

**(2011) 02 GUJ CK 0028**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 4758 of 2010

Hussainbhai Joyebbhahi Bharmal through P.O.A. Bharatkumar C. Mehta APPELLANT

Vs

Collector, Rajkot and Others RESPONDENT

---

**Date of Decision :** 28-02-2011

**Acts Referred:**

Bombay Land Revenue Code, 1879 — Section 10, 211, 37(2), 9  
Bombay Revenue Jurisdiction Act, 1876 — Section 9  
Constitution of India, 1950 — Article 226, 227

**Citation :** (2011) 3 GLR 2322

**Hon'ble Judges :** M.R. Shah, J

**Bench :** Single Bench

**Advocate :** Mithil Mehta for Apurva R. Kapadia, for the Appellant; Jirga Jhaveri, A.G.P., for Respondent No. 1, Notice Served for Respondent Nos. 1-3, Notice Served by D.S. for Respondent Nos. 2 and 3, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

M.R. Shah, J.—By way of this petition under Arts. 226 and 227 of the Constitution of India, petitioner initially prayed for an appropriate writ, direction or order directing the respondents, more particularly, respondent No. 3, Mamlatdar, Paddhari to certify the kachha entry No. 2794 dated 21-8-2009 in the revenue records of the land bearing village Survey No. 224 paikee admeasuring 18 Acres and 39 Gunthas of village Nyara, Taluka Paddhari, District Rajkot. Subsequently, by way of amendment, the petitioner has prayed for an appropriate writ, direction or order quashing and setting the order dated 7/12-4-2010 passed by the Collector, Rajkot, by which the Collector, Rajkot has taken the order passed by the Deputy Collector, Morbi dated 10-8-2009 in suo motu revision u/s 211 of the Bombay Land Revenue Code (hereinafter referred to as "Code") and during the pendency of the said proceedings has granted the stay of further execution, implementation and operation of the order passed by the Deputy Collector, Morbi dated 10-8-2009 and directed the Mamlatdar, Paddhari to

make necessary entry with respect to such a stay order in the revenue record.

2. The brief facts leading to filing of the present Special Civil Application in nutshell are as under :

2.1 The petitioner is a purchaser of the land in question. There was a dispute with respect to the measurement and according to Mamlatdar, Paddhari, petitioner had encroached upon the Government land, inquiry was initiated u/s 37(2) of the Code and the case was transferred to the office of the Deputy Collector, Morbi. The case was registered as Case No. 1 of 2004-2005. That the Deputy Collector, Morbi by order dated 19-3-2007 withdrew the notice issued u/s 37(2) of the Code and held that the land bearing Survey No. 224 paikie of village Nyara, Taluka Paddhari is of the private ownership. That the said order dated 19-3-2007 passed by the Deputy Collector, Morbi was taken in suo motu revision by the Collector, Rajkot in exercise of powers u/s 211 of the Code and the Collector by order dated 24-3-2008 allowed the said revision application quashing and setting aside the order dated 19-3-2007 passed by the Deputy Collector, Morbi and remanded the matter to the Deputy Collector, Morbi for considering the same afresh in light of the observations and discussions made in the said order. That thereafter, on remand, the case was renumbered as Remand Case No. 1 of 2008-2009 and the Deputy Collector, Morbi again passed an order dated 10-8-2009 withdrawing the notices u/s 37(2) of the Code by holding that the land in question is private ownership land.

2.2 That immediately, on passing the order dated 10-8-2009, petitioner approached respondent No. 3-Mamlatdar, Paddhari requesting to certify kachcha Entry No. 2794 dated 21-8-2009 giving effect to the order passed by the Deputy Collector and it is the case on behalf of the petitioner that as despite the order passed by the Deputy Collector, Morbi dated 10-8-2009, respondent No. 3-Mamlatdar, Paddhari was not certifying the entry, and therefore, petitioner has preferred the present Special Civil Application directing the Mamlatdar, Paddhari to certify the entry giving effect to the order passed by the Deputy Collector, Morbi dated 10-8-2009.

2.3 It appears that in the meantime, the order passed u/s 37(2) of the Code by the Deputy Collector, Morbi dated 10-8-2009 has been taken under suo motu revision by the Collector, Rajkot in exercise of powers u/s 211 of the Code and the Collector, Rajkot has passed an interim/stay order vide impugned order dated 7/12-4-2010, by which during the pendency of the revisional proceedings, the Collector, Rajkot has directed to stay further implementation, execution of the order passed by the Deputy Collector, Morbi dated 10-8-2009 and has further directed the Mamlatdar, Paddhari to make necessary entry with respect to such interim/stay order in the revenue record, and therefore, being aggrieved and dissatisfied with the initiation of such a revisional proceedings by the Collector, Rajkot to suo motu take into revision the order passed by the Deputy Collector, Morbi dated 10-8-2009, in exercise of powers u/s 211 of the Code, petitioner has also challenged the initiation of such proceedings by the Collector.

3. Shri Mithil Mehta, learned Advocate appearing for Shri Apurva Kapadia, learned Advocate appearing on behalf of the petitioners has vehemently submitted that initiation of suo motu revisional proceedings by the Collector, Rajkot to take into suo motu revision the order passed u/s 37(2) of the Code by the Deputy Collector, Morbi dated 10-8-2009, in exercise of powers u/s 211 of the Code, is absolutely illegal and without jurisdiction. It is submitted that as such the Deputy Collector, Morbi has exercised the powers u/s 37(2) of the Code as a delegate of Collector, and therefore, Collector has no jurisdiction to revise the order passed by the Deputy Collector, Morbi u/s 37(2) of the Code. Shri Mehta, learned Advocate appearing on behalf of the petitioner has submitted that as such the only remedy available against the order passed by the Deputy Collector, Morbi u/s 37(2) of the Code would be to prefer an Appeal before the Gujarat Revenue Tribunal as provided u/s 9 of the Bombay Revenue Jurisdiction Act. Therefore, it is requested to quash and set aside the impugned said order dated 10-8-2009 and also to quash and set aside the initiation of the suo motu revisional proceedings by the Collector and consequently directing the Mamlatdar, Paddhari to certify the entry in question.

3.1 Shri Mehta, learned Advocate appearing on behalf of the petitioner has heavily relied upon the decision of the Division Bench in the case of Lallumiya Lalmiya Malek v. State of Gujarat, reported in 1971 GLR 668 as well as the decision of the learned Single Judge in the case of State of Gujarat Vs. Polabhai Ajabhai (Decd.) through his heirs Gangaben Polabhai and Others, in support of his above submissions.

3.2 Relying upon the above decisions and making above submissions, it is requested to allow the present petition.

4. Petition is opposed by Ms. Jirga Jhaveri, learned Assistant Government Pleader appearing on behalf of the Collector, Rajkot. It is submitted that as such the controversy raised in the present petition with respect to jurisdiction of the Collector to revise the order passed by the Deputy Collector, Morbi u/s 37(2) of the Code, in exercise of powers u/s 211 of the Code is now not res-integral in view of the decision of the learned Single Judge dated 16-6-2009 passed in Special Civil Application No. 12230 of 2002. It is submitted that the learned Single Judge had an occasion to consider the decision of the Division Bench in the case of Lallumiya Lalmiya Malek (supra), and thereafter, the learned Single Judge has specifically held that the Collector can revise and/or exercise suo motu revisional powers u/s 211 of the Code against the order passed by the Deputy Collector as may be passed u/s 37(2) of the Code. It is submitted that in the said decision, the learned Single Judge has specifically held that the Deputy Collector while exercising powers u/s 37(2) of the Code, exercises the powers as a substitute and not as a delegate of the Collector. Therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned Advocates appearing on behalf of the respective parties at length.

6. The short question which is posed for consideration of this Court is whether the Collector has any jurisdiction to exercise suo motu revisional powers u/s 211 of the Code against the order passed by the Deputy Collector u/s 37(2) of the Code?

7. It is the contention on behalf of the petitioner that as the Deputy Collector is exercising powers u/s 37(2) of the Code as delegate of the Collector, Collector has no jurisdiction to revise u/s 211 of the Code, the order passed by the Deputy Collector u/s 37(2) of the Code. It is also the contention on behalf of the petitioner that the only remedy against the order passed by the Deputy Collector u/s 37(2) is to prefer an Appeal before the Gujarat Revenue Tribunal. As such the aforesaid controversy is now not res-integra in view of the decision of the learned Single Judge rendered in Special Civil Application No. 12230 of 2002 in the case of Virjibhai Jivrajbhai since deceased v. State of Gujarat. Identical question came to be considered by the learned Single Judge and considering the entire scheme of the Code as well as the provisions of the Bombay Revenue Jurisdiction Act, the learned Single Judge has specifically held that the Assistant and Deputy Collector exercise the powers u/s 37(2) of the Code as a substitute and not as a delegate of Collector, and therefore, they can be said to be subordinate to the Collector, and therefore, the Collector can exercise sua motu revisional powers u/s 211 of the Code and take into review the order passed by the Deputy Collector u/s 37(2) of the Code, while exercising powers u/s 211 of the Code. In Para 15, the learned Single Judge has observed and held as under :

15. Assistants or Deputy Collectors, thus, exercising powers of the Collector u/s 10 of the Code, cannot be stated to be delegate of the Collector, but are substitutes for the Collector, so statutorily provided and permitted. They do not cease to be subordinate officers to the Collector, as provided u/s 9 of the Code. u/s 10 of the Code also this important feature is manifested when the Collector is given discretion to retain some of the duties and powers, even while placing any Assistant or Deputy Collector in-charge of a taluka. It is also important that Assistants or Deputy Collectors performing such duties and exercising powers of the Collector, do so subject to provisions of Chapter XIII. Chapter XIII which contains besides other provisions, Section 211 of the Code, empowers the Collector to revise an order by an Assistant or Deputy Collector.

7.1 While deciding the aforesaid Special Civil Application, the learned Single Judge also considered the decision of the Division Bench in the case of Lallumiya Lalmiya Malek (supra) and after considering the said decision, the learned Single Judge has held as above.

8. Considering the decision of the learned Single Judge in the case of Virjibhai Jivrajbhai (supra), this Court is in complete agreement with the view taken by the learned Single Judge in the said Special Civil Application and this Court is also of the opinion that Deputy Collector while exercising powers u/s 37(2) of the Code is exercising powers as a substitute and not as a delegate of the Collector, and therefore, he can be said to be subordinate to the Collector, and therefore,

his order passed u/s 37(2) of the Code is revisable u/s 211 of the Code by the Collector.

8.1 Now, so far as the reliance placed upon the decision of the learned Single Judge in the case of State of Gujarat Vs. Polabhai Ajabhai (Decd.) through his heirs Gangaben Polabhai and Others, is concerned, it is to be noted that in the said decision, as such there is no specific finding and/or final decision by the learned Single Judge with respect to exercise of powers by the Collector exercising powers u/s 211 of the Code to take into suo motu revision the order passed by the Deputy Collector u/s 37(2) of the Code. In the said decision, the learned Single Judge only raised doubts but did not decide the said controversy. However, in the case of Virjibhai Jivrajbhai (supra) in Special Civil Application No. 12230 of 2002, the learned Single Judge has specifically dealt with the aforesaid point and has held as above. Under the circumstances, the decision of the learned Single Judge in the case of Heirs of deceased Polabhai (supra) would not be of any assistance to the petitioner.

9. In view of the above, it cannot be said that the exercise of powers by the Collector and initiation of proceedings u/s 211 of the Code by the Collector, Rajkot to take into suo motu revision the order passed by the Deputy Collector, Morbi dated 10-8-2009 is in anyway erroneous and/ or illegal and/or contrary to the provisions of the Code. Under the circumstances, the prayer of the petitioner to quash and set aside such initiation of proceedings cannot be granted. It is to be noted that earlier also, the on (sic) passed by the Deputy Collector, Morbi dated 19-3-2007 was taken under suo motu revision by the Collector, Rajkot and the petitioner appeared before the Collector in the said proceedings and contested the same, and thereafter, the matter was remanded to the Deputy Collector and at that time petitioner did not raise any objection with respect to exercise of suo motu revisional powers by the Collector, Rajkot u/s 211 of the Code. Be that as it may, even as stated above, the initiation of proceedings by the Collector to take into suo motu revision the order of the Deputy Collector u/s 37(2) is neither illegal nor contrary to the provisions of the Code.

9.1 In view of the above, when the Collector has initiated the proceedings and has exercised the suo motu revisional powers to take the order passed by the Deputy Collector, Morbi dated 19-3-2007 in suo motu revision, and in the meantime, has granted the stay of further implementation and operation of the order passed by the Deputy Collector, Morbi dated 10-8-2009, no relief can be granted to the petitioner directing Mamlatdar, Paddhari to certify the mutation Entry No. 2794 dated 21-8-2009. On the contrary, by impugned communication/ stay order dated 10-8-2009, the Collector has directed the Mamlatdar, Paddhari to make necessary entry in the revenue record with respect to such a stay order.

9.2 In view of the above and for the reasons stated above, petition fails and the same deserves to be dismissed, and is accordingly, dismissed. Rule discharged. Ad-interim relief granted earlier is hereby vacated. No costs.