

(2006) 09 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 853 of 1991

Hotel Guru Prerana

APPELLANT

Vs

Niranjan Jayantilal Thaker and Others

RESPONDENT

Date of Decision : 29-09-2006

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211, 38
Bombay Stamp (Determination of Market Value of Property) Rules, 1984 — Rule 3
Civil Procedure Code, 1908 (CPC) — Order 30 Rule 10
Constitution of India, 1950 — Article 14, 226, 243, 46
Gujarat Panchayats Act, 1961 — Section 122, 122(2), 142, 142(2), 15(3)

Citation : (2006) 09 GUJ CK 0007

Hon'ble Judges : H.N. Devani, J

Bench : Single Bench

Advocate : S.K. Jhaveri, for the Appellant; P.J. Mehta, Reeta Chandarana, A.G.P. for Respondent Nos. 2 and 4 and Dilip B. Rana, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Devani, J. 1. By this petition under Article 226 of the Constitution of India, the petitioner-Hotel Guru Prerana, a proprietary firm of Shri Mansukhlal V. Barai challenges the order dated 5th January, 1991 passed by the respondent No. 4 Special Secretary, Revenue Department (Appeals), in Revision Application No. SRD/JMN/JNR/17 of 1990 (Annexure "C"), and prays that the decision of the respondent No. 3, Dwarka Nagar Panchayat, dated 16th April, 1986 (Annexure "A") as well as the order dated July, 1986 of the respondent No. 2-Collector, Jamnagar (Annexure "B"), be confirmed. It may be noted that the respondent No. 3 Dwarka Nagar Panchayat has subsequently been converted into Dwarka Nagar Palika.

2. The facts of the case are that, by an application dated 23rd March, 1986, one Upendra V. Somani, partner of Guru Prerana Enterprises, made an application before the Dwarka Nagar Panchayat requesting for grant of a plot of land adjoining the firm's existing Hotel, namely Guru Prerana Hotel (hereinafter

referred to as the "subject land"). Pursuant to the said application, Dwarka Nagar Panchayat, in its General Board Meeting held on 16th April, 1986, by Resolution No. 11(4) gave its unanimous approval for the grant of land in favour of the applicant, and forwarded the same to the Deputy Collector and the Collector, Jamnagar for taking necessary action thereon, and informed the petitioner accordingly, vide communication dated 21st April, 1986.

3. In the meanwhile, as averred in the petition, on 8th July, 1986, the original partnership firm was dissolved and Guru Prerana Hotel appears to have taken over by the petitioner, a proprietary firm of one Shri Mansukhlal V. Barai. By an order dated July 1986, the Collector, Jamnagar approved of the aforesaid decision of the Dwarka Nagar Panchayat (respondent No. 3 herein) and fixed the market value of the subject land at the rate of Rs. 75/- per square metre and determined the total market price at Rs. 75,187-50. Pursuant to the aforesaid order, the petitioner paid the aforesaid amount and on 14th August, 1986, entered into an agreement with the said Nagar Panchayat, which was duly registered on 21st August, 1986 before the Sub-Registrar, Kalyanpur, District Jamnagar.

4. It is the case of the petitioner that, subsequently, the petitioner after obtaining permission from the Dwarka Nagar Panchayat, put up construction over the said land and invested about Rs. 5 lacs, over and above, the price paid towards cost of land to the said Panchayat.

5. The aforesaid order of the Collector was challenged by the respondent No. 1 before this Court by way of a writ petition being Special Civil Application No. 1429 of 1987. The said petition was in the nature of a Public Interest Litigation, wherein the respondent No. 1 had also challenged similar orders of the then In-charge Collector, approving grant of land allegedly in contravention of the Government Resolution dated 3rd June, 1980.

6. The said petition was rejected by the learned single Judge by an order dated 10th August, 1987, wherein the Court held that the said petition cannot be said to be a Public Interest Litigation and appeared to be the result of factional fight between the members of the Panchayat. The Court further observed as follows:

[3] According to the petitioners, the land belongs to the Government, and therefore, the Panchayat had no right to sell the same. Be it noted that the Collector, Jamnagar, has sanctioned the sale. The Government does not claim the ownership of the land. Nor does the Government object to the sale. The respondent-Panchayat claims that Dwarka being part of the erstwhile State of Baroda, the Panchayat has a right to dispose of the land which formed part of the "gamtal". Thus, it is clear that disputed questions of facts are involved in this petition. These disputed questions which would require the Court to investigate the facts cannot be decided in a petition under Article 226 of the Constitution of India. Therefore, even if it is assumed that petition is maintainable, since the disputed questions of facts are involved in the petition, the petition is not

required to be entertained.

[4] For the following reasons, the petition is required to be rejected:

(i) This is not a public interest litigation. Petitioners have no right to file the petition.

(ii) The Government does not claim ownership over the land. The Government has no objection to the sales in question. Disputed questions of facts are involved, which cannot be decided in a petition of this nature.

Hence, rejected. Notice discharged.

7. The respondent No. 1 carried the matter further by way of appeal before the Division Bench being Letters Patent Appeal No. 286 of 1987. The said Letters Patent Appeal was dismissed by the Division Bench by judgment and order dated 3rd April, 1989. The Division Bench observed that the learned single Judge had held that the petition involved disputed questions of fact, which cannot be decided in a writ petition under Article 226 of the Constitution of India. The Division Bench agreed with the reasoning adopted by the learned single Judge.

8. After dismissal of the Letters Patent Appeal, the respondent No. 1 approached the State Government against the order of the Collector by way of an appeal. However, there being no provision for appeal against an order of the Collector passed u/s 98 of the Gujarat Panchayats Act, 1961 ("the Act"), the same was registered as a Revision Application under the provisions of Section 305 of the Act, and numbered as Revision Application No. F.SRD/ JMN/JNR/17 of 1990. By an order dated 5th January, 1991, the Additional Chief Secretary, Revenue Department (Appeals) (respondent No. 4 herein) allowed the Revision Application and set aside the order dated July, 1986 passed by the Collector, Jamnagar. It is the aforesaid order passed by the respondent No. 4 which is subject-matter of challenge in the present petition.

9. By an interim order dated 14th June, 2001, this Court had directed the Collector, Jamnagar and the Dwarka Nagar Panchayat to place on record of this proceeding all the details about the area of land known as "Ravla Talav", the allotment, if any, of any portion of the said land to any party, the orders, if any, for that purpose and the details of construction put up on such land/ lands along with figures of such constructions, and whether any permission of any authority was obtained for putting up such construction. It was also directed that the affidavit on behalf of both the aforesaid authorities shall be filed on or before 30th June, 2001. In compliance with the aforesaid directions, affidavits of both the aforesaid authorities had been filed by 30th June, 2001.

10. By judgment and order dated 20th February, 2002, the present Special Civil Application No. 853 of 1991 had been allowed and the impugned order dated 5th January, 1991 passed by the respondent No. 4 had been quashed and set aside. However, thereafter the respondent No. 1 moved a review application being Miscellaneous Civil Application No. 801 of 2002, which was allowed by an order

dated 2nd August, 2002 and the order dated 20th February, 2001 was recalled.

11. That is how the matter is now placed for hearing before this Court.

12. Heard Mr. S. K. Jhaveri, learned Advocate for the petitioner, Mr. P. J. Mehta, learned Advocate for the respondent No. 1, Mrs. Reeta Chandarana, learned Assistant Government Pleader for the respondent Nos. 2 to 4 and Mr. Dilip Rana, learned Advocate for the respondent No. 3.

13. Mr. Jhaveri, learned Advocate for the petitioner submitted that the impugned order passed by the respondent No. 4 in exercise of powers of revision u/s 305 of the Act, in respect of an order passed by the Collector as competent authority u/s 98 of the Act, is null and void for want of inherent jurisdiction. It was submitted that the order of the Collector, which was made in Revision, was not an order passed by any officer of the Panchayat, but was passed by a competent authority u/s 98(1) of the Act, and as such, could not be subject-matter of Revision u/s 305 of the Act. It was contended that Section 305 of the Act envisages revision only against the order passed by the officers of the Panchayat, that the Collector not being an officer of the Panchayat, the Revision against an order of the Collector was incompetent. It was submitted that the State Government also does not have any powers of revision against an order of the Collector passed u/s 98(1) of the Act, u/s 211 of the Bombay Land Revenue Code, 1879 (the Code) inasmuch as the said order was not an order under the provisions of the Code.

14. It was next contended that the Revision Application had been filed after a delay of more than three years, which could not be said to be a reasonable time, and that, therefore, the respondent No. 4 had manifestly erred in holding that limitation is not applicable to the facts of the present case, and that, such an order can be quashed at any time. It was submitted that the Revision Application was barred by limitation and ought to have been rejected on this count alone.

15. On the merits of the case, it was submitted that the respondent No. 4 has proceeded on the basis that the subject land forms part of the lake, which is factually not a correct statement. Drawing attention to the sheet No. 23 annexed to the affidavit dated 12th January, 2005 made by the petitioner, it was pointed out that the subject land is situated at a distance from the lake and does not form part of the lake. It was submitted that the respondent No. 4 had erred in holding that the procedure u/s 38 of the Bombay Land Revenue Code is required to be followed. It was submitted that the subject land does not fall within the ambit of Section 38 of the Code, hence, there was no question of following any procedure prescribed under the said provision. Learned Advocate for the petitioner submitted that the resolution of the Nagar Panchayat, dated 16th April, 1986 as well as the order of the Collector, dated July, 1986, have been confirmed by this Court, both by the learned single Judge as well as the Division Bench, in the circumstances, the respondent No. 4 had manifestly erred in interfering with the same.

16. It was submitted that the subject land was a piece of land adjoining the

petitioner's existing Hotel and that, the Nagar Panchayat while passing the resolution to grant the said land to the petitioner, had specifically observed that the same is being granted as adjoining land. It was submitted that, subject to the provisions of Section 98 of the Act, it was within the power of the Nagar Panchayat to grant adjoining land to the petitioner. It was contended that the very purpose of Section 98 is to ensure that there is control over the action of the Panchayat, and that, the Collector as competent authority, had considered all relevant aspects while granting approval for the sale of the subject land in favour of the petitioner. It was submitted that the Nagar Panchayat, after considering all relevant aspects, had decided to grant the land to the petitioner for development of the said plot, which would cater to the needs of" the pilgrims visiting Dwarka. It was urged that, in the circumstances, the order passed by the Collector approving of the resolution of the Nagar Panchayat for sale of the subject land in favour of the petitioner was just, legal and proper, and that, the respondent No. 4 was not justified in interfering with the same, and accordingly, the impugned order dated 5th January, 1991 deserves to be quashed and set aside.

17. Mr. P. J. Mehta, learned Advocate for the respondent No. 1 strongly opposed the petition. Drawing attention to the provisions of Article 243 of the Constitution of India, it was submitted that the said provision empowers the Legislature of a State to endow a Panchayat with the powers and responsibilities at the appropriate level with respect to - (a) preparation of plans for economic development and social justice; and (b) the implementation of schemes for economic development and social justice, as may be entrusted to them, including those in relation to the matters listed in the Eleventh Schedule. Referring to the matters listed in the Eleventh Schedule, it was argued that, none of the matters enumerated therein empower the Panchayat to grant land for the purpose of hotel business. It was contended that the approval given by the Collector, was therefore, contrary to the provisions and spirit of the Constitution, and as such, had been rightly set aside by the respondent No. 4.

18. Referring to Article 46 of the Constitution of India, which falls under Part IV of the Constitution i.e. "Directive Principles of State Policy", Mr. Mehta submitted that, under the said provision, a duty is cast upon the State and its authorities to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Schedule Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. It was urged that, in view of the said provision, if the Nagar Panchayat was holding unutilized land, the same ought to have been utilized for the benefit of the weaker sections of the people. However, in the most arbitrary manner, valuable land which by an order dated 15th November, 1976 passed by the Collector, Jamnagar had been reserved partly for the purpose of a fifteen feet road and partly for the purpose of pilgrim sheds was sold for peanuts to the petitioner, overlooking the said order. It was submitted that the land reserved for pilgrim sheds was to be put up for public auction for constructing pilgrim sheds thereon, however, giving a go-bye to all norms for disposal of public lands, the subject

land had been granted to the petitioner. Attention of the Court was drawn to the fact that though the application for grant of the subject land had been made by the partnership firm through Shri Upendra Somani, in fact, the said land had been sold to the petitioner, a proprietary firm of Shri Mansukhlal Barai. It was also sought to be contended that similarly, several such plots had been sold to the petitioner, Shri Mansukhlal Barai, who had succeeded in capturing the entire plot in this manner. However, this Court is of the view that the latter contention being de hors the record of the case, cannot be taken into consideration for the purpose of deciding the controversy involved in the present petition.

19. The learned Advocate submitted that, it was the policy of the State Government to dispose of surplus land by way of public auction, however, in flagrant disregard of the aforesaid policy, valuable lands have been straightaway sold to the petitioner without putting up the same for auction. Attention was drawn to the affidavit-in-reply filed on behalf of the State Government and more particularly, to the averments made in Paragraph 20 thereof, to submit that it was also the case of respondent No. 4 that while disposing of public lands, it was necessary to follow the procedure laid down under the Government Resolution dated 17th September, 1966 and sell the same by way of public auction. However, admittedly, the subject land had been disposed of without holding any public auction. It was submitted that, while disposing of the public lands, auction was a must with a view to ensure that the public exchequer obtains the maximum price. It was submitted that the disposal of lands to a private party without auction was in violation of the provisions of Article 14 of the Constitution of India, inasmuch as similarly situated persons were deprived of their right to bid for the said lands. It was submitted that, therefore, the entire exercise was in violation of Article 14 of the Constitution.

20. The learned Advocate for the respondent No. 1 further submitted that the Panchayat cannot give land for a private purpose without public auction. That excess land, if any, held by the Panchayat has to be used for a public purpose and cannot be granted to an individual for setting up his private business. Reliance was placed upon a decision of this Court in the case of Kanchanbhai Kanbhai Tadv and Anr. v. Municipal Corporation of the City of Vadodara 2002 (1) GLH 790, to submit that the Court had, on the question of delay in the exercise of revisional powers, held that there is no straight-jacket formula. The Court was of the view that the Apex Court had laid down that reasonable time and length of reasonable time must be determined by the facts of the case and the nature of the order being revised. That, merely because the power is exercised after a particular period, exercise of power does not ipso facto become bad in law. The Court had also held that the Corporation had not bothered to dispose of the property by a public auction so as to benefit the public at large, hence, the action must be held to be illegal. The learned Advocate, accordingly, contended that, as laid down in the aforesaid decision, while disposing of the land by a public body, auction is a must.

21. Referring to Paragraph 6 of the impugned order dated 5th January, 1991, it was submitted that the respondent No. 4 had recorded a finding that the subject land forms part of "Ravla Talav" and had held that the lake being public property, was required to be utilized for public purposes. That, if at all on account of change of conditions, there was no necessity of a lake, procedure was required to be followed u/s 38 of the Code for deleting the said land from the lands earmarked as the lake. It was submitted that no such procedure u/s 38 of the Code had been followed by any of the authorities prior to granting the subject land in favour of the petitioner, hence, the action of the Nagar Panchayat and the Collector was also in violation of the provisions of Section 38 of the Code. Mr. Mehta also sought to refer to and rely upon similar orders passed by the In-charge Collector to submit that the then In-charge Collector had irregularly granted approval in several such cases. However, this Court is of the view that as the said orders do not form part of the record, the said submission cannot be taken into consideration. The learned Advocate also placed reliance upon a decision of the Division Bench of this Court in the case of *Shailesh R. Shah v. State of Gujarat* 2002 (3) GLR 2295, to submit that the subject land forms part of the lake and if at all it does not form part of the lake, it is situated within the peripheral area as envisaged under the said decision, hence, land forming part of the lake and the peripheral area could not have been sold to the petitioner for commercial purpose.

22. Referring to the provisions of Section 96 of the Act, it was submitted that, as the subject land formed part of a lake, the same vested in the State Government, and that, it was only u/s 96 of the Act that the same came to be vested in the Panchayat. Referring to the order dated July, 1986 of the Collector, it was submitted that, while passing the said order in exercise of powers u/s 98 of the Act, the Collector has not looked into the aspect that the said land forms part of a water-body. It was submitted that the order of the Collector was, therefore, also contrary to the decision of the Division Bench cited above.

23. Reliance was also placed upon a decision of the Apex Court in the case of *State of Orissa and Ors. v. Brundaban Sharma and Anr.* 1995 Suppl. (3) SCC 249, for the proposition that, while exercising revisional powers, length of time depends on the factual scenario in a given case. It was argued that there was violation of Article 14 of the Constitution of India insofar as the sale of the subject land in favour of the petitioner is concerned, inasmuch as the entire plot had been allotted to the petitioner. It was further submitted that the land had been granted without considering the impact on the environment, inasmuch as the subject land formed part of a lake and construction of a hotel upon the same would have a deleterious effect on the environment. In conclusion, it was submitted that the impugned order passed by the respondent No. 4 was just, legal and proper, and did not warrant any interference at the hands of this Court.

24. The learned Assistant Government Pleader supported the order passed by the respondent No. 4, and submitted that the order of the Collector had rightly

been set aside as the same was not in consonance with the policy of the State Government to dispose of excess land by way of public auction. Besides, the subject land was not an irregular piece of land nor a small piece of land, hence, the same could not have been granted as adjoining land. It was submitted that provision was made for disposal of public lands by way of public auction keeping in view the provisions of Article 14 of the Constitution of India, so that all similarly situated persons who are desirous of purchasing the said land have an opportunity to participate in the auction and bid for the same. It was submitted that the Nagar Panchayat and the Collector, both being State Authorities, could not have disposed of public lands in favour of a private individual in disregard of the Government policy and Article 14 of the Constitution of India.

25. It was submitted that it was a partnership firm that had made the application for grant of the subject land. However, before giving their approval for sale of the subject land, neither the respondent panchayat nor the Collector had bothered to verify as to whether there was indeed any such partnership. Attention was drawn to the order of the Revisional Authority to point out that before the said authority, on behalf of the petitioner, request had been made to grant some time to produce a copy of the partnership deed, however, despite the request having been granted, no such partnership deed had been produced. It was urged that, in the circumstances, the Revisional Authority was wholly justified in holding that before granting the application, the authorities below ought to have obtained the details regarding the applicant, to verify as to whether the said person or organization was in a position to utilize the land for the purpose for which it is granted, and that till the partnership deed is produced, it cannot be said that proper inquiry has been made.

26. In rejoinder, Mr. Jhaveri, learned Advocate for the petitioner submitted that the resolution dated 17th September, 1966 would not be applicable to the subject land as originally the said land had not been granted to the Dwarka Nagar Panchayat by the State Government. It was submitted that the provisions of Section 38 of the Code are applicable only to lands, which are the property of the State Government; hence, the provisions of Section 38 of the Code do not come into play insofar as the subject land is concerned. It was submitted that the respondent No. 3 had taken contrary stands insofar as the ownership of the subject land is concerned. While pointing out that the stand taken in the affidavit-in-reply filed in the present case was contrary to the stand adopted in the affidavit-in-reply filed in the earlier petition, it was submitted that the stand taken in the earlier affidavit-in-reply being more specific was required to be taken into consideration in preference to the stand taken in the affidavit-in-reply filed in the present petition. It was urged that the extension of the hotel was for the benefit of the pilgrims and served a better purpose than a pilgrim shed, hence, there was no infirmity in the action of the erstwhile Dwarka Nagar Panchayat as well as the Collector, Jamnagar in granting the subject land to the petitioner for a purpose which was akin to the public purpose for which the subject land had earlier been reserved.

27. The learned Advocate referred to the sanad pertaining to the grant of the subject land in favour of the petitioner to point out that the same nowhere mentioned that the said land formed part of the lake. It was submitted that the boundaries of the subject land were clearly demarcated which makes it evident that the said land was not part of Ravla Talav as canvassed on behalf of the respondent No. 1. It was further contended that even the property card in respect of the subject land does not show that the same forms part of the lake. Hence, from the record of the case, there is nothing to show that the subject land forms part of the lake, and therefore, there was no basis for the respondent No. 4 to hold that the same formed part of Ravla Talav.

28. Dealing with the contention regarding non-production of the partnership deed before the Revisional Authority, the learned Advocate drew the attention of the Court to the provisions of Order 30, Rule 10 of the CPC to submit that a proprietor can carry on business in the name of a firm. It was argued that, therefore, there is no infirmity in the action of the Nagar Panchayat in granting the subject land to the proprietary firm of the petitioner on the application made by the partnership firm.

29. Before dealing with the merits of the case, it would be necessary to deal with the contention that the respondent No. 4 Revisional Authority had no jurisdiction under the provisions of Section 305 of the Act, to entertain and decide a Revision Application against an order made by the Collector as competent authority u/s 98 of the Act. It would, therefore, be pertinent to refer to the provisions of Section 305 of the Act, which reads as under:

305. State Government may call for proceedings:- The State Government may call for and examine the record of proceedings of any panchayat or of any committee thereof or of any officer (except any proceedings of the Nyay Panchayat or of the District or the Sessions Court in judicial proceedings in revision or reference or reference from the proceedings of a Nyaya Panchayat) for the purpose of satisfying itself as to the legality or propriety of the order passed and revise or modify the order as it shall deem just.

30. It has been contended on behalf of the petitioner that an order passed by the Collector as a competent authority u/s 98 of the Act cannot be subject-matter of revision u/s 305 of the Act inasmuch as the Collector is not an officer of the Panchayat and as such, the Act does not contemplate revision from an order passed by the Collector in his capacity as competent authority under the Act. However, for the reasons that follow, this Court is not inclined to accept the aforesaid contention raised on behalf of the petitioner.

31. The expression "competent authority", which has been defined under Sub-section (5) of Section 2 of the Act, reads as under:

Competent authority" means such Government Officer, Panchayat or authority as the State Government may, by notification in the Official Gazette, appoint to perform the functions of a competent authority under such provisions of this Act

and in respect of such panchayat as may be specified in the said notification.

32. From a plain reading of the aforesaid provision, it is apparent that the Government may appoint as a competent authority any Government Officer, Panchayat or authority. Thus, a competent authority appointed under the Act could be an officer other than the Collector or a Government Officer. Under the explanation to the aforesaid provision, a Government Officer includes a Government Officer posted under a Panchayat under Sections 122, 142 or 207 of the Act. Section 122(2) provides that the Taluka Development Officer, who shall be an officer belonging to the State service and posted under the Panchayat, shall be ex-officio Secretary to the Taluka Panchayat. Section 142(2) provides that a District Development Officer posted under the Panchayat, shall be ex-officio Secretary to the District Panchayat. "District Development Officer" has been defined under Sub-section (7) of Section 2 of the Act to mean such officer as the State Government may appoint to be a District Development Officer. Section 207 provides for posting of officers and servants in State Government under Panchayats. Hence, it is open to the State Government to appoint any officer including a Taluka Development Officer or a District Development Officer as the competent authority under any of the provisions of the Act, including Section 98 thereof.

33. From the language employed in Section 305 of the Act, it is apparent that the same envisages revision against any order passed by (i) any Panchayat, (ii) any Committee thereof, or (iii) of any Officer. The Section nowhere provides that such officer should be an officer of the Panchayat. Moreover, the Section also clearly carves out the exceptions thereto, namely proceedings of the Nyay Panchayat or of the District or the Sessions Court in judicial proceeding, in revision or reference or reference from the proceedings of a Nyay Panchayat, from the purview of revision under the said provision. Had it been the intention of the Legislature to exclude the orders passed by the Collector as competent authority from the purview of Section 305 of the Act, the same would have found place along with the other authorities, forum, whose orders are excluded from the purview of the said provision. Besides, the contention raised on behalf of the petitioner that the said provision envisages revision against the orders passed by the officers of Panchayat alone does not appear to be a proper construction of the provision, because in that case, the same would not carve out any exception in the nature of proceeding of the District or Sessions Court which also are not offices of the Panchayat. Hence, the Legislature has specifically excluded the authorities whose orders are not amenable to revision u/s 305 of the Act. Accordingly, orders of the competent authority under the Act having not been excluded from the purview of revision under the said provision, are amenable to revision under the same. Moreover, when the Collector acts in the capacity of a competent authority under the provisions of the Act, he would necessarily be acting as an officer under the Act, though strictly speaking, he may not be an officer of the Panchayat. Viewed from another angle, if the contention sought to be canvassed on behalf of the petitioner were to be accepted, an anomalous

situation would arise, whereby an order passed by a Panchayat in the capacity of a competent authority u/s 98 of the Act would be amenable to revision u/s 305 of the Act, whereas an order passed by the Collector in exercise of the self same powers would not be amenable to revision under the said provision. Such could not have been the intention of the Legislature. In the circumstances, there cannot be said to be any lack of jurisdiction on part of the revisional authority in entertaining the Revision Application made by the respondent No. 1.

34. Insofar as the second contention regarding delay in exercise of powers of revision is concerned, the same does not appear to be well-founded. As can be seen from the facts noted above, the respondent No. 1 had initially invoked the writ jurisdiction of this Court by way of a writ petition being Special Civil Application No. 1429 of 1987, which was in the nature of Public Interest Litigation. In the said petition, notice was issued on 9th April, 1987 and ad-interim relief had been granted restraining the respondents No. 4 to 8 therein from raising any construction on the plots given to them. "Shri Upendra Somani, Guru Prerana Hotels" was impleaded as respondent No. 1 in the said petition. The said interim order continued till the petition was rejected by the learned single Judge vide order dated 10th August, 1987. However, the learned single Judge was pleased to extend the interim relief till 27th August, 1987. Consequently, till the said date, the petitioner could not have created any equities in his favour in respect of the subject lands. Thereafter also, the dispute was very much before this Court by way of Letters Patent Appeal No. 286 of 1987, which was dismissed by judgment and order dated 3rd April, 1989. Hence, till the disposal of the said appeal, the petitioner was well aware that the order u/s 98 of the Act approving of grant of the subject land in his favour was subject-matter of challenge and as such, had not attained finality. After the dismissal of the Letters Patent Appeal on 3rd April, 1989, the respondent preferred appeal against the order of the Collector dated July, 1986 before the State Government on 9th July, 1989 which was entertained as a Revision Application in absence of any provision for appeal against an order passed u/s 98 of the Act. In the background of the aforesaid facts, it cannot be said that there is any undue delay in the filing of the Revision Application. It is true that it is a settled legal position that the power of revision must be exercised within the reasonable time. However, as to what can be said to be reasonable time would depend on the facts and circumstances of each case. The various decisions on this issue are rendered in the context of facts wherein the order which was subject-matter of revision was challenged for the first time in revision after a considerable delay. In the facts of the present case, wherein the order in question was subject-matter of challenge before this Court in Special Civil Application as well as Letters Patent Appeal, and was thereafter, subject-matter of challenge in revision, there has been a continuity of proceedings, hence, it cannot be said that the petitioner was not put to guard that the order passed by the Collector has not attained finality so as to cause any prejudice to the petitioner. In the above view of the matter, the revision proceeding cannot be said to be time-barred.

35. For properly appreciating the case on merits, it would be pertinent to note the following facts. One Shri Upendra P. Somani, Partner of Guru Prerana Enterprise made an application on 25th March, 1986, requesting for grant of land adjoining the existing hotel building for development of its business and to provide better facilities to the satisfaction to its customers. In the said application, it has also been stated that the land may be granted in the same manner, as was done earlier while granting land for the purpose of hotel. (It is not in dispute that the land granted earlier, was by way of public auction). A map of the land for the grant of which request had been made, was also annexed to the application. Upon perusal of the said map, it appears that the said plot of land admeasuring 1002.19 sq.mtrs. is situated between the petitioner's Hotel and Vishrolia Dharam-Shala, with a 10 feet road passing between the said plot and the Dharam-Shala.

36. Pursuant to the aforesaid application, Dwarka Nagar Panchayat, with unusual promptitude, by Resolution No. 11(4) passed in its General Body Meeting held on 16th April, 1986, decided to sell the land for which request had been made by the applicant, at the price fixed by the State Government and informed the applicant about the same vide communication dated 21st April, 1986. By a communication dated 29th April, 1986, the Nagar Panchayat informed the applicant that the proposal for grant of land had been forwarded to the Collector for necessary action, and that, in the meanwhile, the applicant should deposit 25% of the estimated price of the land immediately. Though, the said communication does not specify any amount, on 30th April, 1986, Shri Upendra Somani on behalf of Guru Prerana Enterprises, deposited a sum of Rs. 2,500/- towards sale price of the said land. Thereafter, the Collector, by an order dated Nil July, 1986, gave his approval to the aforesaid proposal under the provisions of Section 98(1) of the Act. By a communication dated 19th July, 1986, the Secretary of the Nagar Panchayat informed Hotel Guru Prerana, through Upendra V. Somani that, as per the order of the Collector, the land was granted as per their request, and that the needful be done for executing the necessary documents and stamp paper within the time stipulated in the said order. Yet, another reminder was sent on 24th July, 1986, this time addressed to Shri Mansukhlal Barai to complete all formalities before 31st July, 1986. (It may be noted that, with effect from 8th July, 1986, the original partnership firm which had requested for grant of the subject lands had been dissolved, and Shri Mansukhlal Barai appears to have taken over the hotel in question as the sole proprietor thereof). It appears that thereafter, the petitioner sought extension of time till 14th August, 1986. Subsequently, by a communication dated 28th August, 1986, the Chairman of the Nagar Panchayat informed the Collector that the petitioner had, on 14th August, 1986, deposited the amount payable towards the market price in terms of the order passed by the Collector, and that the documents in that regard had already been executed and registered with the Sub Registrar. However, it may be pertinent to note that the receipt issued by the Secretary of the Nagar Panchayat acknowledging the receipt of a sum of Rs.

75,187-50 is dated 18th August, 1986. The sale-deed has been executed on 21st August, 1986 and has also been registered on the same day. It may be noted that the sale-deed has been executed between the Dwarka Nagar Panchayat and the partnership firm of Guru Prerana Hotel through its partner Shri Mansukhlal Barai. In the statement furnished by the petitioner in Form No. 1 under Rule 3 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984, the property in question has been described as plot of land of the gamtal which has been vested in the Dwarka Nagar Panchayat. Despite there being specific columns for city survey number, final plot number, revenue survey number etc., no details have been filled in against the said columns. It may be pertinent to note that, despite the fact that the said form is dated 21st August, 1986, the declaration under the said form has been made by Shri Mansukhlal Barai as partner of Shri Guru Prerana Hotel. In the property card, the land has been entered in the name of partnership of Guru Prerana Hotel, through partner Shri Mansukhlal Barai on 18th April, 1987. Permission to construct has been given in December, 1988 during the pendency of Letters Patent Appeal No. 286 of 1987 by Dwarka Area Development Authority to Guru Prerana Enterprises, Shri Mansukhlal Barai (Partner) addressed to Guru Prerana Hotel. In the background of the aforesaid facts, it is apparent that despite the fact that the partnership firm of Guru Prerana Enterprises had been dissolved on 8th July, 1986, all subsequent transactions have been entered into on behalf of the said firm.

37. On behalf of the petitioner, Mr. Jhaveri learned Advocate for the petitioner has drawn the attention of the Court to the provisions of Order 30, Rule 10 of the Code of Civil Procedure, 1908, which reads as under:

10. Suit against person carrying on business in name other than his own :- Any person carrying on business in a name or style other than his own name, or a Hindu Undivided Family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, insofar as the nature of such case permits, all rules under this Order shall apply accordingly.

Placing reliance upon the said provision, it was contended that a proprietor can carry on a business in the name of a firm. On a plain reading of the said provision, it is apparent that what is envisaged under the said Section is that if a person is carrying on business in a name or style other than his own name, he may be sued in such name and style as if it were a firm name. Thus, all that is provided is that a person may carry on business in a name and style other than his own, and in such an eventuality, such person can be sued in such name and style as if he were a firm. The Section does not provide that a single person can constitute a firm. This is made clear by the use of the words "as if it were a firm" and "so far as the nature of the case will permit". The aforesaid view is reinforced by a binding decision of the Bombay High Court in the case of *Rampratab Brijmohandas v. Gaurishankar Karishma* AIR 1924 Bom. 109, wherein it is stated thus : "Turning now to suits against a person carrying on business in a name other than his own, the Code of Civil Procedure, Order 30, Rule 10,

provides that he may be sued in That name as if it were a firm name. The words "as if it were a firm name" are used advisedly, for one man cannot constitute a firm." In the circumstances, reliance placed upon the said provision is misconceived. Besides, the said submission does not deal with the issue as to whether when the partnership firm has been dissolved, the application made on behalf of the said partnership firm would still survive. Moreover, as can be seen from the facts on record, though it is specifically stated in the petition that the partnership firm has been dissolved, even after the dissolution of the said partnership firm, the petitioner has executed all documents in the capacity of partner of Guru Prerana Hotel, and not as a proprietor of the said Hotel, which does not appear to be bona fide.

38. Before the revisional authority, it had been contended on behalf of the petitioner that Guru Prerana Hotel is managed by a partnership firm, and that Shri Upendra Somani is a partner thereof, and time was sought for production of the partnership deed. However, despite granting sufficient opportunity, the petitioner had failed to produce the partnership deed. The reason for the same is not far to seek. It is obvious that the application for grant of the subject land having been made by a partnership firm, which had been dissolved thereafter, could not have been granted as the said firm was no longer in existence. Hence, as is apparent, from the averments made in the petition, the partnership firm having been dissolved on 8th July, 1986, there could not have been any partnership deed, hence, the reluctance on the part of the petitioner to produce the same.

39. From the facts delineated above, it is evident that all through out, the petitioner has acted on behalf of the partnership firm, which was no longer in existence from the date of its dissolution, i.e. 8th July, 1986. Therefore, it is apparent that the petitioner has suppressed the said fact from the concerned authorities. The very fact that even before the Revisional Authority, it was contended that the grantee was a partnership firm goes to show that all along the petitioner has not drawn the attention of the authorities to the fact that original applicant viz. the partnership firm, is no longer in existence. The Revisional Authority is, therefore, wholly justified in holding that the Dwarka Nagar Panchayat as well as the Collector, Jamnagar had erred in not verifying the antecedents of the partnership firm and that no proper inquiry had been made by them before granting the subject land to the petitioner, inasmuch as they had failed to even examine the partnership deed of the applicant firm.

40. As regards the validity of the sale of the subject land in favour of the petitioner, it is the case of the respondent No. 1 that the subject land had been reserved for the public purpose of constructing pilgrim sheds thereon. The said fact has not been disputed by the Dwarka Nagar Panchayat. In fact, the Dwarka Nagar Panchayat in its affidavit-in-reply filed in response to the averments made in Special Civil Application No. 1429 of 1987, a copy of which forms part of the record of the present petition, has stated thus:

The case of Guru Prerna Hotel, the land is adjacent to that hotel and it supplies a good need of the town and for its development this land was necessary to be granted to them. Hence, it was felt desirable to grant him that land and the panchayat resolved to so grant the land on such terms and conditions and such price as may be determined by the Government. At that time, the panchayat decided to cancel the previous resolution of the public works and building permission committee made on 20-1-1977 and corresponding resolution of the General Board made on 28-1-1977 approving it by which it was suggested to reserve the said plot as pilgrim shed as it was not found so necessary and hotel with good facilities was being expanded.

41. Thus, the lands which admittedly were reserved for a public purpose have been sold to the petitioner merely on the basis of an application made by the firm which was dissolved before the actual transaction was effected. No explanation is coming forth as to why the Nagar Panchayat thought it fit to dispose of public land to a private party for commercial purposes without holding an auction to fetch the best possible price. Considering the location of the subject land, it appears to be prime land. Moreover, in response to the petition, except for filing an affidavit-in-compliance with the directions issued by the interim order mentioned hereinabove, the Nagar Panchayat has chosen to maintain a stolid silence, hence, nothing has come on record as to why land which was reserved for a public purpose was allegedly sold for a commercial purpose, giving a go-bye to all settled norms for disposal of public lands. The Nagar Panchayat has not thought it fit to point out as to what were the extenuating circumstances which necessitated the sale of the subject lands in favour of an individual as against the public purpose for which it was reserved. Also, no supporting material has been brought on record to show that the said reservation has actually been lifted.

42. Besides, insofar as the nature of the ownership of the respondent-panchayat in respect of the subject land is concerned, the Nagar Panchayat has taken conflicting stands at different points of time. Whereas, in Paragraph No. 4 of the affidavit-in-reply filed in response to Special Civil Application No. 1429 of 1987, it has been stated that, "It is, therefore, submitted that the lands belongs to the Nagar Panchayat much prior to 1955 and during Baroda State regime and it is submitted that the allegations about Government lands is not correct and it appears to have been made on the basis of the G.R. annexed to the petition which is not at all applicable in the present case." Whereas, in Paragraph No. 2.4 of the affidavit-in-reply dated 30th June, 2001 filed in response to the present petition, it has been stated that, "It is pertinent to note that the said land was given to the Nagar Panchayat by the State Government vide order dated 17-9-1966, and accordingly, possession was taken by the Panchayat. The respondent Nagar Palika crave leave to produce the relevant documents in support of the above-mentioned details at the time of hearing of the petition."

43. In view of the aforesaid conflicting stands taken on behalf of the Nagar

Panchayat at different points of time, the learned Advocate for the Dwarka Nagar Panchayat was called upon to clarify its stand. With a view to substantiate the averments made in the affidavit-in-reply dated 30th June, 2001, filed by the Chief Officer of the Dwarka Nagar Palika, learned Advocate Shri Rana has produced a copy of Government Resolution No. JMN-3966-77886-G dated 17th September, 1966 wherein provision has been made for handing over the existing vacant gamtal plots by the State Government to various Panchayats. The learned Advocate has also placed on record an order dated 30th June, 1992 passed by the Deputy Collector, Khambhalia Division, Khambhalia, wherein it has been held that the possession of the lands detailed in the said order has been handed over to the Panchayat pursuant to the Government Resolution dated 17th September, 1966. The learned Advocate has also placed a copy of the communication dated 3rd March, 1993 of the Dwarka Nagar Panchayat addressed to the Superintendent, City Survey Officer, Dwarka, informing him that the plots detailed in the said communication have been transferred to the Nagar Panchayat.

44. Upon perusal of the map annexed to the aforesaid documents, it is apparent that the subject land forms part of the lands which have been vested in the Panchayat under the aforesaid Government Resolution dated 17th September, 1966. In the circumstances, the disposal of the subject land would be governed by the said Government Resolution. Under the said Government Resolution, it has been provided that the plots shall be disposed of by way of public auction. It is also provided that, while disposing of the plots, the Panchayat shall follow the procedure provided for disposal of the Government lands as well as the provisions of the Land Revenue Code, Rules and prevailing orders in that regard. In the aforesaid circumstances, the subject lands being governed by the aforesaid Government Resolution dated 17th September, 1966, the Dwarka Nagar Panchayat was not empowered to dispose of the same in any other manner except as provided under the said Government Resolution.

45. While dealing with the issue regarding mode of disposal of public lands, the Apex Court, has in the case of New India Public School and other etc. Vs. HUDA and others etc., has held as follows:

4. A reading thereof, in particular Section 15(3) read with Regulation 3(c) does indicate that there are several modes of disposal of the property acquired by H.U.D.A. for public purpose. One of the modes of transfer of property as indicated in Sub-section (3) of Section 15 read with sub-regulation (c) of Regulation 3 is public auction, allotment or otherwise. When public authority discharges its public duty the word "otherwise" would be construed to be consistent with the public purpose and clear and unequivocal guidelines, or rules are necessary and not at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration. It would depend upon the nature of the scheme and object of public purpose sought to be achieved. In all cases relevant criterion should be predetermined by specific rules or regulations

and published for the public. Therefore, the public authorities are required to make necessary specific regulations or valid guidelines to exercise their discretionary powers; otherwise the salutary procedure would be by public auction. The Division Bench, therefore, has rightly pointed out that in the absence of such statutory regulations exercise of discretionary power to allot sites to private institutions or persons was not correct in law.

(Emphasis supplied)

45.1 In the case of State of Kerala and others Vs. M. Bhaskaran Pillai and another, the Apex Court has held thus:

It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act, and is therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value.

Upon perusal of the aforesaid decisions of the Supreme Court as well as the decision of this Court in the case of Kanchanbhai Kanbhai Tadvī v. Municipal Corporation of the City of Vadodara (supra), the principle that clearly emerges is that public lands, insofar as possible, should be used for public purposes and in case there is any surplus land, the salutary procedure for its disposal would be by public auction.

46. The policy of the State Government as reflected in the Government Resolution dated 17th September, 1966 which provides for disposal of the lands that were handed over to different panchayats under the said resolution, by way of public auction, is in consonance with the aforesaid rulings of the Apex Court. In the circumstances, the sale of the subject land to the petitioner is not only in contravention of the Government Resolution dated 17th September, 1996 which governs the disposal of lands handed over by the Government to the Panchayat, but is also contrary to the settled legal position enunciated by the Apex Court in the decisions cited above and as such, is illegal and arbitrary, and cannot be sustained.

47. Considering the fact that the sale of the subject land has been held to be illegal as having been made in favour of a non-existent partnership firm; as being contrary to the policy for disposal of Government lands as well as being violative of the principles laid down by the Apex Court, it is not necessary to decide the issue as to whether or not the land forms part of the lake namely

"Ravla Talav", which even otherwise is essentially a question of fact. However, it may be noted that in the map annexed to the aforesaid Government Resolution dated 17th September, 1966, whereby the subject land, inter alia, had been vested in the Dwarka Nagar Panchayat, the subject land is shown to be a part of Ravla Talav.

48. It is settled legal position, as held by the Apex Court in the case of M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, , and reiterated in the case of M.C. Mehta Vs. Union of India (UOI) and Others, , that judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. A discretion which encourages illegality or perpetuates an illegality cannot be exercised.

49. Applying the principle laid down by the Apex Court in the aforesaid decisions, granting any relief in favour of the petitioner would amount to perpetuating an illegality and this Court would be loath to grant any relief which would amount to perpetuating an illegality. In the circumstances, the resolution dated 16th April, 1986 passed by the Dwarka Nagar Panchayat deciding to sell the subject lands to the petitioner, being contrary to the provisions of the Government Resolution dated 17th September, 1966 as well as the law laid down by the Apex Court in the decisions cited hereinabove, is held to be illegal and invalid. Accordingly, it is held that the Collector, Jamnagar was not justified in granting approval to the aforesaid resolution passed by the Dwarka Nagar Panchayat in exercise of powers u/s 98 of the Act. The revisional authority, is therefore, fully justified in setting aside the order dated July, 1986 passed by the Collector, Jamnagar.

50. Insofar as the contention that the Revision application could not have been entertained as the same was barred by principles analogous to res judicata is concerned, the same does not merit acceptance. As can be seen from the judgment and order dated 10th August, 1987 passed in Special Civil Application No. 1429 of 1987 as well as the judgment and order dated 3rd April, 1989 passed in Letters Patent Appeal No. 286 of 1987, both the petitions as well as appeal have been dismissed on the ground that the same involved disputed questions of fact, and that, the same could not have been filed in public interest. Upon perusal of the said order, it is evident that there is no decision on the merits of the matter. In the aforesaid circumstances, when the petition has been rejected on the ground that disputed questions of fact are involved, no fault can be found with the revisional authority in entertaining the said application, it being the appropriate authority for deciding such disputed questions of fact.

51. For the foregoing reasons, no case is made out to warrant any interference by this Court. The petition, therefore, fails and is, accordingly, rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

52. At this stage, learned Advocate for the petitioner seeks extension of the

interim relief granted earlier for such period as he deemed reasonable by this Court. Considering the fact that the interim relief has continued till today, the interim relief shall stand extended for a further period of ten weeks.