
(1995) 10 RAJ CK 0009
In the Rajasthan High Court
Case No : C.S.A. No. 72 of 1987

Anandi Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-10-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Rajasthan High Court Ordinance, 1949 — Section 18
Rajasthan Land Revenue Act, 1956 — Section 82
Rajasthan Tenancy Act, 1955 — Section 232

Citation : AIR 1996 Raj 154 : (1996) 2 WLC 36

Hon'ble Judges : A.P. Ravani, C.J.; M.A.A. Khan, J

Bench : Division Bench

Advocate : K.K. Mehrish, J.S. Rastogi, Sanjay Mehrish, for the Appellant; S.C. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Ravani, C.J.—Where no period of limitation is prescribed under the relevant provision of the Statute, can the power be exercised by the authority at any time? The question has arisen in this Appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 in the context of exercise of powers by the Board of Revenue after a period of about 25 years u/s 82 of the Rajasthan Land Revenue Act, 1956 and u/s 232 of the Rajasthan Tenancy Act, 1955.

2. This Appeal arises out of the judgment and order passed by the learned single Judge in SB Civil Writ Petition No. 184 of 1987 decided on January 19, 1987. By the aforesaid order, the learned single Judge confirmed the judgment and order passed by the Board of Revenue in LR Reference No. 38 of 1984/ Kota.

3. The facts giving rise to this appeal, are as follows :--

The dispute pertains to a land admeasuring 43 Bighas and 9 Biswas, situated in the village -- Ulthi Tehsil and District -- Baran. The land was originally in the

name of Pujari Laxminarain Temple. Sometime in the year 1951, the Pujari died. The land was ordered to be resumed and confiscated to the State as per order dated January 20, 1955 passed by the Commissioner, Kota. In other words, the land was a "Muafi" land inasmuch as after death of the Pujari of Laxminarain temple, no one was there to claim the land. By way of escheat, it was ordered to be resumed by the State.

4. On Oct. 14, 1955, the Rajasthan Tenancy Act, 1955 (for short "the Act of 1955") came into force. Thereafter, the petitioner, appellant herein, filed suit on May 19, 1957 under the appropriate provisions of the Act of 1955 for a declaration that he be declared "khatedar" of the land, inter alia, on the ground that on Oct. 14, 1955 he was in possession of the land. The suit was decreed on Oct. 12, 1957. The State Government of Rajasthan was party to the suit. No appeal was filed against the said order. Consequently, in the revenue record, Mutation Entry No. 334 was made on Sept. 22, 1958. The petitioner continued to be in possession of the land and enjoyed the fruits of the same.

5. On the basis of report made by the Tehsildar on Dec. 27, 1983, the Additional Collector, Baran made reference to the Board of Revenue u/s 232 of the Act of 1955 and u/s 82 of the Rajasthan Land Revenue Act, 1956 (for short "the Act of 1956"). By the said reference it was prayed that the decree passed by the Assistant Collector, Baran dated Oct. 12, 1957 and the Mutation Entry No. 334 dated Sept. 22, 1958, be cancelled. The Board of Revenue accepted the reference as per the judgment and order dated May 21, 1986 and directed that the decree passed by Assistant Collector, Baran dated Oct. 12, 1957 and the Mutation Entry No. 334 dated Sept. 22, 1958, be cancelled and the earlier position be restored and the land be entered in the name of Mandir Maufi.

6. The appellant-petitioner preferred a Writ Petition before this Court under Articles 226 and 227 of the Constitution of India, challenging the legality and validity of the judgment and order passed by the Board of Revenue. The petitioner also prayed for declaration that he had acquired the khate-dari rights of the disputed land u/s 15 of the Act of 1956 and further declaration that the disputed land had been resumed under the orders of the Commissioner, Kota passed on January 20, 1955. Thereafter the land had ceased to be of the Maufi of Murti Mandir and since then it did not belong to Murti Mandir Laxminarayanji.

The learned single Judge (Coram: P.C. Jain, J.) summarily rejected the Petition as per judgment and order dated January 19, 1987. It is against this judgment and order passed by the learned single Judge that this Special Appeal is preferred.

7. A preliminary objection is raised on behalf of the respondents as regards maintainability of the Special Appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 (for short "the Ordinance"). It is not disputed that the provisions of Section 18 of the Ordinance are *pari materia* with Clause 15 of the Letters Patent Act, which applies to Bombay High Court and certain other High

Courts. The learned counsel appearing for the appellant relied upon the following decisions of the Supreme Court in-support of his contention that the Appeal is maintainable:--

Union of India (UOI) Vs. Mohindra Supply Company,

Gulab Bai and Another Vs. Puniya,

Umaji Keshao Meshram and Others Vs. Radhikabai and Another,

Sushilabai Laxminarayan Mudliyar and others Vs. Nihalchand Waghajibhai Shah and others,

Since the law laid down by the Supreme Court is elaborately discussed in the case of Umaji Keshao Meshram (supra) and reiterated in the case of Sushilabai Laxminarayan Mudliyar (supra), it is not necessary to refer to earlier two decisions in detail.

8. In the case of Umaji Keshao Meshram and Others Vs. Radhikabai and Another, , the question arose as regards the maintainability of intra-Court appeal, before Division Bench of the Bombay High Court against the judgment and order passed by the learned single Judge in a petition filed under Article 227 of the Constitution. The Division Bench of Bombay High Court dismissed the Letters Patent Appeal as being not maintainable. The matter was carried before the Supreme Court. The Supreme Court held that the Letters Patent Appeal would be maintainable only if the petition before the learned single Judge was filed under Articles 226 and 227 of the Constitution. If the petition is under Article 227 of the Constitution alone, then the appeal would not be maintainable. In para 101 of the reported decision, the Supreme Court observed as follows:--

"Consequently, where a petition filed under Article 226 of the Constitution is according to the rules of a particular High Court heard by a single Judge, an intra Court appeal will lie from that judgment if such a right of appeal is provided in the Charter of that High Court, whether such Charter be Letters Patent or a Statute."

9. After referring to its earlier decision in the case of Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, the Apex Court held that it is equally well settled in law that the proceeding under Article 227 of the Constitution is not an original proceeding, and observed that an intra-Court appeal does not lie against the judgment of a single Judge given in the petition under Article 227 of the Constitution by reason of such appeal being expressly barred by Clause 15 of the Letters Patent of Bombay High Court. After discussing case law on the point, in para 106 of the decision the Supreme Court observed as follows:--

"In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in

order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226."

10. The principle laid down in the aforesaid decision has been reiterated by the Supreme Court in the case of Sushilabai Laxminarayan Mudliyar and others Vs. Nihalchand Waghajibhai Shah and others, The Supreme Court explained and clarified the position of law declared by it in Umaji Keshao Meshram and Others Vs. Radhikabai and Another, The Supreme Court reiterated the aforesaid proposition of law. Therefore, in each case what is to be seen by the Court is as to whether facts of the case justified that the party could file a petition under both the Articles 226 and 227 of the Constitution or it could file petition only under Article 227 of the Constitution? If a party could file petition only under Article 227 of the Constitution and in facts and circumstances, the petition is under Article 227 of the Constitution, then appeal to Division Bench will not lie. Moreover, the substantial part of the order appealed against should be under Article 226 of the Constitution. Therefore, two conditions are required to be fulfilled, to show that an intra-Court Appeal is maintainable. These are -- (1) that the facts of the case should justify that a party could file petition both under Articles 226 and 227 of the Constitution and in fact and substance the party files petition both under Articles 226 and 227 of the Constitution; (2) That substantial part of the order appealed against should be under Article 226 of the Constitution. If these conditions are not satisfied and yet the party mentions Article 226 of the Constitution, that itself would not confer upon him the right of appeal.

11. In view of the aforesaid settled legal position, let us examine the provisions of Section 18 of the Ordinance which reads as follows:--

"Appeal" to the High Court from Judgment of the Court.-

(1) An appeal shall be to the High Court, from the judgment, (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence to the High Court and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence u/s 43 or in the exercise of criminal jurisdiction) of one Judge of the High Court.

(2) Notwithstanding anything hereinbefore provided, an appeal shall lie to the High Court from a judgment of one Judge of the High Court made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court where the Judge who passed the judgment declares that the case is a fit one for

appeal."

Analysing the provision of Section 18 of the Ordinance, it becomes evident that the Special Appeal lie to the High Court-

- (i) from a judgment,
- (ii) of one judge of the High Court,
- (iii) not being a judgment passed in the exercise of appellate jurisdiction in respect of-
 - (a) a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the High Court;
 - (b) not being an order made in the exercise of revisional jurisdiction;
 - (c) not being a sentence or order passed or made in exercise of powers of superintendence u/s 43 or in the exercise of criminal jurisdiction;
 - (d) a sentence or order passed or made in exercise of criminal jurisdiction.

12. The aforesaid analysis makes it clear that the provisions of Section 18 of the Ordinance would not apply if it is shown that what is appealed against is not a judgment within the meaning of the term occurring in the Ordinance. Moreover, if the judgment of the learned single Judge, falls in any of the excepted categories covered by Clause (iii), hereinabove, then also appeal to Division Bench will not be maintainable. Thus, two conditions must be satisfied to attract the provisions of Section 18 of the Ordinance. One that there should be a judgment passed by learned single Judge against which Special Appeal is to be filed. Another condition is that such judgment should not be falling in any of the excepted categories mentioned in Clause (iii) hereinabove.

13. In view of the settled legal position, as declared by the Apex Court, the question as to whether intra-Court Appeal or Special Appeal in the same High Court would be maintainable or not, would depend upon the facts of the case. Only if the facts justify, a party would be entitled to file petition both under Articles 226 and 227 of the Constitution. If facts do not justify and yet the party labels the petition as one under Article 226 of the Constitution also, that would not be sufficient to hold that an intra-Court Appeal or Special Appeal would be maintainable against the judgment and order of a single Judge of the High Court. Thus in each case, it will be for the High Court to examine the facts of the case. On examination of facts the Court should be satisfied that the substantial part of the order appealed against is under Article 226 of the Constitution. Moreover, the Court should be further satisfied that petition could be filed under both the Articles i.e. Articles 226 and 227 of the Constitution. If the Court comes to the conclusion that the petition could be filed only under Article 227 of the Constitution and in fact and substance the petition is one under Article 227, further appeal, that is Special Appeal would not be maintainable before Division Bench of the same High Court, against the judgment of a learned single Judge

passed in such petition.

14. In light of the legal position as stated above, we have examined the facts of this case. In para 15 of the petition the petitioner inter alia, prayed that the judgment dated May 21, 1986 of the Board of Revenue, Rajasthan, Ajmer be quashed and set aside. He further prayed that the judgment dated October 12, 1957 of the Assistant Collector, Baran, be confirmed. Thereafter, the petitioner prayed in Clauses (iii) and (iv) of the prayer clause that by a suitable writ, order or direction it be declared that the petitioner acquired the Khatedari rights on the disputed land u/s 15 of the Rajasthan Tenancy Act, 1956. The petitioner also prayed for declaration that the disputed land had been resumed under the orders of the Commissioner, Kota dated January 20, 1955 and thereafter the land ceased to be of the Muafi of Murti Mandir Shri Laxmi Narainji. Therefore, the same could not be taken to be belonging to Murti Mandir Shri Laxmi Narainji. From the averments made in the petition and in view of the reliefs prayed for by the petitioner, which have been referred to hereinabove, it cannot be said that the petition was only under Article 227 of the Constitution. In facts of the case, we are satisfied that the petition was both under Articles 226 and 227 of the Constitution. In view of this position we hold that in this case the petition before the High Court was under both Articles 226 and 227 of the Constitution. Therefore, the Special Appeal is maintainable and the preliminary objection is overruled.

15. The learned counsel appearing for appellant submitted that in reference, the Board of Revenue was required to consider the legality and validity of the judgment and decree passed by the Assistant Collector, Baran dated October 12, 1957. Bare reading of the aforesaid decree shows that the land in dispute was resumed by order dated January 20, 1955 passed by the Commissioner, Kota. That order had become final. Thereafter, rights of cultivation were auctioned in the year 1955 and the appellant-petitioner has purchased the said rights by offering the highest bid of Rs. 65/ -. Since then he continued to be in possession of the land. On October 14, 1955 when the Act of 1955 came into force, he was in possession of the land, therefore, he filed the suit as stated above. The Assistant Collector, Baran has narrated these facts in the decree which is produced at Annexure-2 to the writ petition. The Board of Revenue has passed the order without taking into consideration the vital facts as regards the resumption of land by the State by order dated January 20, 1955 passed by the Commissioner, Kota and the facts that the rights of cultivation were auctioned in the year 1955 and the petitioner's highest bid of Rs. 65/- was accepted and he was granted the rights of cultivation. These facts have not even been averted to by the Board of Revenue. Thus, the Board of Revenue has failed to exercise jurisdiction vested in it and the judgment and order passed by it suffers from the vice of failure to exercise jurisdiction. The same infirmity attaches with the judgment and order passed by the learned single Judge. The learned counsel appearing for the petitioner further submitted that power of making reference u/s 232 of the Act of 1955 and u/s 82 of the Act of 1956, was exercised by the

Tehsildar after a period of about 25 years. Consequently, the Board of Revenue has exercised the same power after such an inordinate delay. Therefore, it is submitted that the power has been invoked and exercised after unreasonable length of time. Hence it is contended that the exercise of power is unreasonable and arbitrary, and, therefore, also the judgment and order passed by the Board of Revenue is required to be quashed and set aside.

16. Learned counsel for the respondents submitted that the land belong to Maufi Mandir Laxminarain Temple, therefore, power could be exercised after any length of time. There was no question of limitation while exercising powers u/s 232 of the Act of 1955 and u/s 82 of the Act of 1956. It was further submitted that if the Board of Revenue has failed to take into consideration the facts regarding resumption of land by the State and auction of the , cultivatory rights over the land, then in that case the matter may be remanded to the Board of Revenue for deciding the case afresh.

17. In this case it is an undisputed position that the Tehsildar made report on December 27, 1983 to the Additional Collector, Bafan. On the basis of this report the Additional Collector made reference to the Board of Revenue. Thus, the decree which was passed in favour of the appellant/petitioner on October 12, 1957 and the Mutation Entry No. 334 which was made on September 22, 1958, are sought to be interfered with and set aside by invoking powers u/s 82 of the Act of 1956 and u/s 232 of the Act of 1955, after a period of about 25 years. The provisions of Section 232 of the Act of 1955 and Section 82 of the Act of 1956, reads as follows :--

"232. Power to call for record and refer to the Board -- The Collector may call for and examine the record of any case or proceeding decided by or pending before any revenue Court subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order or decree passed and as to the regularity of the proceeding, and if he is of opinion that the order or decree passed or the proceeding taken by such Court should be varied, cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board and the Board shall, thereupon, pass such orders as it thinks fit :

Provided that the power conferred by this section shall not be exercised in respect of suits or proceedings falling within the purview of Section 239."

"82. Power to call for records and proceedings and reference to State Government or Board -- The Settlement Commissioner or the Director of Land Records or a Collector may call for and examine the record of any case decided or proceedings held by any revenue Court or officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of proceedings and, if he is of opinion that the proceedings taken or order passed by such subordinate Court or officer should be varied, cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board, if the case is of a judicial nature or connected with

settlement, or for the orders of the State Government if the case is of a non-judicial nature not connected with settlement; and the board or the State Government, as the case may be, shall thereupon pass such order as it thinks fit."

Bare reading of the aforesaid provision show that no period of limitation is prescribed for the exercise of revisional power by the Board of Revenue. However, when no period of limitation is prescribed by the Legislature, can it be said that the power could be exercised at any time even after lapse of unreasonably long period of time ?

18. Similar question arose before the Supreme Court in the case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, In that case facts were like this. On July 2, 1960 Collector granted permission for non-agricultural use of the land. The Commissioner, Rajkot Division set aside the order passed by the Collector in exercise of re-visional powers by order dated October 12, 1961. The revisional powers conferred upon the State Government u/s 211 of the Bombay Land Revenue Code, could be exercised by the Commissioner. The question arose as to whether the Commissioner could exercise this power at any time inasmuch as there was no period of limitation prescribed u/s 211 of the Bombay Land Revenue Code ? After considering the provisions of Section 211 of the Bombay Land Revenue Code, in para 11 of the judgment, the Supreme Court observed as follows:--

"The question arises whether the Com-missioner can revise an order made u/s 65 at any time. It is true that there is no period of limitation prescribed u/s 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

Thereafter in para 12 of the judgment, after considering the provisions of Section 65 of the Bombay Land Revenue Code, and Section 211 of the Code, the Supreme Court further observed as follows :--

".... Regarding Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector, this is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e. more than a year after the order, and it seems to us that this order was passed too late."

19. Thus the Supreme Court has held that even when no limitation is prescribed, the power conferred upon the authority concerned could be exercised within reasonable time. In the facts of the case before it, the Supreme Court held that the powers u/s 211 of the Bombay Land Revenue Code in relation to the permission for user of the land for non-agricultural purposes, could be exercised

within few months from the date of the permission. In that case, the power was exercised after a period of more than one year. The Supreme Court held that the exercise of power was too late.

20. The aforesaid principle has been reiterated by the Supreme Court in the case of *Mansaram Vs. S.P. Pathak and Others*, . In that case in para 12 of the reported decision, the Supreme Court inter alia observed as follows :--

"..... But when the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner. Exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time. Undoubtedly, no limitation is prescribed in this behalf but one would stand aghast that a landlord to some extent in pari delicto could turn the tables against the person who was in possession for 22 years as a tenant....."

The Supreme Court has referred to the case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, and has reiterated the same principle.

21. In view of the settled position of law, as stated above, simply because the provisions of Section 82 of the Act of 1956 and Section 232 of the Act of 1955 do not provide for the period of limitation, it does not mean that the authority on whom the power is conferred, can invoke the same at any time. This is so because each and every authority on whom the power is conferred, is expected to exercise the same in just and reasonable manner. The concept of exercise of power in a reasonable manner inheres with it the concept of exercising the same within a reasonable time. If the power is not exercised within reasonable time, the invocation of the power after inordinate delay and the exercise of the same after unreasonable length of time, would be unjust, arbitrary and unreasonable. Therefore, the action taken by exercise of such power would be illegal and void. If the requirement of exercise of power within reasonable time is not read into the provisions of Section 82 of the Act of 1956 and Section 232 of the Act of 1955, then the provision itself would become unconstitutional. It can never be presumed that the Legislature intended to confer power on any authority to exercise the same in unjust and unreasonable manner. Therefore, to uphold the constitutionality of the aforesaid provisions, the requirement of exercise of the same power within reasonable period has got to be read into the same.

22. In the case of *Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others*, the question arose as to the constitutional validity of Rule 12 of the Medicinal and Toilet Preparation (Excise Duties) Rules, 1956. The said Rule provided for residuary powers of recovery of sums due to Government. Sine no period of limitation was prescribed, it was contended that the provision of Rule 12 was unreasonable and violative of Article 14 of the Constitution. The Supreme Court negated the contention. Then in para 6 of the reported decision, the Supreme Court observed as follows :--

".... While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rules is to be made, but that by

itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case."

23. The contention that the land was a Muafi Murti Mandir Land, therefore, the power could be exercised after any length of time, cannot be accepted. The question is not with regard to the nature of the land. The question which is required to be examined is as to whether the revisional power conferred upon the authority concerned under the provisions of Section 82 of the Act of 1956 and under the provisions of Section 232 of the Act of 1955, could be exercised after unreasonable period of time. As held by the Supreme Court in the aforesaid decisions, the power could be exercised within reasonable time whenever the statute does not provide for the period of limitation. What would be the reasonable period, would depend upon the facts of the case and the nature of the order sought to be revised.

24. In our opinion, the settled legal position as stated above, would apply to the agricultural land in possession of the tenants/ khatedars also once the cases of such tenants/ khatedars are decided and their rights have been concluded and pursuant to the same they are in possession of the land. Ordinarily the revisional power u/s 82 of the Act of 1956 and u/s 232 of the Act of 1955, cannot be exercised after a period of one year from the date of the order sought to be revised. Once a tenant/khatedar acquires tenancy/ khatedari rights and continues to be in possession of the land, his rights cannot be called in question after unreasonable delay. Such tenant/khatedars are required to be treated at par, for all purposes, with all other tenants/khatedars who acquired tenancy/ khatedari rights over the land. To permit the exercise of revisional powers u/s 82 of the Act of 1956 and/Or u/s 232 of the Act of 1955 after unreasonable delay, would amount to putting imprimatur of the Courts on the unreasonable and arbitrary exercise of power. Within a period of one year the tenant/khatedar of the land would have spent money for the improvement of the land, he would have arranged his affairs of life on the basis that he is in occupation of the land, he would have entered into several transactions on this basis and made many commitments. Therefore, ordinarily revisional powers u/s 82 of the Act of 1956 and u/s 232 of the Act of 1955, cannot be exercised after a period of one year. If this requirement of reasonable length of time is not read into the aforesaid provisions, the provisions would become unconstitutional.

25. However, we make it clear that in case where fraud is alleged and public interest is shown to be suffering on account of collusion between the public officers and the private party, this revisional power may be exercised even after a period of one year. However, there should be satisfactory explanation for the exercise of revisional power after reasonable length of time. In view of this position of law, whether the land was Murti Muafi Land of Laxminarayan Temple, is not of much relevance. Whatever be the nature of the land, after lapse of

unreasonably long time, the revisional power could not be exercised by the authorities concerned.

26. Thus, in view of the aforesaid settled legal position, the Additional Collector as well as the Board of Revenue, could not have exercised the power conferred upon them u/s 82 of the Act of 1956 and u/s 232 of the Act of 1955, after a period of about 25 years. Of course, as laid down by the Supreme Court, the reasonable time and length of reasonable time must be determined by-

- i. the facts of the case, and
- ii. the nature of the order sought to be revised.

27. In the instant case, it is evident that the petitioner purchased the rights of cultivation in auction held in 1955. He made the highest bid of Rs. 65/-. He was in possession of the land on October 14, 1955 when the Act of 1955 came into force. He got decree in his favour as per judgment and decree passed by the Assistant Collector, Baran on October 12, 1957. Thereafter Mutation Entry No. 334 was made in revenue records in his name on September 22, 1958. Thereafter, after a period of about 25 years the Additional Collector, Baran, sought to exercise powers of making reference to the Board of Revenue under the provisions of the Act of 1955 and that of the Act of 1956, On the face of it, the exercise of power is unreasonable and arbitrary. The facts do not justify the exercise of power after such an inordinate delay. It is immaterial and irrelevant that the land is alleged to be Muafi Land and belong to Laxminarayan Temple. Simply because the provision of a particular Statute does not provide for limitation, the authority on whom the power is conferred is not free to exercise the power at any time. It is important to note that the authority on whom the power is conferred should exercise the same in a reasonable manner and within reasonable time. The time element enters into consideration from the limited point of view to see as to whether it is a genuine exercise of power. The exercise of power must be reasonable and the reasonableness would in its sweep include the time element also. No authority could exercise the power conferred upon it in an unreasonable manner. The exercise of power after inordinate delay would be unreasonable and arbitrary exercise of power. Therefore, it would be void under Article 14 of the Constitution of India also.

28. In our opinion, in this case there is no material, whatsoever, to indicate that the exercise of power after a period of about 25 years is in any way justified. Thus, the order of reference made by the Additional Collector, Baran and the power exercised by the Board of Revenue, being unreasonable, unjust and unfair, the decision rendered by them in exercise of such powers, cannot be sustained in law. In facts of the case, we do not think it proper that it is just and proper to remit the matter to Board of Revenue and permit the State to exercise its power after such an inordinate delay. For these reasons the judgment and order passed by the Board of Revenue is required to be quashed and set aside and the order passed by the Assistant Collector, Baran in Revenue Case No. 50/1956 decided

on October 12, 1957, is required to be restored.

29. In the result, the Special Appeal is allowed. The judgment and order passed by the learned single Judge, confirming the judgment and order passed by the Board of Revenue in Reference Case No. 38/ 84/ Kota/ LR Reference decided on May 21, 1986, is quashed and set aside. The order and decree .passed by the Assistant Collector, Baran in Revenue Case No. 50/ 1956 decided on October 12, 1957 is restored.

30. The Special Appeal stands allowed to the aforesaid extent. There shall be no order as to costs.