

2010 was also filed by the same parties initiating the SLP on 14.06.2010. On the orders of the Hon'ble Apex Court the Review Petition was expeditiously heard and dismissed on 27.09.2010.

16. During pendency of the SLP's before the Hon'ble Apex Court the respondent no. 1 MoEF issued a notification regarding Wetland (Conservation and Management) Rules 2010 on 04.12.2010. However, the MoEF filed an affidavit supporting the project pursuant to the directions of the Hon'ble Apex Court in the said SLP on 08.01.2011.
17. According to the appellants the MoEF took U-turn as to the validity of the project and the environmental clearance granted to it at the instance of one Ms. Sunita Narayan who addressed an email to the then Hon'ble Minister of Environment and Forest Mr. Jairam Ramesh to have a re-look into the project. The MoEF sought adjournment, when the aforesaid petitions came up before the Hon'ble Supreme Court for hearing on 17.05.2011, in order to buy time to start the process of reversing the environmental clearance granted to the project previously. The MoEF appointed an Expert Committee of 7 Members headed by Prof. C K Varshney to check the ground situation on 21.01.2011. Even before the Committee has visited the project site the Hon'ble Minister of MoEF Mr. Jairam Ramesh publicly declared that the appellants plant was situated on the wetland on 03.02.2011. Varshney Committee reported that Samadhiyala Bandhara

possessed all the characteristics features of wetland ecosystem. The report was considered by the EAC in its meeting held on 22<sup>nd</sup>/23<sup>rd</sup>.02.2011. On 11.03.2011 a show cause notice was issued to the appellants under section 5 of environment (Protection) Act 1986 to show cause as to why environmental clearance accorded to the project should not be revoked. This notice was challenged by the appellants before the Gujarat High Court in writ petition being SCA No. 3542 of 2011. The Hon'ble High Court issued the notice but refused to grant stay in the said writ petition. The appellants therefore moved the Hon'ble Apex Court by preferring an SLP bearing no. 559 of 2011 against the refusal to grant stay by the Hon'ble High court of Gujarat.

18. When the bunch of said SLPs preferred by the respondent no. 4 and another came up for the hearing before the Hon'ble Supreme Court on 18.03.2011 the Learned Solicitor General submitted that he would like to revisit the environment clearance granted to the project and there upon the Hon'ble Apex Court directed the Expert Appraisal Committee of the MoEF to call for the report of an Expert Body consisting of 5 independent reputed scientist who were to visit the site and answer the following issues:

- (a) Whether the lands in question were wet lands/ water bodies;
- (b) Whether the project could come up on such wet land/water bodies and if so, what would be its impact on

environment? Would it lead to environmental degradation?

(c) If at all the project could come up, what steps the user agency should take in the interest of environment protection; and

(d) The precise current status of the project may also be indicated by the Expert Body, and further directed the MoEF to take decision upon the report of the Expert Body. The Expert Body was directed to give hearing to the project proponents and the objectors to the project. Learned Counsel appearing on behalf of the appellants the project proponents there upon made a statement before the Hon'ble Apex Court that the writ petition filed by them in the Hon'ble High Court would be withdrawn.

19. Accordingly, 5 Member Expert Body comprising of Independent Reputed Scientists headed by Prof. C. R. Babu was appointed to go into the fact situation and answer the aforesaid questions raised by the Hon'ble Apex Court. Later on one Mr. Paritosh Tyagi, Ex-Chairman of the Central Pollution Control Board was included in the body of experts at the instance of the Project Proponent. This Expert Body gave its findings upon making certain inquiries. According to the Expert Body headed by Prof. Babu (for short herein after referred to as Prof. Babu Committee) the Project site lies within the water spread of catchment, and the water run-off

terrain of Samadhiyala Bandhara; and what earlier was a costal saline natural eco system was converted into fresh water man-made eco system providing assistance of lift irrigation. According to the Prof. Babu Committee, the site may be classified only as a wet land and water body and the existence of the plant at the site is incompatible with ecology and the Project may not be proceeded with.

20. Prof. Babu Committee Report was placed before the Hon'ble Apex Court. The Hon'ble Apex Court while passing the order dated 9<sup>th</sup> September, 2011, observed that the narrow issue which arose for determination in a said Special Leave Petitions was whether the EC has been obtained by suppressing the material fact. The Hon'ble Apex Court noticed that the EAC in its Report dated 5<sup>th</sup> May, 2011 had concurred with the view expressed by the eminent scientist saying that the site has been appropriately re-classified as water bodies, and a Show Cause notice was issued by MoEF on 11<sup>th</sup> May, 2011 to Nirma Ltd accordingly, and therefore MoEF was obliged to the decide whether clearance dated 8<sup>th</sup> December, 2008 should or should not be revoked. The Hon'ble Apex Court directed the Appellant's Nirma Ltd., to give its objection / reply to the report dated 5<sup>th</sup> May, 2011 of EAC as also to the Show Cause Notice dated 11<sup>th</sup> May, 2013. The MoEF was directed to take its decision on revocation of the clearance dated 8<sup>th</sup> December, 2008 on the said of the objection / reply as aforesaid within 3 months from the date

of the order dated 9<sup>th</sup> September, 2011. The Hon'ble Apex Court also drew the attention of the MoEF to the directions passed in Lafarge Umiam Mining Private Ltd. v. Union of India, case (2011 (7) SCC 338) requiring framing of questions in appropriate cases wherever MoEF deemed fit and refer those questions to the experts (institutions) from its panel.

21. According to the Appellants, they undertook study on the issue of waste land through Department of Environmental Science and Engineering **GJU Institute of Science and Technology**, Hisar, Haryana, and as the study undertaken was not completed, it could not submit its additional / supplementary reply to the Respondent No. 1 (MoEF) and explain its position vide letter dated 23.11.2011 addressed to the MoEF. The Appellants also informed the MoEF that they would be seeking appropriate directions from the Hon'ble Apex Court in that regard on 9.12.2011. The Appellant submits that the Respondent No. 1 (MoEF) without giving any heed to their request for granting one more opportunity for final hearing on critical issue proceeded to pass impugned order / direction dated 1.12.2011 with **undue haste**.
22. On 9.12.2011 the Hon'ble Apex Court was apprised of the impugned order, whereupon the Hon'ble Apex Court disposed of the aforesaid SLPS accepting the request of the Appellants to proceed against the impugned order in accordance with law.

23. It is on this back drop the present appeal has come up for hearing before us. Suffice it to state that the Respondent No. 1 (MoEF) has refuted the case of the Appellant and on the other hand the Respondent No. 2 and 3, the State of Gujarat and **Gujarat Pollution Control Board** maintain that the land in question was waste land / gauchar land/ intwado land and not a wet land / water body and the relevant revenue record makes a reference accordingly. According to the Respondent No. 3 (**Gujarat State Pollution Control Board**) a reference to Bandhara was made in the public hearing conducted for the grant of environmental clearance and there is no adverse environment impact of the Project on the land / Bandhara in question. The Respondent No. 4 is the most vociferous contending parties amongst the array of Respondents and has vehemently refuted the case of the Appellants and urged for the revocation of the environment clearance to be maintained both on the points of law and facts.
24. During the pendency of this Appeal, the Expert Members of the Bench inspected the Project site in question twice in order to have clear perspective with the reference to the waste land / water bodies Bandharas and adverse effect of the Project on the environment. First visit to this site in question of the Expert Members was during June 7-9, 2013. However, the Respondent No. 1 and Respondent No. 4 filed applications (M.A No. 504/2013 and 497/2013 respectively) for staying the

operation of the order of the Tribunal for site inspection by the Expert Members passed on 20<sup>th</sup> May, 2013. Parties were heard and these applications were duly dismissed on the same day. Inspection of this site by the Expert Members was conducted as ordered vide order dated 20<sup>th</sup> May, 2013. Interestingly on 23<sup>rd</sup> August, 2013 a common prayer was made by the Learned Counsel appearing for the parties asking for second visit to the site in monsoon season for assessing complete and **comprehensive** situation with regard to wet land and likely damage to the water body. The request for second visit was acceded to by us and accordingly a second inspection of the site in question was conducted by Expert Members on 7<sup>th</sup> September, 2013. Pertinently the Expert Members during their first visit in June 2013 observed that the Bandhara was totally dry despite good over short period (75 mm rainfall recorded at Bhavnagar on 7<sup>th</sup> June, 2013). On the second visit in September, 2013 the Expert Members observed that the Bandhara was almost at full level with shallow level depth all over in submergence and growth of aquatic vegetation and presence of few water/migratory birds. They further observed that no part of the Proposed plant was under submergence and the joint areas beyond the boundaries of the proposed cement plant were having a shallow water accumulation. Though there have been misgivings about the inspection done by the Expert Members of the Bench, we may like to clarify that the concept of inspection of any property or

thing by the adjudicatory authority – the court is not alien to the judicial process and the procedure adopted by the courts. Order XXVIII Rule 18 of the Code of Civil Procedure provides for the local inspection by the court. Local inspection of any property or thing is undertaken by the Judge or adjudicating authority for the purpose of understanding appreciating and better following of the evidence adduced by the parties and to bring acuity to the judicial view in relation to the evidence placed before it. Material placed before us by the parties including various Committees / Expert Body Reports can therefore be better appreciated by us in light of the observations made by the Expert Members for dispensation of Justice.

25. Before we appreciate the factual matrix of the case it is necessary to determine the scope of the Appeal in light of the Judgments passed by the Gujarat High Court and the Hon'ble Apex Court in the matters inter se parties. Admittedly, the environmental clearance dated 11-12-2008 accorded to the cement plant, Coke Oven plant and the captive power plant in question did not find any challenge in the manner prescribed under the law in force then from any quarters except the PIL (SCA3477/2009) preferred before Gujarat High Court by the respondent no. 4 herein. From the perusal of the Judgment dated 26-4-2010 passed by the Hon'ble High Court of Gujarat in the said petition, it appears that the main grievance of the petitioners therein was in respect of the allotment of land by

the Government of Gujarat for setting up of such plant in the middle of sweet water reservoir created by the construction of 250 meters long waste weir called Samadhiyala Bandhara; and the proposed site of the plant also occupied the land falling in catchment area of reservoir; and construction of the cement plant in such circumstances would destroy the entire reservoir. The respondents therein dismissed this application as ill-founded and contended that the capacity of the reservoir upon implementation of the recommendation of the Expert Committee as directed by the Government would increase and setting up of cement plant would generate local employment. The Hon'ble High Court of Gujarat took into account the facts, which prompted construction of Samadhiyala Bandhara and its dual purpose arresting - ingress of sea water with consequent resolution of salinity problem and creation of sweet water reservoir with an estimated capacity of 62.31 million cubic feet. A fact that the land going in the submergence due to said Samadhiyala Bandhara mainly came from Government waste land as well as part of Gaucher land from surrounding villages, which the village panchayats agreed to surrender to the Government was also taken into account by the High Court. It was also taken into consideration that nearly 100 Ha. Of land out of total land allotted i.e. 268.86.52 Ha. was part of Bandhara reservoir and there could be reduction in capacity of the reservoir to the extent of 21.18 million cubic feet of water. It appears that the

Hon'ble High court had in its view while passing the said judgment a report from the salinity division recommending certain measures for meeting the challenge posed by reduction of capacity of the reservoir due to the proposed allotment of land as well as the recommendations made by the High Level Committee headed by Shri Shelat, Advisor to the Chief Minister and the State Government's action on the said report to pass directions to the company Nirma Ltd. to return 54 Ha. of land which formed part of Samadhiyala Bandhara and to deepen 40 Ha. of the said land for increasing the water carrying capacity of the reservoir by 22.7 per cent. M/s Nirma Ltd. bowed down to the recommendations made by the Shelat Committee and agreed to carry out the directions passed by the state government to deepen the land in addition to 75 per cent of government waste land to be deepened and to provide for 3 different channels after measuring 13 meter in width following 3 sides of the factory to ensure free flow of water from surrounding areas into the reservoir on this back drop Learned Counsel for petitioners therein Vehemently contended that the land allotted to the Nirma Ltd. was part of the water body and in view of the Judgement passed by the Division Bench in case of Shailesh R. Shah's case no part of such land can be alienated much less granted to the private companies. He also point out from the satellite imagery of the area in question that water gets collected during monsoon where the land has been allotted to the company and

measures suggested to compensate the loss of land and in flow of water are not adequate he further contended that the state government had not even notified Samadhiyala Bandhara as the water body despite the directions issued by the Division Bench of the Gujarat High Court in the case of Shailesh R Shah (Supra). Besides laying stress on the decision of the Division Bench of the High Court of Gujarat in relation to the water bodies in the case of Satesh R Shah (Supra) the petitioner therein cited several decision of the Hon'ble Apex Court-Countering these submissions, several judgments of the Apex Court were also cited by the contending respondent M/s Nirma Ltd. we need not detain ourselves much on the submissions of the rival parties in light of the judgments cited by them as we do not propose to sit in Judgement over the decision of the Hon'ble High Court of Gujarat. Suffice it to say that the Hon'ble High Court of Gujarat did consider these judgments and the rival submissions and took into account respondent no. 4 M/s Nirma Ltd's willingness to surrender further 46 Ha. of land excluding area comprising of canals to be constructed by the company in addition to surrender of 54 Ha. of land pursuant to the Government order and proceeded to answer the pertinent question as to whether all the measures provided by the Government coupled with surrender of additional 46 Ha. of land was sufficient to safeguard, protect and preserve the Samadhiyala Bandhara reservoir so as to

permit the respondent no. 8 company to carry on with the further construction of the cement factory.

26. The Hon'ble High Court of Gujarat was of the view that with certain minor fine tuning conditions to surrender the land by the company was sufficient to safeguard, protect and preserve Samadhiyala Bandhara reservoir and with further surrender of 46 Ha. of land the company would have surrendered equal area of land going under submergence. It appears from the reading of the said judgment that the principle of sustainable development was at the back of the mind of the Hon'ble High Court of Gujarat while delivering the said judgment. This could be perceived from the para 24 of the Judgment.

27. Pertinently, the Hon'ble High Court of Gujarat after hearing the parties dismissed the Review Application preferred by the petitioners in special 3477/2009, on merits and the petition for special leave to appeal (civil) (14698/2010) preferred against the Judgment and order dated 26-04-2010 passed by the Hon'ble High Court of Gujarat in SA 3477/2009, was disposed of following the statement made on behalf of M/s Nirma Ltd that the competent authority under Environment (Protection) Act, 1986 had passed an order against Nirma on 1st December, 2011 and the company would proceed in appeal before us vide order dated 9th December, 2011. Thus the entire controversy over the project being established on the land in question came to an end except the narrow issue whether environmental clearance dated 8<sup>th</sup> December, 2008 had been

obtained by suppressing the material facts. This could be read from the prelude to the order dated 9th December, 2011 disposing of the said petition.

28. On 18th March, 2011 the Hon'ble Apex Court without expressing any opinion on merits of the case sought answers to certain pertinent questions as regards the nature of the land in question and its impact on environment as well as the current states of the project from the expert body consisting of 5 independent reputed scientists and directed the MoEF to take its decision uninfluenced by any observations made in the pending proceedings. In light of the answers given by the expert body. The Hon'ble Apex Court On 9<sup>th</sup> September, 2014 observed that the narrow issue before the MoEF was whether his decision of granting environmental clearance should be recalled being based on the footing that the cement plant would be constructed on the waste land and the MoEF was required to decide whether environmental clearance should or should not be revoked. The Hon'ble Apex Court set the calendar for taking appropriate decision in the matter by the MoEF and directed the MoEF to complete the exercise of decision making within 3 months from the date of the said order. It is pursuant to these directions that the impugned decision was taken and the Hon'ble Apex Court having found nothing more to consider on merits disposed of the said petitions by order dated 9th December, 2011. Thus, we have only to examine in the present appeal whether the action of

revocation of the environmental clearance on the ground of material suppression of fact was justified or not. No other issues by virtue of the Judgments passed by the Hon'ble High Court of Gujarat and the Hon'ble Apex Court, therefore, survive for our consideration.

29. Learned Counsel for the appellant at the outset submitted that the Central Government could not have done or revoked the environment clearance granted to the project by due process of law in directly by invoking the provisions of Section 5 on the specious premise of the land being "*wetland as per Ramsar Convention*" which otherwise could have been directly done by duly declaring the same land as wetland-an ecologically sensitive area. He pointed out from the revenue record and Wet land At-lass that the land in question allotted to the project was not identified as a wetland/ water body but were shown in the revenue record as wetland /Gauchar land/Intwado land. He further submitted that public hearing was conducted for transfer of the same land in question from salt department to the revenue department before it was allotted to the project. He further pointed out that the process as prescribed under EIA Notification, 2006 for grant of EC was duly gone through including second public hearing for EC purposes was conducted wherein reference to Bandhara was made; and it is only after the due process of law being followed the EC was granted. He further submitted that the grant of EC found no challenge except the aforesaid writ petition

preferred to the Hon'ble High Court of Gujarat; and the Hon'ble High Court of Gujarat had duly disposed of the said petition after taking into consideration all aspects in relation to the artificial water body created on construction of Bandhara. The Hon'ble Apex Court having dismissed the petitions preferred against the Judgment of the Hon'ble High Court of Gujarat, he argued no issue regarding the water body artificially created by the Bandhara and possible adverse environmental impact of the project on the water body survived for judicial consideration. According to him invoking of the provisions of Section 5 for revoking the EC duly granted at the instance of one Sunita Narayan vide email dated 14.01.2011 was inappropriate and demonstrated malice in law, and as such the impugned order of revocation deserved to be set aside. He invited our attention to the Judgment delivered by the Hon'ble Apex Court in Smt. Venkataraman Case-(1979) 2 SCC Cases 491: Smt. S.R. Venkataraman Vs Union of India and Another:

30. Answering these submission learned Counsel for the Respondent No. 4 submitted that the plea of malice in law cannot be raised for the first time in the appeal when this issue was not raised before the Hon'ble Apex Court in reply to the notice issued on the SLP. He further submitted that neither Sunita Narayan the author of the email dated 14.01.2011, nor the then Hon'ble Minister of Environment and Forest Mr. Jai Ram Ramesh have been made parties to the

present appeal and, therefore, the real facts regarding the episode of email have remained shrouded for want of authentic material on record; and as such the plea of malice in law must fail. He further pointed out that there existed enough material on record to suggest the existence of water body/wetland as defined under Ramsar convention and therefore it cannot be said that the action taken by the Central Government for revocation of EC was without just cause or excuse, reasonable or probable cause. It is for this reason he argued that the plea of malice in law must fail. To buttress his submissions and to further enrich our understanding regarding malice or jurisprudence of power he placed reliance on the several judgments of the Hon'ble Apex Court, more particularly,

1. (1979) 3 SCC 229: State of U.P. and Ors. Vs Hindustan Aluminium Corporation & Ors.
2. (1985) 3 SCC 1: Raja Ram Jaiswal Vs Collector Allahabad & Anr.
3. (1980) 2 SCC 471: State of Punjab Vs Gurdial Singh & Anr.

He particularly laid emphasis on para no. 9 of the Judgment delivered by the Hon'ble Apex Court in State of Punjab and Anr. Vs Gurdial Singh & Anrs case in order to make a submission that if the power is used for a legitimate object no malice can be attributed to such use.

31. On going through the Judgment passed in Venkataraman case we come across the meaning of “malice in law” as expounded by the Hon’ble Apex Court in the following words:

*“para 5 ..... Thus malice in its legal sense means malice made by such as may be assumed from the doing of wrongful Act intentionally but without just cause or excuse or for want of reasonable or probable cause”.*

32. In instant case the Central Government invoked Section 5 of the Environment Protection Act 1986-the Act to revoke environmental clearance which was granted by following the process stipulated in Environment Clearance Regulation 2006 framed in exercise of powers conferred by sub section 1 and clause (V) of sub section 2 of section 3 of the Act read with clause (b) of sub rule 3 of Rule 5 of the Environment (Protection) Rules 1986. Pertinently as observed herein above the said EC had attained finality for the reason of it not being challenged as per the provisions of the Act and or the challenge to it by way of the writ petition coming to an end as aforesaid. Section 5 of the Environment Protection Act 1986 permits the Central Government, subject to the provisions of the said Act, to issue directions in writing to any person in exercise of its powers and performance of its functions under the said Act. The Central Government therefore could not have invoked the provisions of Section 5 for revoking the EC which had attained finality particularly when there existed a specific provision under the Environment Clearance

Regulation, 2006 for revocation under sub para (vi) of para 8 of the Regulation.

33. This takes us to further enquiry as to whether the action initiated purportedly under Section 5 of the Environment Protection was without any probable cause or legitimate object. Such enquiry is necessitated not only in light of the meaning expounded by the Hon'ble Apex Court in Venkataraman case but also para 9 of the Judgement in Gurdial Singh case which is quoted herein below:

*“The question, then, is what mala fides in the jurisprudence of power is? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidated the exercise of power—sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions – is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the cue for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undecieved by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: “I repeat. that all power is a trust- that we are accountable for its exercise- that, from the people, and for the people, all springs, and all must exist”. Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel*

*the action, mala fides or fraud on power vitiates the acquisition or other official act”.*

34. Assuming that Ms. Sunita Narayan addressed the email to the then Hon'ble Minister Jai Ram Ramesh of the MoEF pointing out that there were sufficient grounds to hold existence of water body which called for revocation of the EC, then it would be prudent to examine whether Ms. Sunita Narayan was prompted to address this email for some legitimate object. We have before us the reports of Shelath Committee, Prof. Varshney Committee and Prof. Babu Committee. All have pointed out unanimously that there existed a Bandhara which laid to the creation of water body due to accumulation of rain water. Prof. Babu Committee recommended classification of the land in question as 'wetland' and 'water body' and observed that it had manifold ecological utility besides helping recharge of ground water, sustain rich biodiversity, provide pastures and support settlements and as such common property resource. It appears that accepting the findings and recommendations of the Babu Committee and in its wake the MoEF was prompted to invoke the provisions of Section 5 of the Environment Protection Act. It is therefore difficult to hold that there was no probable cause or the legitimate object for initiation of such action. We are, therefore, of the considered opinion that the actuation or catalysation of such action by the email purportedly addressed by Ms. Sunita Narayan was not legicidal and, therefore, the plea of there being malice in law in

actuation of the proceedings under Section 5 as raised by the appellant must fail.

35. However, the revocation of EC granted as per EIA Notification 2006 ought to have been done in the manner provided under para 8 sub-para (vi) of the Regulation, 2006 which reads as under:

“(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice”.

36. Reading of this provision makes it abundantly clear that the prior environmental clearance granted following deliberate concealment and/or submission of false or misleading information or data, which is material to any of the stages leading to the grant of environmental clearance qualifies for cancellation of such clearance. Act of concealment and or submission of false or misleading information or data, however, should be a deliberate one.

37. Revocation of the environmental clearance mainly proceeded on the premise that the environmental clearance accorded was founded on undisclosed and incorrect postulates mainly as regards the character of the land in question recognised by the Prof. Babu Committee as a “Wetland”. It is true that the

appellant described it as “Wasteland” when the proposal for the grant of EC was initiated and not as a wetland. Explanation offered for this aberration is that the land in question was not identified as a wetland by the authorities concerned and was shown in the revenue records throughout by the State of Gujarat as a wasteland and the confusion in understanding of its nature led to such aberration which cannot be termed as an act of deliberate concealment and/or submission of false or misleading information or data to the authorities under the Environment Clearance Regulations 2006. According to the appellants the existence of the Bandhara and formation of water body as a result of accumulation of rain water during monsoons surfaced in the public hearing and the decision of grant of EC was taken in light of such revelations. We find from the records that there was disclosure regarding Bandhara during the public hearing conducted by GPCB in the process leading to the EC in question; and following such disclosure the project proponent had clarified the issues specifically relating to salinity control Samdiyala Bandhara, school crematorium and road at the time of its presentation in 86<sup>th</sup> meeting of the EAC held at MoEF New Delhi on 22<sup>nd</sup> October, 2008 vide presentation slide no. 58 and 59. The decision recommending the grant of EC was thus consequentially taken and the grant was recommended by EAC to the MoEF. Fact of the existence of the water body and the effect of the project there upon was

also taken into account in the proceedings before the Hon'ble High Court of Gujarat while passing the verdict which had attained finality.

38. Issue of conservation of wetlands worldwide vis. a vis. development was taken cognisance of by the international community in Ramsar Convention in the following words:

Wetland should be conserved by ensuring their **wise use**. Wise use is defined as "Sustainable utilisation for the benefit of mankind in a way compatible that the maintenance of the natural properties of the ecosystem" – Sustainable utilisation is understood as "Human use of wetland so that it may yield the continuous benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations. "Wise use" may also require strict protection.

39. The Ramsar Convention defined wetlands as below:

*"Wetlands are area of Marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static are flowing, fresh, brackish or salt, including areas of marine water, the depth was at low tide does not exceed six metres".*

40. Following the Ramsar Convention the Central Government made the wetlands (Conservation and Management) Rules 2010 for conservation and management of wetlands in exercise of the powers conferred by Section 25, read with sub section (1) and clause (V) of sub section (2) and sub section (3) of section 3 of the Environment (Protection) Act, 1986. Definition of wetland is available at Rule 2 (g) of the wetlands

(Conservation and Management) Rules 2010 in the following words:

*2(g) "Wetland" means an area of Marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and the zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Government of India in the Ministry of Environment and Forest, S.O. Number 114(E), dated the 19<sup>th</sup> February, 1991 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (II) of dated the 20<sup>th</sup> February, 1991.*

41. Rule 3 therein speaks about the **Protected Wetlands** in the following words:

*"3. Protected wetlands-Based on the significance of the functions performed by the wetlands for overall well being of the people and for determining the extent and level of regulation, the following wetlands shall be regulated under these rules, namely-*

- (i) Wetlands categorised as Ramsar Wetlands of International Importance under the Ramsar convention as specified in the Schedule.*
- (ii) wetlands in areas that are ecologically sensitive and important, such as, national parks, marine parks, sanctuaries, reserved forests, wildlife habitats, mangroves, corals, coral reefs, areas of outstanding natural beauty or historical or heritage areas and the areas rich in genetic diversity;*
- (iii) wetlands recognised as or lying within a INESCO World Heritage Site;*
- (iv) high altitude wetlands or high altitude wetland complexes at or above an elevation of two thousand five hundred metres with an area equal to or greater than five hectares;*
- (v) wetlands or wetland complexes below an elevation of two thousand five hundred metres with*

*an area equal to or greater than five hundred hectares;*

*(vi) any other wetland as so identified by the Authority and thereafter notified by the Central Government under the provisions of the Act for purposes of these rules.*

It has been pointed out to us that the land in question is not a **Protected Wetland** falling in any of the categories of Protected Wetlands spoken of in Rule 3 of the said Rules and there is no blanket moratorium on its development except a regulatory regime prescribed under Rule 4 of the said rules.

42. Visit of the Expert Members twice to the project site, firstly in the first week of June 2013 and secondly in the month of September 2013 brought to light some material facts concerning the water body. On the first visit of the Expert Members it was noticed that the Bandhara was totally dry despite good rains over short period ("75 mm false" recorded at Bhavnagar) and on second visit it was noticed that the Bandhara was almost at full level with shallow water depth all over in submergence and no part of the proposed project land was under submergence and the adjoining areas beyond the boundaries of the proposed project land was having shallow water accumulation. Expert Members also noticed during their second visit that there was growth of aquatic vegetation and the presence of few migratory birds around the water body. One wonders how Prof. Babu Committee could document exhaustive list of birds, presence of endangered vulture and Asiatic lions and could give soil type extra in two hours of field visit without any backing of any specific

scientific study in relation to the project site. On visits to site in question the Expert Member had made pointed enquiry and asked for data/information as regards month wise rainfall pattern over the years, month wise water levels in the Bandhara, month wise irrigation area provided from the reservoir, soil type and its characteristics in the project area and adjoining area, lay out maps of the area in question along with superimposition of project boundaries from the parties to the Appeal. This information/data was made available to us and was exchanged between the parties. Having gone through the entire information/data thus made available we are of the considered opinion that the Samdiyala Bandhara serves as a temporary storage of water, which gets used by farmers or gets evaporated due to its large spread or gets percolated due to fairly high porosity of soil and as such cannot be called as a productive wetland having all perennial features of a wetland.

43.As noted above, the revenue records described the area in question as a 'waste Land' and it was never, even till today, identified as wet land by the Central Wetlands Regulatory Authority and so notified by the Central Government under the provisions of the Act for the purposes of Wetland (Conservation & Management) Rules, 2010. The Hon'ble High Court of Gujarat, however, considered the issue of water body thus created by Samadhiyala Bhandhara on such Waste Land, particularly in light of the concerns of the local persons whom the respondent no. 4 professes to represent.

44. In the given circumstances it is difficult to hold that there was any deliberate concealment and or submission of false or misleading information or data to the authorities according environmental clearance. Moreover, the Hon'ble High Court of Gujarat, whose verdict has attained finality as aforesaid, had taken into account the recompense the appellants have made by foregoing 100 hectares of land, 80 per cent of which was under submergence, and by deepening certain portion of the land and channelizing the storm water towards the water body. We have also noticed that the project proponent have given up Captive Power Plant and Coke Oven Plant and the project is designed not to discharge any effluent or any material in the water body created by Samdiyala Bandhara. These aspects of the matter were not fully taken into account either by Prof. Babu Committee or MoEF during the process leading to the revocation of the environmental clearance granted to the project proponent.

45. In our considered opinion, therefore, this Appeal needs to be allowed and is accordingly allowed. The Impugned Order dated 1<sup>st</sup> December, 2011 issued by respondent no. 1- MoEF is set aside.

46. With a view to enrich our understanding regarding the wise use of such sites we feel that the effect of the project on the water bodies of such nature thus created by the Samdiyala Bandhara need to be monitored and study undertaken in that regard for a period of 2 years on the commencement of the

project. We, therefore, direct the respondent no. 3-State Pollution Control Board to monitor and undertake study of the effects of running of the project on the water body of such nature created by Samdiyala Bandhara in conjunction with CPCB Zonal Office at Baroda from the date of the commencement of the project. The applicant- project proponent shall bear the expenses incurred by the State Pollution Control Board and CPCB for monitoring and conducting such study. Liberty is granted to the State Pollution Control Board and CPCB to take assistance of such expert body/institution in the field of Environmental Monitoring of water bodies as they deem fit. Parties shall bear their own cost. At the end of the study the report shall be tendered before us.

....., CP  
(Swatanter Kumar)

....., JM  
(U.D. Salvi)

....., EM  
(Dr. D.K. Agrawal)

....., EM  
(Dr. G.K. Pandey)

