GAUCHAR LAND

By Toshit Godra*

In the past, every village or cluster of villages in India was given 5-50 hectares (ha) of grazing lands looking on the cattle population and availability of such land popularly referred to as Gauchar (grazing) or Panchayat land for the common grazing of the livestock. Owing to increased human and livestock population, continuous uncontrolled grazing and cutting of woody vegetation, community grazing lands are deteriorating.

Besides, a number of the areas are gradually encroached and given to landless individuals by the government, leading to shrinkage of these common lands. All this results in increased grazing pressure on the adjacent forest lands, endangering the very existence of forests. At present for all practical purpose community grazing lands in India include

(1) Panchayat grazing land specifically demarcated for the purpose
(2) revenue and other waste land commonly utilised for grazing, and
(3) degraded forests land illegally or legally allowed for grazing.

In India as per 1999 the National Sample Survey Organisation estimates (NSSO), there is decline of common lands at a quinquennial rate of 1.9%. The NSSO survey also indicates that the dependence of rural households on grazing lands is

- For firewood collection: 45%
- For fodder collection: 13%
- For grazing land: 20%
- Water for livestock: 30%
- Water for irrigation: 23%.

NS Jodha’s study across seven states in the arid and semi-arid zones of India highlighted the relevance of the Commons to the rural economy at large and their importance as a ‘safety net’ for the poor in particular. He estimated around 84-100% dependence of the rural poor on the Commons for fuel, fodder and food items, in comparison to 10-19% dependence of better-off households (even for the better-off the figure increases in dry land regions like Rajasthan).

The study estimated that 14-23% of household incomes are derived from the Commons and they play an important role in reducing income inequalities, which would have been otherwise starker. The study also indicated that rearing livestock without the support from the Commons would mean a diversion of almost 48-55% of cropland from food and cash crops to fodder crops.

The alternative of reducing the number of animals in proportion to the availability of one’s own fodder resources, would entail a 68-76% loss of draught power and up to 43% loss of farmyard manure. Not only the use and need of grazing land is limited to rural households but “Gauchar” land also plays a significant role in maintaining the ecological balance they are watersheds which contribute to good water quality and groundwater recharging. They do support vegetation that can be grazed by livestock to transform this renewable resource into food and fiber products.
Well managed grazing lands support desirable vegetative cover, which is highly resistant to erosive forces of water and wind; they are a renewable, natural, and sustainable form of agriculture. Grazing land plants can be harvested as sources for biomass energy or as feed stocks for industrial materials. Healthy grazing lands provide benefits other than feed for domestic animals. They are important habitats for a variety of large and small mammals, birds, and insects.

Water runoff on healthy grazing land is slow, so more water infiltrates into the soil, providing cleaner, more abundant water for wildlife, and human use. The plant cover on grazing land sequesters millions of tons of carbon, thus reducing atmospheric carbon dioxide.

The destruction of Gauchar land creates a burden/ pressure on the small amount of land that is available for grazing. This pressure increases with time as land shrinks and cattle are increasing. The increased pressure on Gauchar land replaces the edible perennial grass cover with weeds and annuals. Loss of grass cover then leads to soil erosion and decreases the fertility of soil. Overgrazing also results into a dramatic decrease in plant diversity in this ecosystem; and additional carbon and nitrogen are discharged into the atmosphere.

These results can have serious effects on humans like displacing herders from their community; a decrease in vegetables, fruit, and meat that are often acquired from these fields; and a catalyzing effect on global warming.

During the last two decades, apart from the distribution of such wastelands to the poor and landless farmers, the government has come up with the Special Economic Zone Act, 2005. The Act envisaged the use of wastelands as the first preference for the establishment of Special Economic Zones (SEZs). But much of the land referred to as wasteland is actually Gauchar land.

After an important observation made by the Supreme Court in the case of Jagpal Singh & Others v. State of Punjab and Others that “there is not an inch of land left for the common use of the people of the village, though it may exist on paper”, the judgement gave clear instructions for removal of encroachments and protection of common land in villages. After this judgement, many states made changes in their existing laws regarding Gauchar land and some states developed new laws to remove the encroachments. In Gujarat, the development commissioner issued a circular titled, “removal of encroachments on land vested, including Gauchar” referring to Section 105 of the Gujarat Panchayat Act, 1993.

**LAWS:**

**Gujarat Panchayats Act 1993**

Section 105. (1) Whoever, within the limits of a village-

(a) builds or sets up any wall, or any fence, rail, post, stall, verandah, platform, plinth, step or structure or thing or any other encroachment, or obstruction, or

(b) deposits, or causes to be placed or deposited, any box, bale, package or merchandise, or any other thing, or

(c) without written permission given to the owner or occupier of a building by a panchayat puts up, so as to project from an upper storey thereof any verandah, balcony, room or other structure or thing,
in or over any public street or place, or in or upon any open drain, gutter, sewer or aqueduct in such street or place, or contravenes any conditions subject to which any permission as aforesaid is given or the provisions of any bye-law made in relation to any such projections or cultivates or makes any unauthorised use of any grazing land, not being private property, shall on conviction, be punished with fine, and with further fine which may extend to twenty five rupees for each day on which such obstruction, deposit, projection, cultivation or unauthorised use continues after the date of first conviction for such offence.

(2) The panchayat may remove any such obstruction or encroachment and remove any crop unauthorisedly cultivated, on grazing land or any other land not being private property, and may remove any unauthorised obstruction or encroachment of the like nature in any open site not being private property, whether such site is vested in the panchayat or not:

Provided that if the site be vested in the State Government, the permission of the Collector or any officer authorised by him in this behalf, shall have first been obtained the expenses of such removal shall be paid by the person who has caused the said obstruction or encroachment and shall be recoverable under Chapter X:

Provided further that when before the removal of any such encroachment or projection a notice for bringing action in that behalf has been given under sub-section (2) of section 270, no action for the removal of the encroachment or projection shall be taken until the expiry of the period of such notice and further period of seven days.

(3) Nothing in sub-section (2) shall prevent the panchayat from permitting any construction referred to in clause (a) or clause (c) of sub-section (1) to stand on such terms and conditions as may be prescribed.

(4) The power under sub-section (2) may be exercised in respect of any obstruction, encroachment, or projection referred to therein whether or not such obstruction, encroachment, or projection has been made before or after the village is specified as such under clause (g) of article 243 of the Constitution or before or after the property is vested in the panchayat,

(5) Whoever not being duly authorised in that behalf removes earth, sand or other material from, or makes any encroachment in or upon any open site which is not private property, shall, on conviction, be punished with fine and, in the case of an encroachment, with further fine which may extend to twenty five rupees for every day on which the encroachment continues after the date of first conviction.

(6) Nothing contained in this section shall prevent the panchayat from allowing any temporary occupation of or erection in, any public street on, occasions of festivals and ceremonies, of the piling of fuel in by-lanes and sites for not more than seven days, and in such manner as not to inconvenience the public or any individual or from allowing any temporary erection on or putting projection over, or temporary occupation of, any such public street or place, or any other purpose in accordance with the bye-laws made under this Act.

Obstruction and encroachment upon public streets and open sites.

(7) Where the panchayat finds it difficult to remove any obstruction or encroachment or any crop unauthorisedly cultivated on grazing lands as referred to in subsection (2), it shall inform the Taluka Development Officer accordingly and the Taluka Development Officer
shall on receipt of such information exercise the powers of the panchayat under sub-section (2) and take action to remove the obstruction, encroachment or, as the case may be, the crop.

(8) The Taluka Development Officer may, take action referred to in sub-section (7) suo-motu or whenever it is reported to him that though the panchayat was moved to take action under sub-section (2) it has not taken any action for three months:

Provided that before taking action suo motu he shall direct the village panchayat to take action and if the panchayat fails to do so within a specified time, the Taluka Development Officer may thereafter take action.

Section 108. (1) For the purpose of this Act, the State Government may subject to such conditions and restrictions as it may think fit to impose, vest in a panchayat open sites, waste, vacant or grazing lands or public roads, streets, bridges, ditches, dikes and fences, wells, river-beds, tanks, streams, lakes, nallas, canals, water-courses, trees or any other property in the village vesting in the Government.

(2) Subject to any conditions and restrictions imposed by the State Government under sub-section (7) and with the previous sanction of the Collector, a panchayat may discontinue or stop up any such public road or street vested in it by the State Government, but which is no longer required as public road or street and may lease or sell any such land therefore used for the purposes of such public road or street:

Provided that one month before it is decided to stop up or discontinue such public road or street, the Sarpanch shall, by notice signed by him and affixed in the part of the public road or street which is proposed to be discontinued or stopped up, and published in such other manner as is prescribed, inform the residents of the village of the said proposal and consider any objections in writing made thereto. The notice shall indicate the alternative route, if any, which it is proposed to provide or which may already be in existence.

(3) Whenever any public road or street or any part thereof has been so discontinued or stopped up, reasonable compensation shall be paid to every person who was entitled to use such road or street or part thereof, otherwise than as a mere member of the public, as a means of access to or from his property and has suffered damage from such discontinuance c" stopping up, and the provisions in the Bombay Highways Act, 1955 in relation to the assessment, apportionment, and payment of compensation shall, mutatis mutandis, apply thereto as they apply in relation to the closure of a highway under section 52 of that Act.

(4) Where any open site or waste, vacant or grazing land vesting in Government, has been vested by Government in a panchayat whether before or after the commencement of this Act, then it shall be lawful for the State Government to resume at any time such site or land, if it is required by it for any public purpose:

Provided that in case of any improvement of such site or land made by the panchayat or any other person, the panchayat or person, as the case may be, shall be entitled to compensation equal to the value of such improvement and such value shall be determined in accordance with the provisions of the Land Acquisition Act, 1894.

**Punjab Municipal Act 1911**
Section 115 A-Paving or draining of cattle stands

(Note: This section makes it mandatory for owners of land which keeps cattle tethered, to take steps to ensure that the land is properly paved/drained accordingly)

The committee may by notice require the owner or occupier of any land on which cattle or other animals are habitually tethered to have the same properly paved or drained or both

Bombay Land Revenue Code

Section 38 of the Land Revenue Code under which land may be assigned for special purposes by the Collector at any time and by the survey officers while survey operations are in progress for free pasturage for the village cattle for forest reserves or for any other public or municipal purpose.

Cases

There are many related judgments given by Supreme Court and various high courts regarding the Gauchar land. The related judicial decisions by SC and Gujarat High court upheld that there should be common understanding and that the order of the court are followed not only in paper but also in spirit. That there should be proper legal framework through which the encroachments over the Gauchar land are removed and they are again restored to people of the community. The judgement of Gujarat HC emphasise that when the Gauchar land is not govt land then before giving it to someone the permission of the village headmen should be taken . State of Jharkhand and another v Pakur Jagran Manch and other this judgment one hand try to restore the Gauchar lands back to the villagers and on the other hand lay an stress on the point that in case when the Gauchar land is required to be given for some public purpose it should be done in exceptional circumstances but on the other hand it also says that without waiting for the next settlement the govt can de-reserve the Gauchar land for public purposes .after the case of Alabhai Rajde Batiya v State of Gujarat[2011 Indlaw GUJ 678]. The Government issued circular dated 30.12.1988 reiterating that as per Government standards per 100 cattle, 40 acres(16 hectares) of Gauchar land is required to be maintained, so that village cattle can be properly looked after. This circular is significant for two purposes. Firstly, it refers to ratio of village cattle to the Gauchar land to be maintained as far as
possible. It also though while recognizing the Government’s power to resume Gauchar land for any public purpose refers to consultation with the Village Panchayat while resuming the Gauchar land in case where minimum ratio is not maintained. Not only this judgment but various other judgments tell about use of Gauchar land only in exceptional case. Chaudhary Laxmanbhai Parthibhai and others v State of Gujarat Notice, through Secretary and others[2012 Indlaw GUJ 1762]The decision of the court also highlights that in case there is need to take the Gauchar land for purpose of mining or something that can happen only on that land the government should give the villagers another land for Gauchar land. Chaudhari Ramjibhai Abhabhai & Anr. v. State of Gujarat & Ors the court decided that when collector assigns a Gauchar land to some private person it has to take permission from the village the same was observed in the case of Asada Gram Panchayat and another v Collector and others here the court also said that in case the Panchayat alone is not able to remove the encroachments it can take help of the taluka. Most of the judgements of the courts are in favour of the villagers and hence are directions to remove the encroachments. But despite the decisions of the court the encroachments are still a big problem. The Gujarat government’s 100 crore Gauchar vikas yojana is being piloted in 100 villages since june 2015 still there are around 89% of land in Gujarat which is encroached.

Annexure:

**GAUCHAR LAND CASES**


Laws and provisions: Bihar and Orissa General Clauses Act s. 24; Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949s. 38; s. 67; s. 69; s. 2(1); s. 38(2); s. 38(1); Santhal Parganas Settlement Regulations, 1872 reg. 24

Facts: The Settlement Officer notified and published a record of rights u/s. 24 of the Santhal Parganas Settlement Regulations, 1872 (‘Regulations’ for short) under which land measuring 4.40 acres in Thana No.24, Plot No.1061, Mouza Solagaria, Circle and District Pakur, Jharkhand, was recorded as gochar (village grazing land) for the said village Solagaria. In a public interest litigation (W.P. No.5332/2001), the High Court of Jharkhand issued certain directions for effective implementation of national leprosy eradication programme and for improving the standards of health of the tribal residents of the area. In pursuance of it, the Department of Health & Family Welfare, Government of Jharkhand and the Deputy Commissioner, Pakur, on 21.12.2005, authorized the Executive Engineer, Rural Development, Special Division, Pakur, to construct a hospital building. The said gochar was identified as being suitable for construction of the Hospital with the consent of village headman and village community (all the Jamabandi Raiyats of the village), vide consent letter
dated 10.11.2006. On 31.5.2007, the State government issued a notification denotifying releasing the said 4.44 acres of gochar in Plot No.1061 and in its place declaring an extent of 4.44 acres of Gairmajarua (Government) Khas land in Khata No.44, Plot Nos. 62, 199 and 427 as gochar u/s. 38(2) of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (‘Tenancy Act’ for short). On the basis of the said notification it was contended by the appellants in the two appeals before the High Court that the land in question had ceased to be gochar and therefore, there was no impediment for using the said land for construction of an hospital. The High Court by the impugned order dated 17.8.2007 allowed the said writ petition holding as follows:

(i) The State had no authority to construct a hospital in the land earmarked as gochar meant for grazing of cattle.

(ii) The notification dated 31.5.2007, denotifying and releasing the gochar in order to hand over the same to the health department for construction of a hospital, was not valid in law, having regard to the bar contained in s. 38(1) read with ss. 67 and 69 of the Tenancy Act.

The said order of the High Court is challenged by the State of Jharkhand and by the village headman in these two appeals by special leave.

Decision: It is evident from Regulation 25 read with Regulation 24 that though normally once the record of rights has become final, it shall not be re-opened until a fresh settlement is made, the entries in the record of rights can be re-opened and altered with the previous sanction of the state government. It is therefore clear that even if a land had been recorded as a gochar in the record-of-rights of a village in pursuance of a settlement under the Regulations, it can be re-opened and altered at any time, without waiting for the next settlement, with the previous sanction of the state government. note that such de-reservation of any government land reserved as gochar, should only be in exceptional circumstances and for valid reasons, having regard to the importance of gochar in every village. Any attempt by either the villagers or others to encroach upon or illegally convert the gochar to house plots or other non-grazing use should be resisted and firmly dealt with. Any requirement of land for any public purpose should be met from available waste or unutilized land in the village and not gochar. Whenever it becomes inevitable or necessary to de-reserve any gochar for any public purpose (which as stated above should be as a last resort), the following procedure contemplated in Regulations 24 and 25 and s. 38(2) should be strictly followed. allow these appeals, set aside the impugned order of the High Court and dismiss the public interest litigation (W.P. (PIL) No. 6779/2006) and permit the hospital to function in ex-gochar land namely Plot No.1061, Mohza Solagaria.

2. Chandradhoja Sahoo v State of Orissa and others[2012 Indlaw SC 574; (2012) 13 SCC 419; AIR 2013 SC 367; 2013 (2) ALD(SC) 36; JT 2013 (1) SC 192; 2013 (2) MLJ 71; 2013 (1) OLR 1033; 2013 (3) RCR(Civil) 60; 2013 (118) RD 558; 2012(12) SCALE 584; [2012] 9 S.C.R. 1158]

Laws and provisions: Orissa Land Settlement Act; Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 s. 2(d); s. 2(a)

Facts: Appellant filed petition before HC contending that sometime in the year 1979 he, as a landless person, had applied for grant of a lease of government wasteland - By order dt.26-3-
1979, said land was granted in favour of appellant for agricultural purposes with liability to pay rent. Thereafter, by order dt.28-5-1979, Tehsildar had directed for correction of Record of Rights and issuance of patta in favour of appellant. As no steps were taken in the matter, appellant filed application before Board of Revenue. Board by order dt.7-1-2005 directed Tehsildar to correct the Record of Rights in terms of the order dt.26-3-1979. As order of Board of Revenue dt.7-1-2005 was also not implemented a Writ Petition was filed by appellant before HC. HC by order dt.26-2-2007 directed Tehsildar to forthwith comply with directions issued by Board of Revenue by its order dt.7-10-2005. Thereafter on 25-8-2007 and while Writ Petition was pending, Respondent/State filed an application before Board of Revenue for recall of its order dt.7-1-2005. By order dt.12-10-2007 the said application was entertained and earlier order of Board dt.7-10-2005 was suspended. While the matter was so situated the State filed appeal before HC challenging the order dt.26-2-2007 passed in Writ Petition, on the ground that the said order was passed ex-parte in so far as the State was concerned. HC remanded the matter to Single Judge for a de novo consideration. Appellant challenged proceedings before Board of Revenue seeking recall of its order dt.7-1-2005. HC held that no legal or valid right accrued to 2 appellants under the lease(s) granted in respect of 2 separate areas of land as claimed by them. Hence instant appeals. Responded/State contended that no valid order passed on the basis of an appropriate proceeding in law exists so as to recognize any right in appellant to the land under the lease claimed. Further contended that land having been shown as 'kanta jungle' in the Record of Rights lease of the said land, even if assumed, was void being contrary to the provisions of 1948 Act. Held, publication of the Record of Rights of 'M' Village in the year 1973 showing the land covered by plot No. 516 and 301 as "Kanta jungle" was noticed in the report of the Amin submitted to the Tehsildar. However, in the said report, it was mentioned that there was no forest growth over the land and also that the aforesaid land did not find any place in the reservation proceedings. It was also reported that the land, not having been reserved for any specific purpose, was surplus land available for settlement for agricultural purposes. Pursuant to said report the Tehsildar by order dt.26-3-1979 granted settlement of the land in favour of appellant and on 28-5-1979, on expiry of the appeal period, it was directed that the Record of Rights be corrected and patta be issued in favour of the appellant.

Decision: the approach of the High Court in attempting to resolve the conflict between the parties suffers from a fundamental error which would justify a correction. The High Court ought not to have split up the two questions as if they were independent of each other and on that basis ought not to have proceeded to determine the second question without recording acceptable findings on all aspects connected with the first. the order of the High Court should receive our interference and the matter should be remanded to the High Court for a de novo decision which may be rendered as expeditiously as possible. Accordingly, we set aside the order dated 13.05.2009 of the High Court and allow these appeals.

3. Chaudhary Laxmanbhai Parthibhai and others v State of Gujarat Notice, through Secretary and others[2012 Indlaw GUJ 1762]

Laws and Provisions: Bombay Land Revenue Code s. 38; s. 108(4); s. 37; Constitution of India, 1950 art. 226;art. 14; Gujarat Panchayats Act, 1961 s. 259;s. 96(4); s. 108(4); Gujarat Panchayats Act, 1993 s. 271;s. 108(4); s. 108;Jagiri Abolition Act; Gujarat (Practice and
Procedure for Public Interest Litigation) Rules, 2010; Gujarat Land Revenue Rules, 1972 r. 73; r. 73(2)

Facts: Petitioners were residents of village Mahi and earned their livelihood by doing agricultural operations - Land in question which was the subject matter of dispute belonged to Mahi Gram Panchayat as reflected from 7/12 extract of the revenue records - On 30-3-2010, the Sarpanch of the Panchayat passed an illegal resolution stating that the Panchayat had no objection if part of the land in question was allotted to the private respondents herein by the State Govt. - As the said resolution was passed illegally without taking into consideration the repercussion of the same, the petitioners and other villagers preferred a representation - Panchayat accordingly reviewed its earlier decision by passing an appropriate resolution dt. 20-7-2010 stating that as the land in question is a 'gauchar' land the Panchayat had objections and does not agree for the allotment of land to private respondents - Record revealed that respondent nos. 3 and 4 challenged the said decision of the Gram Panchayat before the appellate committee who, vide order dt. 3-9-2010, allowed the appeal and set-aside the resolution dt. 20-7-2010 passed by the Mahi Gram Panchayat - Matter, thereafter, was heard from time to time with extension of the interim order - Respondents had appeared and have opposed this petition by filing affidavit-in-reply - Whether as to what extent Govt. was able to adhere to and follow the norms as laid down under the said Policy.

Decision: Held, court was of the view that many a times Govt. may find difficulties in allotting suitable land other than 'gauchar' land for public purpose - Under such circumstances, the other public purpose also could not be permitted to be overlooked or avoided - Though total cattle population may be very high as pointed out in most of the cases on the strength of certificates and statements issued by Talati-cum-Mantri, Sarpanch, Taluka Development Officer, etc., but not all the cattle in the village were to be counted for the purpose of maintaining minimum 'gauchar' land - Resolutions of the State Govt. itself provided that useless cattle, cattle belonging to professional grazers or professional cattle breeder or commercial dairies and cattle used for business purpose, should not be taken into account for the purpose of maintaining minimum area of 'gauchar' land - Keeping this in mind, Court suggested to the State Govt. to review its resolutions passed in this regard from time to time and amend them accordingly - If the Govt. itself was not able to follow its own policy or strictly adhere to it, then it was meaningless to keep such a policy subsisting thereby giving rise to litigations in the nature of a public interest - It was high time that the State Govt. took up the issue seriously and evolved a policy which was workable, practical and would protect the interest of one and all - Petition dismissed.


Facts: A Resolution dated 7.1.2008 came to be passed by Ranpur Athannawas Gram Panchayat pursuant to a letter dated 6.1.2007 issued by Deputy Collector, land Acquisition and Rehabilitations Scheme, Mukteshwar Sipu Project, asking the Gram Panchayat to pass a resolution allotting 45 acres of land from Survey No. 2A/1, which is a gauchar land, for the rehabilitation of the affected agriculturists, whose lands have been submerged due to Sipu Project. Accordingly, the panchayat passed a Resolution, being Resolution No. 26 dated 7.1.2008 by consensus that the said area of gauchar
land can be allotted to the affected agriculturists. Some of the villagers were not happy with the said Resolution and, therefore, requested the Sarpanch of Gram panchayat on 25.1.2008 to cancel the said Resolution No. 26, which was passed on 7.1.2008. Pursuant to the said representation, another Resolution No. 31 was passed cancelling the earlier Resolution No. 26 on the ground that it would not be desirable to grant land to the affected persons since the land available for cattle grazing is not sufficient. It was also resolved in the said resolution that the Collector can be requested to grant land in some other villages. The Resolution No. 31 was passed by the Panchayat on 1.2.2008 i.e. within a very short period from passing of the first resolution. One Rameshkumar Menghaji Mali, preferred an appeal being Appeal No. 7 of 2008, under Section 242 of the Act and challenged the Resolution No. 26 dated 7.1.2008. Similarly, the present appellants, who were beneficiaries of the scheme, also challenged the subsequent Resolution No. 31 dated 1.2.2008 by filing an Appeal, being Appeal No. 13 of 2008, under Section 242 of the Act. The Appellate Committee after hearing the appellants in these two appeals, dismissed the Appeal No. 7 of 2008 filed by Rameshkumar Menghaji Mali whereas the Appeal No. 13 of 2008 filed by the affected persons i.e. present appellants was allowed and held that the Resolution No. 31 dated 1.2.2008 was required to be quashed on the ground that the Panchayat has not followed the provisions of Section-97 of the Act as well as Rule-7 and Rule 18 of the Gujarat Panchayat (Procedure) Rules, 1997. Feeling aggrieved by the said order dated 1.6.2009, the villagers preferred the above referred Special Civil Applications and challenged the said order as well as the order passed by the Committee in Appeals No. 7 of 2008 and 31 of 2008.

Decision: the provisions of Section-108 of the Act would be applicable in the facts and circumstances of the present case. It is an admitted position that under Section-108(1) of the Act, Government has power to vest certain open sites, vacant or grazing land or public roads, streets, bridges, ditches, etc. in panchayat subject to such conditions and restrictions the State Government may think fit to impose. Under Section-108(4) of the Act, the Government has power to resume such site or land which has been vested in the panchayat for any public purpose. In the present case, the Collector has passed an Order on 27.2.2009 under Section 108(4) of the Act and has resumed the gaucher land in dispute in favour of the project affected persons and appellants of these appeals. While passing the Order dated 27.2.2009, the Collector has also considered the Resolutions No. 26 and 31 passed by Village Panchayat and after considering the same, the Collector thought it fit to grant the land in favour of the affected persons including the present appellants. It is also to be noted that the respondent No. 1 while considering the application under Section-259 of the Act, as directed by the High Court, has also considered the said order dated 27.2.2009 passed by the Collector exercising powers under Section 108(4) of the Act and came to the conclusion that the proceedings undertaken by the Panchayat while passing the Resolution No. 31 was not a legal one and when the Collector has exercised its power under Section-108(4) of the Act after considering the issue in dispute, it was not necessary for the State Government to allow the Revision Application in favour of the original petitioners - villagers. It is pertinent to note that the Order dated 27.2.2009 passed by the Collector under Section-108(4) of the Act by which the
land has been resumed to the affected persons is not challenged by the original petitioners or by panchayat before any higher forum. the Order dated 1.6.2009 passed by the respondent No. 1 - State in Revision Application No. 12 of 2009 confirming the Order dated 3.11.2008 by the Appellate Committee in Appeal No. 7 of 2008 and 13 of 2008 is required to be confirmed and the order passed by the learned Single Judge dated 30.9.2010 passed in Special Civil Applications No. 6583 of 2009 and 6541 of 2009 is required to be set aside. both the appeals are allowed. The order dated 30.9.2010 passed by the learned Single Judge in Special Civil Applications No. 6583 of 2009 and 6541 of 2009 is set aside and confirmed the Order passed by the respondent No. 1 - State on 1.6.2009 in Revision Application No. 12 of 2009.

5. Asada Gram Panchayat and another v Collector and others[2016 Indlaw GUJ 733]

Laws and provisions: Gujarat Panchayats Act, 1993 s. 105; s. 105(2); s. 108(4)

Facts: the grazing land bearing Survey No.3/1 (pakki) and 18/pakki/1 measuring 214 Ha.(536 Acres) was being used by the inhabitants of the village Asada and adjoining villages for the purpose of grazing their cattle and as such, land vested in Gram Panchayat as Gaucher (grazing) land. Revenue entry in this regard was there in the village records. Since the year 2006, there were encroachments in certain fringe areas of the said land by way of small cultivation and making of bricks, etc. In order to get this land vacated, the petitioner-Panchayat passed resolutions, served notices on the encroachers, informed the District Development Officer and the Taluka Development Officer for assistance to remove the encroachments. Finally with the help of the police such encroachments were removed in year 2009. However, notwithstanding the efforts made by the petitioner-Panchayat, the Collector served a show cause notice dated 7.8.2009 and thereafter, resumed the entire above said grazing land by order dated 12.5.2010. It is grievance of the petitioner-Panchayat that without showing any public purpose and without giving any effective hearing, the Gauchar land has been taken away by the Government. Aggrieved from this action of the Collector, petitioner has approached this Court.

Decision: It is not in dispute that the residents of the village have been using this land for grazing their animals for years together. The land was entered as Gauchar land in the revenue records. if the Panchayat is not in a position to get the land vacated from unauthorized encroachments, it can inform the Taluka Development Officer and Taluka Development Officer shall on receipt of such information, exercise the powers of Panchayat under Sub-section (2) of Section 105 and take action to remove obstruction / encroachments. It will be relevant to note that without following procedure prescribed under Section 105(7), the authority has passed the order dated 12.5.2010 taking away the land granted to the Panchayat. This Court is of the considered opinion that Collector cannot take away Gaucher land granted to the village. If the Panchayat was unable to take back the possession of said land, it can initiate the process for vacation of unauthorized occupants through Taluka Development Officer or through other process available with the Government. Straightway taking away the land which was being used for centuries by the residents of the village for grazing their animals was never the intention of the Act. This is particularly so when Panchayat has written to Taluka Development Officer to help in removing unauthorized encroachments. Accordingly, order passed by the Collector
dated 12.5.2010 is hereby set aside. Land is ordered to be returned back to the Panchayat. If encroachments are still there, the Government will proceed as per procedure prescribed in the Act.

6. Kantiji Sarupji Thakor and others v Nagarpalika Thara and another[2016 Indlaw GUJ 521]

Laws and provisions: Constitution of India, 1950 art. 226; Gujarat Municipalities Act, 1963

Facts: It is alleged by the respondents that the appellants-original petitioners have encroached upon the gauchar land and made construction on both sides of the road. It is not in dispute that similar such notices were issued earlier in the year 2015, some of the original petitioners also challenged the said notices by way of Special Civil Application No. 8367 of 2015. The said writ- petition was disposed of by the learned single judge vide order dated 7th May, 2015 with specific observation that it will be for the petitioners to find out any scheme like JNNRUM, Mukhya Mantri Awas Yojna etc to seek regularization of the properties occupied by them, by way of representations which were to be filed within a period of 15 days from the date of passing of the order. The learned single Judge further observed that if any such representations are filed, it will be open for the respondent no.2 therein to take suitable measures on such representation

Decision: No merit in the appeal so as to interfere with the order passed by the learned single Judge. The appeal is, therefore, dismissed at the admission stage. However, it is made clear that if any such schemes as stated above for rehabilitation are in existence, we grant liberty to the appellants-petitioners to approach the authority by way of representation and we are sure that such representation will be considered by the authority in accordance with law.

7. Laljibhai Veljibhai Chaudhry v State of Gujarat and others[2016 Indlaw GUJ 512]

Laws and provisions: Gujarat Panchayats Act, 1993 s. 105

Facts: grievance of the petitioner was that though there is encroachment on the gauchar land in village Bhandu and in spite of representation made to the authorities, no action was taken to remove such encroachments. Upon hearing the learned counsel for the petitioner, by order dated 15.2.2016, without issuing any directions, this Court disposed of the writ- petition granting liberty to the petitioner to make representation to the respondent nos. 3 and 4 and such representation was expected to be dealt under Section 105 of the Gujarat Panchayats Act, 1993. The present Misc. Civil Application is filed by impleading opponent nos. 6 and 7, alleging that in spite of earlier observations made by this Court in the order dated 15.2.2016 in the main writ-petition, no steps have been taken for removal of encroachments. In the affidavit in reply, it is stated that, earlier, steps were taken by issuing notice dated 7.10.2013 to all the encroachers to remove the encroachments and date was fixed for hearing the encroachers on 6th August, 2016 at the office of the Village Panchayat. It is further stated that on the aforesaid date, 29 persons remained present and gave written statement stating that they are using the place for keeping their animals and requested not to demolish such sheds.

Decision: the steps taken by the respondent authorities, which is evident from the affidavit in reply filed on behalf of the Village Panchayat, it cannot be said that the respondent authorities have not taken any steps It is also made clear that we have not recorded any finding on the
encroachment as alleged by the petitioner, however, it is open for the authorities to take steps in accordance with law. Misc. Civil Application stands disposed of accordingly.

8. Maliben Rameshbhai Bhutiya vs Special Secretary(Appeals)

Laws and provisions:

Facts: The Mamlatdar, Ranavav initiated proceedings under section 61 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as the Code ) for removing the encroachments on the land bearing revenue survey No.309 paiki alleged to have been made by the petitioner. After hearing the petitioner, the Mamlatdar, by an order dated 22.03.2001, directed the petitioner to vacate the subject land. The petitioner was also directed to deposit certain amount for having used the land for a period of two years from 1999. On 12th January, 2001, the petitioner made an application before the District Collector to regularize the encroachment made by the petitioner to the extent of 900 square metres over the subject land. By an order dated 07.07.2003, as a pre-condition, for regularizing the encroachment in respect of 900 square metres of land bearing revenue survey No.309 paiki, the Mamlatdar directed the petitioner to vacate about 1,860 square metres of land occupied by her. It was also mentioned that unless the said area is cleared, the application made by the petitioner would not be considered. Pursuant thereto, the petitioner cleared land to the extent of 1,860 square metres. By an order dated 13.07.2005, the application made by the petitioner came to be rejected and the Mamlatdar, Ranavav was directed to initiate proceedings under section 61 of the Code for removing the encroachment made over the subject land by the petitioner.

Decision: the petitioners had earlier encroached upon the lands adjoining the lands which were leased to them by the Government. Subsequently, they had sought for regularization of the said lands and later on, pursuant to orders passed by this court, they had vacated the said lands and thereafter, made applications for allotment of 900 square metres of land each out of the land bearing revenue survey No.309 paiki. From the concurrent findings of fact recorded by the Collector as well as the revisional authority, it appears that the subject lands are situated near the National Highway and are valuable lands. Moreover, the lands in question are gauchar lands, which are vested in the Village Panchayat. The subject lands are situated near the National Highway and are valuable lands, and in future, are likely to be used as gamtal lands, as rightly observed by the revisional authority, such lands are required to be disposed of by way of public auction and cannot be allotted at the instance of parties who had earlier encroached upon such lands. For the foregoing reasons, the court does not find any infirmity in the impugned orders passed by the revisional authority so as to warrant interference. The petitions being devoid of merit, are accordingly, summarily dismissed.

9. Bhimpore Samudayik Sahakari ... vs State Of Gujarat

Laws and provisions:

Facts: petitioner-society was granted total 875 acres, 39.5 gunthas of land by two different orders, namely, (i) L.N.D/K.I.E dated 31.03.1964, and (ii) LNE/Misc./S.R. 16/64-65 dated 30.03.1965. The land was granted to the petitioner-society on condition that it shall make it cultivable and then put to use. After the land was granted in the year 1964-65 it was noticed by the authorities that the land is not made cultivable, the Assistant Collector, Chauryashi Prant, Surat, by order dated 19.01.1972, forfeited the same. The Collector in an appeal, on
certain conditions quashed order dated 19.01.1972 and granted additional five years to comply with the conditions on which the land was granted. Against this order the petitioner society made a representation before the Government and represented that on account of insufficient water supply and natural circumstances, the entire land could not be made cultivable. The Government taking into consideration the contents of the representation once again by order dated 07.11.1978 quashed the order and gave an opportunity to the petitioner-society to make the entire land cultivable within next five years. Later on the Collector, Surat issued Show Cause Notice to the petitioner society on 15.02.2002 and after following the necessary procedure passed order bearing No. A/JMN/VASHI 2315/2003 dated 'nil' September 2003, for forfeiting the lands mentioned in the order. The lands which were not made cultivable were ordered to be forfeited The Collector, on remand, heard the matter afresh and passed an order on 27.07.2005. The land which were ordered to be forfeited by order dated 'nil' September 2003, are ordered to be forfeited. It is against this order dated 27.07.2005 the petitioner society filed a Revision Application. The order impugned in the petition dated 16.07.2007 is passed in that Revision Application.

Decision: the petitioner society is out to achieve its oblique motive of grabbing the land which was got allotted in its favour in 1964-65 but thereafter did not use it for actual cultivation and thus, committed breach of condition on which the land was granted and in view of the fact that 'Khar Jamin Vikas Mandal' had written to the Collector by letter dated 22.12.1981 that the petitioner society is not putting the land to use for which it is allotted, speaks for itself about the method and manner in which the affairs of the petitioner society are conducted, the petition is dismissed with cost


Laws and provisions:

Facts: the land admeasuring 02 Hectares of Survey No.115 situated in Village Lathodra, Taluka Mangrol, District Junagadh, for which orders have been passed by the competent authority, was divested from gauchar head to Government waste land for the grant of quarry lease in favour of respondent no.6. But, at the same time, it is to be noticed that the Gram Panchayat has given "No Objection" for divesting 02 Hectares of land of Survey No.115 from gauchar land to Government waste land. There are two different Resolutions of the Gram Panchayat giving consent to divest 02 Hectares of land from Survey No.115 for the purpose of mining activity.

Decision: based on the Geologist's Report, it was found that minerals were available beneath a part of the gauchar land and relying on such Report, the order is passed by the competent authority, i.e. the Collector. Some guidelines have been issued by way of Government Resolutions for maintaining the proportion of availability of grazing land for cattle in Villages but, at the same time, if the Report of the Geologist reveals that beneath a part of the gauchar land minerals are available, then it is always open to the authorities to pass orders divesting the land as Government waste land for the purpose of grant of quarry lease. It is also to be noticed that consequent to the orders passed by the competent authority, the mining authority has passed orders granting lease in favour of respondent no.6, by entering into an agreement. Such orders were not under challenge in the Special Civil Application. the findings recorded by the learned single Judge, we are of the view that no error is committed by the learned single Judge so as to interfere in this appeal under Clause 15 of the Letters

11. Gajjan Jumma Hussain and others v District Superintendent of Police - Devbhumi Dwarka and others[2016 Indlaw GUJ 1874]

Laws and provisions: Constitution of India, 1950 art. 226

Facts: the petitioners and other agriculturist had earlier preferred Special Civil Application No.10798 of 2015 and allied matters challenging the alleged high handed action of the State authorities stated to be at the behest of respondent No.2 - Company in trying to remove the petitioners from their agricultural lands without any authority of law and under the guise of acquisition of their lands bearing revenue survey no.293/P3, 293/P2, 293/P1 (lands in question). Such petitions were disposed of by order dated 05.10.2015 as withdrawn, as Settlement Commissioner was to hear the grievance of the petitioners of Special Civil Application No.10671 of 2015 and was also directed to hear the grievance of the petitioners, if the petitioners approached him on 09.10.2015 as the Settlement Commissioner was to render decision by 16.10.2015. It appears that the petitioners then approached Settlement Commissioner with an application on 09.10.2015, copy whereof is placed at Page No.38. In the said application grievance appears to be raised is that respondent no.2 - company and the Government Officers are misguiding the petitioners and village people and trying to enter upon the lands of the petitioners though respondent no.2 is not allotted lands of the petitioners. Request is made in the said application that the copies of the orders giving land for personal cultivation in the year 1971, copy of the original Sanad issued in the year 1973 as well as copy of so called measurement sheet of 1973 be ordered to be produced before the Settlement Commissioner and as per measurement taken on site with transplanted sheet on the original documents be considered and necessary order for correcting the record be passed. One more application dated 09.10.2015 was also filed before the Settlement Commissioner to issue necessary direction to any officer to visit site and the office of District Collector, Devbhumi Dwarka be asked to identify and prepare a panchnama in presence of the applicants for the land in relation to the panchnama and Kabja Pavti dated 10.06.2015 for the lands allotted to respondent no.2 - company and to place such report before the Settlement Commissioner. The Settlement Commissioner after hearing the petitioners, through their advocates and after considering the submissions made by the different authorities passed impugned order dated 15.10.2015 recorded that lands of the petitioners were measured in the year 2010 at the request of petitioners and map was prepared on such measurement and considering Tipan prepared by the DILR in the year 1956, resurvey map was prepared on 03.09.2015 shows encroachment made by the petitioners. The Settlement Commissioner ultimately canceled survey no.502, 529, 560 given on the basis of resurvey done by IIC Technology Agency in the year 2012 as well as promulgation order made by the Prant Officer and confirmed the measurement done on 16.01.2010 which was as per the Tipan of 1956. It is this order of Settlement Commissioner which is under challenge.

Decision: The Court having heard learned advocates for the parties finds that there is no dispute on the aspect that at the request of petitioners measurement of their lands was done in the year 2010. Against such measurement no grievance was made by the petitioners, till respondent no.2 - company was allotted lands of different survey numbers, except the survey
numbers belonging to the petitioners. However, it appears that after the lands were allotted to respondent no.2 - company the petitioners and others village people started making grievance against allotment of lands to respondent no.2 - company. Such grievance was sought to be raised by filing Writ Petition (PIL) No.136 of 2015 which was heard with Special Civil Application 13902 of 2015. The Court finds that the Settlement Commissioner has committed no error in arriving at the impugned decision and therefore, no interference is called for in exercise of powers under Article 226 of the Constitution of India especially when it is not alleged that the Settlement Commissioner has not given any fair opportunity while taking such decision or that the impugned order is in excess of the authority vested with the Settlement Commissioner.

12. Sharda Sahkari Gruh Mandali Ltd. ... vs Ahmedabad Municipal Corp. And ... on 28 June, 2006

Facts:
During the course of hearing, the learned Single Judge has passed orders from time to time in connection with solving the problem of stray cattle, maintaining and repairing roads within AMC and AUDA limit and for solving the traffic congestion problem caused on account of these factors. For the purpose of making adequate area available to accommodate the stray cattle, orders are also passed for removing encroachments made by cattle owners at Rebari Vasahat. For getting adequate gaucher land available, learned Single has also passed various orders for removing encroachment from gaucher land. In the said Special Civil Application, the petitioner Society has prayed that respondent No. 1, Ahmedabad Municipal Corporation may be directed to carry out its duties under the Bombay Provincial Municipal Corporations Act, 1949 [hereinafter referred to as the BPMC Act and/or Corporation Act] for repairing and asphalting of the roads of petitioner No. 1 Society. The grievance of the said Society in the petition is that on account of heavy rains at the relevant time, the internal road of the Society was damaged, which required repairing and asphalting. It is averred in the petition that roads of petitioner No. 1 Society are to be considered within the meaning of Section 52(o)(a) of the BPMC Act. The learned Single Judge, while entertaining the said Special Civil Application, took suo motu proceedings in connection with the condition of the roads in the area forming part of the Corporation as well as the area which is forming part of AUDA. The court also took suo motu proceedings in connection with stray cattle on the roads. During the hearing of the petition before the learned Single Judge it was submitted that since there is scarcity of gaucher land and since adequate grazing land is not available for cattle, owners of the cattle are allowing the cattle to move on the roads. It was also brought to the notice of the learned Single Judge that cattle owners have encroached upon gaucher land and have put up unauthorized construction upon gaucher lands which has resulted into stray cattle problem on public streets.

Decision: Pursuant to the order passed by this Court, an affidavit-in-reply is filed by Shri M.D. Modhiya, Addl. Resident Deputy Collector, Ahmedabad, on behalf of the Collector, Ahmedabad. It is stated in the said affidavit-in-reply that as per their record there is
encroachment on the 'gauchar' land to the extent of 115,42,825 sq.mtrs. by some persons who have encroached upon the land illegally. Along with the affidavit-in-reply Annexure-A particulars are given with regard to 77 villages. It appears from the particulars which are given in the said affidavit-in-reply that particulars are not given with regard to survey number of the 'gauchar' land. Accordingly, the State Government is directed to give particulars with regard to survey number of the 'gauchar' land of 77 villages. It is also submitted in the affidavit-in-reply that Ahmedabad District Panchayat is directed to take appropriate action under the provisions of the Gujarat Panchayats Act, 1993 for removing encroachment in question so that the 'gauchar' land can be released and such communication is dated 25th November, 2004. It is further submitted in the said affidavit-in-reply that various resolutions/circulars are issued by the State Government to see that the 'gauchar' land in the State of Gujarat is protected and there is no encroachment on the 'gauchar' land and latest circular is dated 26th February, 2004. From the aforesaid Government resolutions/circulars it prima facie appears that the Government is very serious with regard to removal of encroachment on the 'gauchar' land and for the 'gauchar' land for the cattle, but there is lack of coordination and there is no implementation of the aforesaid circulars/resolutions. Ahmedabad Municipal Corporation and Ahmedabad Urban Development Authority are directed to consider the aforesaid suggestion and give advertisements in the local newspaper having wide publication informing the owners of the cattle to get their cattle registered and to inform those persons/owners of the cattle the consequences of non registration of their cattle and give some time limit with regard to registration.


Laws and provisions:

Facts: The predecessor of the petitioner resided at Village Kahoda of Siddhpur as agriculturist since more than 80 years and his forefathers were in possession of a piece of land ad-measuring 153.06 square meters, in Revenue Survey No.667 paiki which was being used as wada land. The State Government had been passing resolutions at least right from 1930 under the BLRC to confer possessory rights to the agriculturist holding wada land. One of such resolution was passed on 22/06/1968 and then on 25/04/1980 (Annexure I Colly of reply affidavit). In both the above resolutions, a policy was set up by the State Government to grant possessory rights on defined payment to the agriculturist possessing wada land. As per the said resolutions, wada land is the one which is used by agriculturist as an additional piece of land in the Gam Tal either immediately attached to their agricultural land or at some other place in Gam Tal depending upon the convenience and The petitioner pointed out that the land in question was not Gauchar land and by order dated 07/06/1980, the character of the lands in question as Gauchar was deleted from the record as such and was categorized as Gam Tal land. A reliance for the purposes is placed upon the entry made in the record of rights produced at Annexure G. Reliance is placed upon at Annexure H to show that the land in question is being used for various other purposes. While reiterating character of the land as Gauchar land in impugned order at Annexure B, the Mamlatdar was held to had no authority to certify the possession of said land as wada land. Mamlatdar’s order was held to be nullity and against the record. Hence, this petition
Decision: The impugned order (Annexure A) also records the fact that as per Resolution dated 25/04/1980, the possessor right in respect of wada land was to be claimed within three months and thereafter in case of old wada, the use of the land, only as an open land was permissible and therefore the order at Annexure C passed by the Mamlatdar was against the purpose of Resolution dated 25/04/1980. Evident from the Resolution dated 25/04/1980 annexed with affidavit in reply, that those whose land was registered as wada land were entitled to apply for possessory right on payment of defined cost. As per resolution dated 25/04/1980, a wada land can be in the Gam Tal adjoining to the house or away from the house and a Wada Patrak as per rules shall have to be maintained village-wise with relevant details. What is significant from the Resolution dated 25/04/1980 is that it lays down the policy of administration of wada lands under Wada Code and grant or non-grant of absolute or possessory rights for those lands which have been registered as wada land. In the impugned order at Annexure B, a reference to the reservation of land ad-measuring 27 Acres and 32 Gunthas of Survey No.667/2 Paiki as Gaurchar land has been made and the petitioner s claim came to be rejected on the ground that the lands in question were Gaurchar land and therefore it was not permissible to hold it as wada land. However, in the impugned order at Annexure B itself a further reference to village Form No.7 & 12 is made with the finding that the land in question is permitted to be used as Gam Tal land for various purposes like co-operative societies, post and telegram department, milk producing co-operative society, etc. Thus the respondents contention that the land in question was not grantable being a Gaurchar land, belies its own record. Considering the object of the policy under Resolution dated 25/04/1980, it is clear that the petitioner substantially complied with the eligibility for possessory rights. In fact, his possession cannot be said to be unauthorized, inasmuch as, the definition of wada itself is an indicator that when the people settled in the villages, they occupied certain amount of land in addition to the agricultural land, for being used as wada land and perhaps that is what forefather of the petitioner had done. Therefore, merely because the lands were formally not entered into Wada Register as wada land, it was not permissible for the State to deny the petitioner the benefit of the scheme when it was extended to other similarly situated persons whose names were entered into Wada Register.


Laws and provisions:
Facts: The appellant-petitioner, an Ex-serviceman, was released from Army Services w.e.f. 1.2.1973. He immediately joined Police Service. Somewhere in 1980, while the appellant-petitioner was posted as District Superintendent of Police at Valsad, he applied for grant, on lease, of land bearing Survey Nos.550 and 552 situating at Village Magod, Taluka Valsad for plantation of coconut trees. It comes out from the record that the lands in question were assigned to Village Panchayat and were gauchar land (pasture land). It also emerges from the record that on 29.11.1980, the Gram Panchayat passed resolution in respect of the said lands i.e. lands bearing Survey Nos.550 and 552, resolving that it had no objection if the said lands were granted by the Government to present appellant-petitioner. The appellant-petitioner has also claimed that in response to queries by the Collector, the District Agriculture Officer, the
Revenue Department and the District Soldier Board had also opined that the lands can be considered for cultivation of coconut trees. In pursuance of the said communication, the Collector, Valsad passed an order dated 5.12.1981 reclaiming the gauchar land, i.e. the land out of the lands bearing Survey No.550 admeasuring about 3-H, 53-A and 9-Sq.Mts. (equivalent to 8-Acres & 29-Gunthas) and further granted the said land to the appellanpetitioner on lease for the purpose of plantation of coconut trees, for period of 5 years on payment of token rent of Re.1/- per year. Thereafter, on 7.12.1981, i.e. within two days, after the land was granted on lease to the appellant-petitioner, he filed another application before the Collector, Valsad and requested that so as to make his agricultural operations economically viable, he may be allotted further land of Survey No.552 (as requested by him earlier) and also requested for extension of the lease period from 5 years to 20 years. The Collector, Valsad, by order dated 27.1.1982, i.e. within period of about 50 days, granted additional land admeasuring 8-Acres & 4-Gunthas in favour of the appellant-petitioner and also made the term of lease of both the lands for 20 years (extending, within about 50 days) 5 years' period to 20 years for previously granted lease. Since small portion of the land out of the land leased to the appellant-petitioner was required for the purpose of houses of weaker section, the Collector, by order dated 10.6.1982 reclaimed and allotted 14-Gunthas of Survey No.550 to 18 members of the weaker section of the society. Thereafter, on 16.10.1990, the competent authority in the Revenue Department issued a show-cause notice to the appellant-petitioner calling upon the appellant to show cause and explain as to why all the three orders passed by the Collector, Valsad be not recalled. The notice was issued, inter alia, on the grounds that before deleting the land from the head of gauchar lands, proper opportunity to submit objections, if any, was not given to the people of village and it was also not considered as to whether sufficient land for grazing would be available to the people of the village or not and that though the Government had declared a policy for cultivation of coconut trees on 20.3.1965 and the order was ab-initio void. The Secretary (Appeals) after hearing the counsel of the petitioner, by order dated 7.12.1991 cancelled the grant of land made by the Collector, Valsad through above mentioned three orders. Being dissatisfied and aggrieved with the order dated 7.12.1991 passed by the Secretary (Appeals), the petitioner preferred the writ petition being SCA No.2248 of 1992 in the month of January-1992. The learned Single Judge, upon considering all the documentary evidence placed before him and upon taking into account the submissions made on behalf of both the parties, by order dated 24.8.2009 rejected the writ petition. Hence, present Appeal.

Decision: Before the learned Single Judge, the appellant had also relied on the Resolution dated 24.9.1981. Although the said resolution prescribes preference or priority for ex-serviceman, the said resolution also pertains to and deals with "waste land" and also contains conditions related to income of the Ex-army personnel who seeks grant of land. The said resolutions also would not take the appellant's case further in view of the fact that, (a) The resolutions deal with and pertain to "Government waste land" and not the gauchar land; and (b) at the relevant time, the appellant was in service as District Superintendent of Police and was drawing salary of about Rs.2,170/-; and (c) at that time, he was not resident of the village, but was resident of Taluka Muli, District Surendranagar; and (d) did not have any agricultural land, and was not an agriculturist. Having regard to the said aspects and particulars of the Resolutions, the learned Single Judge has held that the grant of lands in
question, which are Gauchar land, was and is unauthorized, and the said resolutions could not have been taken recourse of and/or could not have been relied on and used for allotting or granting Gauchar land to the appellant either as ex-serviceman or as ordinary citizen. However, in present case, the introduction of the appellant's affidavit dated 13.8.2010 and the submission of the annexed documents - particularly the Collector's letter dated 29.11.1983, on the record of present appeal, has brought in picture certain additional dimensions and facts which were not available before the learned Single Judge until the time of the decision When the remarks and response by the Collector in his communication dated 29.11.1983 are taken into account, it appears that at the relevant time, the land in question though Gauchar land (pasture land), were probably not being used as Gauchar land. In view of the foregoing discussion and on taking into account the appellant's affidavit dated 13.8.2010, the earlier order dated 21.9.2010 by the Division Bench, the Collector's letter dated 29.11.1983 and the respondent's affidavit dated 2.11.2010, the matter is remitted to the learned Single Judge. Thus, the judgment and order dated 24.8.2009 would not survive. The learned Single Judge may, if need be, call for such other and further details as may be necessary and upon considering such material - replies as may be placed on record by both sides, pass appropriate orders as may be justified and appropriate in the facts of the case. The appeal stands disposed off accordingly.

15.   Biliyaada Gram Panchayat and others v State of Gujarat and others[2015 Indlaw GUJ 102]
Laws and provisions: Bombay Land Revenue Code s. 62; Constitution of India, 1950 art. 14

Facts: The petitioners, by this petition, are invoking the jurisdiction of this Court as public interest litigation for seeking appropriate writ to quash and set aside the order (Annexure-M) passed in May 2015 by the District Collector and it is prayed by the petitioners that respondent authority be directed to reassign the land as Gauchar land. the land has not been allotted by public auction and it was also submitted that in village area, there is requirement for Gauchar land (land reserved for grazing of stray cattle) and therefore, the land should have been marked for Gauchar land instead of allotting the same to the respondent no.3 trust for educational purpose. on the the date when the land was allotted by the impugned decision of the Collector, the land was not reserved as Gauchar land, but was as waste land of the Government. It is true that initially, the land was reserved as Gauchar land, but subsequently, the land was resumed by the Government and it was allotted for industrial purpose of stone crushing to the private person. As the said person committed breach of the condition of allotment, the land was again resumed back and it remained as waste land.

Decision: The land remained as waste land of the Government and thereafter, it was never marked as Gauchar land. Further, even one of the prayer of the petitioners is that the land be marked as Gauchar land. That itself would show that the land was not marked as Gauchar land. The record shows that the land was a waste land of the Government. The village panchayat is the main body who is one of the petitioners and it is true that some residents of the village are joined. The essential purpose is to make the land available for the cattle of the residents and not for any class of the person who cannot approach before the Court for ventilating the grievance. It is hardly required to be stated that the engagement in the business
of animal husbandry cannot be co-linked with the land to be used for grazing purposes of the stray cattle who would not be looked further by anybody. In any case, the land is not allotted for any private purpose or with any extraneous consideration, more particularly, when no allegation is made nor any material is produced for such purpose. If the land simplicitor is allotted for educational purpose to a charitable trust who is to render the educational activity without any discrimination of caste or religion that too in a remote area of the village, such action cannot be said as illegal just on a mere ground that a public auction was not held. Under the circumstances, the petition is dismissed.

16. Chintamani and another v Mohan Singh and others[2007 Indlaw UTT 217; 2007 (4) UC 183]

Laws and provisions: Code of Civil Procedure, 1908s. 80; s. 100; Indian Evidence Act, 1872 s. 120; Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975 s. 3

Facts: This Second Appeal is directed against the judgment and decree dated 9-8-1982 passed by the I Additional District Judge, Nainital in Civil Appeal No. 159 of 1980, Mohan Singh and another Vs. Chintamani and others. By the impugned judgment and decree, the first appellant court has partly allowed the appeal preferred by the defendant nos. The plaintiffs Chintamani and Shyam Ban filed a suit for mandatory and prohibitory injunction against the defendants Mohan Singh and Puran Singh directing them to restore the rivulet (water channel) flowing from plot no. 295 to plot no. 272 of village Bajoon to its natural and original condition. The defendants were also sought to be directed by mandatory injunction to restore the Batia, Panghat, Gauchar and Rasta existing in plot no. 272 to its original condition. Plaintiffs have also prayed for further mandatory injunction against the defendants directing them to construct a wall below plot no. 273 of the plaintiff no. 1 to prevent its fall which had become imminent because of the hill cutting and digging done by them below the said plot no. 273 in plot no. 272. The plaintiffs by way of prohibitory injunction also prayed that defendants be restrained not to damage the plot nos. 272 and 274 of the plaintiff no. 1 and plot nos. 340, 341, 343, 344 and 339 of the plaintiff no. 2. They were also sought to be restrained from interfering in the use of the Batia, Rasta, Panghat and Gauchar of the plaintiffs existing in plot no. 272. It was alleged that the plaintiff no. 1 had purchased plot nos. 272A, 273, 274, 275, 276 and 277 from Kharak Singh and he was the owner in possession of the same. The plaintiff no. 2 was in possession as Bhumiidar of plot nos. 339, 340, 341, 342, 343 and 344 apart from his certain other land. A rivulet used to flow at a distance of 30 feet from plot nos. 338 and 339 in a natural way. A few days before the filing of the suit, defendants changed the course of the said rivulet and as a result its flow was turned towards plots no. 340 and 341 of the plaintiff no. 2 which were at a lower level. By such diversion of the rivulet or the water channel, Rasta, Batia, Panghat and Gauchar existing in plot no. 272 got blocked. The plaintiffs had an easementary right to use the said Rasta, Panghat an Gauchar existing as aforesaid, as they were in their use for the last more than 50 years. Besides, the defendants also resorted to hill cutting and digging under plot no. 273 and as a result of an imminent danger had arisen of the fall of the plots of the plaintiff no. 1. With these allegations the suit was filed.
Decision: It is not disputed that the defendant Mohan Singh got constructed a cemented wall to save erosion of his land by the flow of the water of rivulet. The appellate court has observed that the plaintiffs have not produced any independent witness of the village who could have come to say that actually the course of the rivulet had been changed or diverted or turned by the defendants no. 1 and 2. The lower appellate court has dealt with the evidence of both the parties. It is not disputed that the land of defendant Mohan Singh lies first from the side of flow of rivulet. In view of the above, it cannot be said that the finding of, the first appellate court is based on no evidence. Accordingly, the Question No. 1 is answered in negative against the appellants. The learned lower appellate court has considered the evidence properly to arrive at the conclusion that the defendant nos. 1 and 2 had not changed the course of the rivulet. Question no. 2 is answered in negative in the manner that by virtue of Section 3 of the Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975, the plaintiffs ceased to have any right in the course of the rivulet. The finding that the defendant nos. 1 and 2 had not changed the course of rivulet is a pure finding of fact, which cannot be interfered with by the High Court. The plaintiffs have claimed their right of Rasta, Batia, Gauchar and Panghat existing in plot no. 272. The learned trial court has held that there existed Rasta, Batia, Gauchar and Panghat in Banjar portion of the plot no. 272, but the trial court has not made any reference to the revenue records on record and merely on the assertions made by the plaintiffs, the trial court has recorded the finding that Rasta, Batia, Gauchar and Panghat existed on plot no. 272. The learned lower Court has examined the Khatuni (Ext. B2) on record and found that the plot no. 272 is divided in two parts - Plot No. 272A and Plot No. 272B and it was found that plaintiffs failed to file revenue papers in this regard. The learned lower appellate court has rightly observed that the plaintiffs have not produced any independent witness to state that in fact Rasta, Batia, Gauchar and Panghat existed in plot no. 272. Relief of easementary rights could not have been granted on the basis of presumption that there existed Rasta, Batia, Gauchar and Panghat in plot no. 272. Plot No. 272 B is recorded as Banjar and the same is owned by the State. It was ultimately held that the plaintiffs had miserably failed to establish the existence of any prescriptive easementary right in their favour in respect of plot no. 272B. It was held by the learned first appellate Court that existence of Rasta, Batia, Gauchar and Panghat on the spot were not proved at all. It is pertinent to mention that the plaintiffs have also failed to establish how and when they perfected the easementary right .Question No. 3 is answered accordingly against the appellants. The second appeal is hereby dismissed. No order as to costs

17. Alabhai Rajde Batiya v State of Gujarat[2011 Indlaw GUJ 678]

Laws and provisions: Gujarat Panchayats Act, 1961 s. 108(4); s. 108

Facts: Special Civil Application No.5386/2008 has been filed by residents of village Zarpara, Taluka Mundra, District Kutch. In this petition filed in the nature of PIL, petitioners have prayed for quashing and setting aside orders passed by respondent No.1 and 2 i.e. the State and the Collector of the District Kutch, by virtue of which certain lands allotted to Village
Panchayat for the purpose of Gauchar(grazing) came to be resumed by the State and ultimately came to be allotted to respondent no.3 for creation of Mundra Special Economic Zone ("Mundra SEZ" for short). The petitioners are residents of village Zarpara. It is their case that respondent authorities illegally and unjustifiedly resumed 402 hectares 24 Are and 2 sq. mtrs. (1000 acres) of Gauchar land allotted to the Village Panchayat and decided to grant the same to respondent no.3 for the purpose of setting up of Special Economic Zone. It is the case of the petitioners that such resumption and ultimate allocation of land in favour of respondent no.3 is wholly illegal and unlawful. Gauchar land could not be diverted for any purpose other than for public purpose. In the present case, no public purpose is being served. It is the case of the petitioners that previously Village Panchayat had also opposed such proposal. However, after election of new Sarpanch and induction of Shri Dhanraj Gadhvi as Sarpanch, Panchayat adopted a resolution of 14.3.2007 in favour of resumption of Gauchar land by the State Government. In December 2003, respondent no.3 made an application to the Collector Bhuj for allotment of land of village Zarpara for setting up of Special Economic Zone. On 14.3.2007, Zarpara Village Panchayat adopted a unanimous resolution recording that respondent no.3 had demanded 1000 acres of land from out of survey no.689 for the purpose of setting up of Special Economic Zone and that the Panchayat agrees to allot such Gauchar land to the company. On 12.9.2007, a resolution was passed by the Revenue Department to allot 402 hectares 24 Are and 2 sq. mtrs. (approx. 1000 acres) of village Zarpara to respondent no.3 on certain terms and conditions. On 5.10.2007, the Collector, Bhuj directed respondent no.3 to deposit a sum of Rs.4,42,46,422/- at the rate of Rs.11/- per sq. mtr. for the land to be allotted and also directed to deposit further sums of Rs.1,32,73,927/- towards premium for the land at the rate of 30% and conversion tax of Rs.2,41,34,412/- at the rate of Rs.6/- per sq. mtr. On 16.11.2007, the Collector, Kutch resumed said extent of land i.e. 402 hectares 24 Are and 2 sq. mtrs. u/s. 108(4) of the Gujarat Panchayat Act. On 19.11.2007, the Collector, Bhuj allotted said land in favour of respondent no.3.

Decision: it cannot be stated that the land in question was allotted to respondent no.3 even before its resumption by the State. Such resumption was after village panchayat by a unanimous resolution agreed to the same and that village Gram Sabha cannot in facts of this case re-open such issue many years later. We may recall that Grampanchayat agreed to surrender the land by a resolution dated 12.9.2007. Collector thereupon resumed the land and thereafter allotted it to the respondent no.3 by order dated 19.11.2007. Gram Sabha in its meeting dated 11.9.2010 decided to oppose such allotment. Now coming to the question of adequacy of Gauchar land at the command of Village Panchayat, we may refer to relevant Government resolutions. The Government issued circular dated 30.12.1988 reiterating that as per Government standards per 100 cattle, 40 acres (16 hectares) of Gauchar land is required to be maintained, so that village cattle can be properly looked after. However, the Government is empowered to resume even the Gauchar land for any public purpose because such resumption of land ultimately benefits village people also. The circular further, provided that wherever, available Gauchar land is less than the prescribed standards, in such cases, Gauchar land should not be utilised for any other purpose and that in exceptional cases only, when such land is required for public purpose, procedure for resumption of land should be undertaken. Even in such cases, if there is opposition from the local self governing bodies, as
far as possible, procedure for resumption of such land should be avoided unless opposition is found to be baseless. It can be seen that there is controversy regarding number of cattle in village Zarpara when the Collector decided to resume the Gauchar land admeasuring 1000 acres for the purpose of granting to respondent no.3 for setting up Special Economic Zone. Such controversy is required to be resolved from available documents on record. In Government Resolution dated 20.5.1954, it was provided that standard average of grazing area should be fixed at 40 acres per 100 cattle. We may also notice that under Government Resolution dated 27.1.1999, Government provided that whenever Gauchar land is being resumed for industrial purpose, on the basic market price of land, 30% thereof should be collected by way of premium and such amount shall be made available to the Gram Panchayat for improvement of Gauchar land. Such amount shall be transferred to Taluka Panchayat from where it can be utilised by Gram Panchayat for the purchase of land for Gauchar and the ownership thereof will be of the Gram Panchayat. In the said resolution it is further provided that in case where Gauchar land is being resumed, land to the same extent out of Government wasteland, if possible should be allotted to Village Panchayat. In such case, premium collected from the industry would be retained by the Government. We are sure State authorities would be cognizant of the provisions contained in said Government Resolution dated 27.1.1999 and would take appropriate steps in terms of such provisions. Present petition however, is not aimed at directing the Government to allot Gauchar land to the Village Panchayat from out of its wasteland available. No direction in this regard therefore, can be granted. However, we recommend that State Government shall examine whether out of wasteland available with the Government, area to the extent of Gauchar land resumed from the Panchayat, could be allotted to Zarpara Gram Panchayat. However, insofar as challenge of the petitioners to the resumption of Gauchar land to the Panchayat and allotment thereof to respondent no.3 is concerned, same fails.


Laws and provisions: Constitution of India, 1950 art. 226

Facts: the petitioner is an agriculturist who makes two ends meet by farming and cattle rearing. According to the petitioner, he and other villagers were grazing their cattle in the Gauchar land bearing Survey Nos.1107 and 976, admeasuring 3-81-72 square metres and 2-65-29 square metres, respectively, registered at Account No.112, situated in the periphery of village Ganeshpura (Tarab). It is the case of the petitioner that upto the year 2004, this land was shown as "Government Waste Gauchar" in the revenue records and the village people used to graze their cattle thereupon. However, on verifying the record, it was found that Entry No.664 for Revenue Survey No.1107, and Entry No.934 for Revenue Survey No.976, had been mutated, by virtue of which, the names of Patel Ramchand Kuber, Mulchand Talja, Bechar Javra, Haribhai Kalubhai, Hirabhai Dayalji, Chatur Valabhai and Haribhai Revabhai, were shown with the remarks that "the said land was continuously waste land and before 20 years along with Raichand Kuber has been purchased in partnership in an auction". According to the petitioner, the said Ramchand Kuberbhai Patel was the then Mukhi of Ganeshpura village who, in collusion with the Talati-cum-Mantri, got his name inserted in the revenue record for land bearing Survey Nos.1107 and 976, by way of Entries Nos.664 and 934 respectively. It is the case of the petitioner that the heirs of said Ramchand Kuberbhai...
restrained the villagers from entering upon the land and grazing their cattle. Representations were made to the Collector and Deputy Collector (respondents Nos.2 and 3) respectively, to take appropriate action in the matter, but none was taken. The petitioner issued a legal notice to the authorities, asking them to make inquiries and take action in the matter as, according to him, Government Waste Gauchar land has been wrongly converted into private land. The petitioner has also filed a criminal complaint against the alleged encroachers. Under these circumstances, the petitioner has approached this Court by making the prayers reproduced hereinabove.

Decision: in the form of a copy of Form-I of the year 1917-1918, annexed to the affidavit-in-reply filed by respondent No.2 makes it abundantly clear that the land is Government Waste land and not Gauchar land as stated by the petitioner. The documents on record further reveal that the land in question was sold in auction to the persons mentioned hereinabove, whose names are shown in the revenue record. The copies of Village Form No.7/12 from the year 1952 to 1998, annexed as Annexure-R II collectively to the affidavit-in-reply filed by respondent No.2, clearly mention this aspect. In view of the documentary evidence on record, that the land was never Gauchar land, and has been sold by auction somewhere in the year 1930, the very premise on which the case of the petitioner rests would collapse. Significantly, no material to the contrary has been placed on record by the petitioner. As the land in question was never Gauchar land, the petitioner cannot have grazing rights upon the same. Further, the auction-sale of the land has never been challenged by the petitioner at any point of time. The persons to whom the land has been sold have become the owners thereof, and their rights of ownership qua the land in question cannot be restricted in a manner that is being prayed for by the petitioner. The petition is rejected. Notice is discharged.


Laws and provisions: Gujarat Panchayats Act, 1962 s. 96(4)

Facts: Nabipur village stood inhabited by about 4,000 people belonging to various creeds including Adivasis and Harijans and other economically backward persons. Most of the village population depends upon agriculture. Landbearing survey No. 1048 in the outskirt of village Nabipur has been used as grazing land from times immemorial. The same is meant for grazing for more than 1100 cattle heads. In compliance of the 20 Points Programme of the Government, the Taluka Development Officer wrote a letter to the petitioner - Nabipur Gram Panchayat to mutate the aforesaid grazing land into Gamtal (Gharthal) land with a view to plotting the same for landless persons. On receipt of the letter, the petitioner Panchayat invited objections from the members of the public as per public notice and proclamation dated 20-11-1981. Number of village people including the people belonging to weaker section for which Gauchar land was sought to be set apart for rehabilitation, raised objections protesting to the proposed action of the Government to convert the grazing land into Gamtal land for the purpose of rehabilitation thereof by the landless persons. On 24-11-1981 Social Justice Committee held a meeting where the question was considered and it was resolved that there was a shortage of land for grazing and if from the existing grazing land, some portion was set apart for rehabilitation, the problem of grazing would be aggravated. It was resolved that if the Government wanted to set apart the land for landless persons some other land should be
found out. It is the say of the petitioners that the persons who formed Social Justice Committee represented the Adivasis and other backward classes for whom the Government wanted the land to be set apart. In spite of such objections on the part of the petitioner - Gram Panchayat, the Executive Committee of the Taluka Panchayat passed the impugned resolution dated 3-12-1981. The petitioner thereupon submitted an appeal before the District Panchayat and the District Panchayat rejected the petitioner's appeal as per the impugned order dated 5-4-1982 passed by the learned Collector (Annexure D). A Review Application was also preferred to the same authority, but it met with the same fate on September 30, 1982.

Decision: It is no doubt true S. 96(4) does confer power upon the Government to resume land including grazing land for any public purpose. However, such power has to be exercised reasonably and upon consideration of the relevant factors. On a look at the impugned order dated 5-4-1982 it clearly appears that the learned Collector has failed to apply his mind with regard to the actual requirement of grazing land for people of village Nabipur and the actual availability of grazing land to them. It is an admitted fact that even prior to the impugned order for resumption of portion of the grazing land bearing survey No. 1048, there, was a demand from the petitioner Panchayat for annexing more grazing land as the land available was short of the requirement of grazing for the cattle heads in village Nabipur. It also appears that the particulars of landless persons who are in contemplation to be rehabilitated are also not forthcoming. They also do not appear in the affidavit in reply. As against that the people of Nabipur village at large have objected to the resumption of grazing land for non-agricultural use of providing residence to landless persons. If there are no landless persons, in fact requiring land, the proposed resumption would be futile. It is not the case of the respondents that some persons from other villages or of other places are sought to be rehabilitated in the outskirt of village Nabipur. The learned Collector has not weighed the purpose for which resumption is to be made and the purpose of grazing in the context of the actual requirement of the village. In the facts of the case it, therefore, clearly appears that the impugned resolution and the impugned order respectively Annexure C and D apparently suffer from unreasonableness and nonapplication of mind to the very relevant factors. Finally it also does not appear on the face of the impugned order that the objections of the village people as also the petitioners have in fact been considered by the learned Collector. In the result, the petition deserves to be granted. The impugned resolution and order Annexure C and D are here by quashed and set aside. R. made absolute.