(2022) 03 GUJ CK 0047

In the Gujarat High Court

Case No : R/Special Civil Application No. 5924 Of 2012

Kamlaben Dhayashankar Dave W/O.Godindprasad APPELLANT

Vs

District Collector & 2 Other(S) RESPONDENT

Date of Decision : 10-03-2022

Acts Referred:

Limitation Act, 1963 — Article 113
Constitution Of India, 1950 — Article 226, 227
Bombay Land Revenue — Section 34, 65, 84C, 135B, 135(C), 135D, 125L(2), 125(3), 133(2), 211
Gujarat Land Revenue Code,1879 — Section 65

Citation : (2022) 03 GUJ CK 0047

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Bharat Jani, Nikunj Kanara, Mohini J Bhavsar

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. The petitioner has preferred this petitioner under Articles 226 and 227 of the Constitution of India challenging the order dated 27.2.2012 passed by the Additional Secretary Revenue Department (Appeal) – respondent No.3 rejecting the revision application of the petitioner of confirming the order dated 22.1.2009.

2. The brief facts fo the present petition, as emerged from the record, is that land bearing Survey No. 319 of village Sankhari, Taluka & District: Patan was originally belonging ancestral property belonging to Dhayashankar Tuljaram Dave, who died on 25.4.1993. Thereafter, on 25.10.1993, entry No. 2591 was mutated in the name of his legal heirs and vide entry No. 2592 names of Bhagwatiben Dhayashankar Dave, Taraben Dhayashankar Dave and the petitioner Kamlaben Dhayashankar Dave were deleted stating that they have relinquished their rights in the suit property in favour of their brothers.

2.1 Thereafter, on 30.7.1994, on account of family partition, Mutation entry No.

2627 was made whereby the land bearing Block No. 319 came in the share of Pravinchandra Dhayashankar Dave. On being informed that her name came to be deleted from the record of the rights as a co-owner though she was daughter of the deceased Dhayashankar, she was entitled to share of agricultural land of her father. She made application to enter her name in the revenue record. Thereafter, on 15.5.1998, her name was entered in the revenue record vide mutation entry No. 2826 which was confirmed by the Deputy Mamlatdar. Thereafter, on 6.4.2000, Pravinchandra Dhayashankar Dave died.

2.2 That on 30.10.2003, names of legal heirs of Pravinchandra Dhayashankar Dave were entered along with name of present petitioner vide entry No. 3284, which was also certified.

2.3 The entry No. 2826 came to be taken into suo-motu revision by the respondent No.1 i.e. Collector Patan after almost 10 years of the mutation of the said entry and he issued show-cause notice to the petitioner. In the said proceedings, name of Pravinchandra Dhayashankar Dave and that all the petitioners were shown as respondents. Inspite of the fact that Pravinchandra Dhayashankar Dave died in the year 2000 and name of his legal heirs were already been brought on record, vide entry No. 3284 dated 30.10.2003, no show-cause notice was issued to the legal heirs for giving opportunity of being heard to them. The Collector, Patan cancelled the entry No. 2826 on 15.5.1998 though there was a consent letter given by the legal heirs of Pravinchandra Dhayashankar Dave stating that they have no objection in continuing the name of the petitioner on the revenue record along with them.

2.4 Against the said order of the Collector, revision was filed, which came to be rejected by the respondent No.3.

3. Private Respondent Nos. 2A and 2B have supported the case of the petitioner and has filed affidavit to that effect and submitted that they have no objection for mutation of the name of the petitioner along with them as co-owner. It is also stated on oath they have filed consent letter individually before the learned Collector on affidavit to that effect.

4. One Shri D.A. Shah, Resident Additional Collector, Respondent No.1 herein for the State has filed affidavit-in-reply. It is submitted that the land bearing Revenue Survey No. 319, 335 of village: Sakhari, Taluka and District: Patan was originally and exclusively owned and occupied by one Shri Dhayashankar Tuljaram Dave who expired on 25.4.1993 and mutation entry bearing No. 2591 dated 25.10.1993 came to be recorded in the revenue record of the land in question and his legal heirs were brought on record. That thereafter, three daughters namely Dave Bhagwatiben Dhayashankar, Dave Taraben Dhayashankar and Dave Kamlaben Dhyashankar reqlinquished their right in the land in question and, thereafter, the names of Dave Rameshchandra Dhayashankar (2) Dave Pravinchandra Dhayashankar continued as joint owners in the revenue record of land in question.

4.1 It is further averred that the partition was effected whereby revenue survey No. 319 was mutated in the name of Pravinchandra Dhayashankar Dave and Survey No. 335 was entered in the name of Rameshchandra Dhayashankar Dave and necessary revenue entry number was mutated therein.

4.2 It is also submitted that thereafter the petitioner made an application to mutate her name in Block No. 310 along with consent letters of the owner namely Dave Pravinchandra Dhayashankar and the learned Mamlatdar without verifying the fact and the status of the petitioner as agriculturist, certified the name of the petitioner as co-owner vide mutation entry No. 2826.

4.3 It is specifically averred that it was brought to the notice of the Mamlatdar, Patan by the Mamlatdar, Dhandhuka that son of the present Petitioner has purchased one agricultural land bearing revenue Survey No. 633/2 paikee of village: Kharad, Taluka: Dhandhuka, District: Ahmedabad wherein the only certificate of agriculturist produced was that the mother being the present petitioner was an agriculturist of Block No. 319. It is contended that an RRT case was registered whereby vide order dated 15.9.2008, the entry was cancelled. Pursuant to the said communication, the Mamlatdar Patan found that the mutation entry No. 2826 was prima-facie not tenable in the eyes of law and, therefore, vide his communication dated 6.9.2008, sent a proposal to take the entry No. 2826 in review. It is contended that after providing opportunity of being heard, the learned Collector has exercised his power under Bombay Land Revenue Code and passed the impugned order after providing opportunity of heard to the petitioner. Itis also contended that appropriate notices were issued and statements were recorded and, thereafter, impugned order was passed. While referring to the provisions of Section 135(C) of Bombay Land Revenue Code, it is submitted that by merely making her name in the revenue entry, she cannot acquire any legal right by succession, survivorship in the land and, therefore, re-entering the name of the petitioner, once she has relinquished her right in favour of her brother, is illegal and, therefore, order passed by the authority are proper one.

5. The Petitioner has filed affidavit-in-rejoinder and has reiterated the fact that the averments made regarding cancellation of the sale transaction of her son by the Mamlatdar, Dhandhuka is not correct as the said order was carried out before the higher authority and the District Collector has allowed the revision application of the son of the petitioner and set-aside the order dated 15.9.2008 passed by the District Collector, Dholka, Prant: Dholka. She has also submitted that her father was an agriculturist and she is also agriculturist and the right of the petitioner cannot be divided merely on technicality. She has also stated that there is no violation of any of the provisions of Section 135-B, 135-C and 135-D of the Bombay Land Revenue Code. She has contended that the petitioner is a Khedut Khatedar in respect of the land situated at Sankhari, Taluka: Patan and Khata Number is 314. She has submitted that cancellation of impugned entry at belated stage is not in accordance with law.

6. Heard Mr. Bharat Jani, learned advocate for the petitioner, Mr. Nikunj Kanara, learned advocate for the respondent State and Ms. Mohini Bhavsar, learned advocate for the private respondent. Perused the material placed on record.

7. Mr. Bharat Jani, learned advocate for the petitioner has vehemently submitted the same facts which are narrated hereinabove. He has submitted that the petitioner is daughter of original agriculturist namely Dhayashankar Dave who died in the year 1993. He has submitted that after the death of Dhayashankar, mutation entries were made regarding the heirship which include the name of the petitioner along with her two sisters and two brothers. He has submitted that as per the revenue entry No. 2592, the sisters have relinquished rights in favour of their brothers. He has submitted that thereafter there was partition of the land between the two brothers out of which the Survey No. 319 came in the share of Pravinchandra Dave and after his death, name of the present petitioner along with others were mutated as heirs of Pravinchandra in the revenue record. He has submitted that entry to that effect was entered vide entry No. 2826 dated 15.5.1998. He has submitted that after almost 10 years, the authority has taken suo-motu revision which is beyond reasonable period of time. He has submitted that with consent of the heirs of the brothers, if name of the petitioner is entered, who has original share in the property, there is no illegality committed by the authority. He has submitted that private respondent has already submitted affidavit even before the SSRD and even before this Court for and in favour of the petitioner that her name may be continued as a sharer in the property. He has submitted that the entire exercise as suo-motu power is beyond period of limitation and only on the sole ground, the petitioner needs to be allowed. He has relied upon the following decision in his favour:

1. The State of Gujarat v. Patel Raghav Natha and Ors, reported in AIR 1969 SC 1297;

2. Mohamad Kavi Mohamad Amin V. Fatmabai Ibrahim, reported in (1997) 6 SCC 71;

3. Harshadbhai Dahyabhai Desai v. State of Gujarat, reported in 2000 (4) GLR 3402;

4. Ravjibhai Mavji Jogani v. State of Gujarat, reported in 2000 JX (Guj) 2630;

5. Pratimaben Gopaldas Desai v. State of Gujarat & Ors, reported in 2003 (3) G.L.H 430;

6. Cold Cap Tyres Pvt. Ltd. v. Additional Chief Secretary, reported in 2005 (1) G.L.H (U.J) 1;

7. Kiritbhai C. Patel v. Girdharbhai N. Barot, reported in 2001 (3) G.L.H (U.J) 6;

8. Rajesh Omprakash Sood & Ors. v. State of Gujarat & Anr. , reported in 2006 (2) GCD 1659 (Guj);

9. Jamnadas Meghji and Anr. v. State of Gujarat & Ors, reported in 2006 (2)

G.L.H 620;

10. Pune Municipal Corporation v. State of Maharashtra and Ors, reported in AIR 2007 SC 2414.

8. Per contra, learned AGP Mr. Nikunj Kanara for the State has vehemently supported the impugned orders passed by the revenue authority. He has submitted that once the petitioner has relinquished her right in favour of her brothers, her name cannot be re-entered as heir, after the partition between the two brothers. While relying upon Section 135-C of the Bombay Land Revenue Code, he has submitted that the petitioner cannot acquire any such right in the property in question. He has submitted that on the basis of the relinquishment of the share by the petitioner in past, revenue entry was mutated by the Mamlatdar and thereafter the Mamlatdar has re-entered the name on the revenue record of the petitioner as a heir of Pravinchandra, is without jurisdiction. He has submitted that when the Mamlatdar has entered the entry of relinquished, the same authority i.e. Mamlatdar cannot re-enter the name of the petitioner. He has heavily relied upon the ground stated in the affidavit-in-reply to the fact that the sole transaction entered into by the son of the petitioner in Dhandhuka came to be cancelled by the Prant Officer of the Dhandhuka and in consequence of the communication received from the said Prant officer, the entry in question was taken into suo-motu revision and it has been properly cancelled. He has submitted that the entire petition is devoid of merits and needs to be dismissed. He has relied upon the following decisions:

1. Manjibhai Nagjibhai Mangukia v. Special Secretary (Appeals), Revenue Department and Others, reported in 2015 (3) G.L.R. 2660 (para-1)

2. Yunus Ibrahim Adam Patel v. Special Secretary Revenue Department (Appeals) and Others, reported in 2012 (2) G.L.R 1558 (Para-30)

9. Ms. Mohini Bhavsar, learned advocate for the private respondent has supported the submission of learned advocate for the petitioner and has submitted that the other co-owners have already filed affidavit in support of the petitioner. She has submitted that entire exercise by the revenue authority is without jurisdiction has it has been exercised after lapse of almost 10 years.

10. In rejoinder to the submission of learned AGP, Mr. Bharat Jani, learned advocate for the petitioner has submitted that the decision cited by the learned AGP is not relevant to the facts of the present case and they are not applicable. Referring the to the reply (Para-7.5), he has submitted that this is pertinent to the another transaction of petitioner’s son and the order passed against the son of the petitioner was already challenged before the higher authority and the higher authority has set-aside the order of the subordinate authority. He has submitted that the entire exercise of suo-motu revision is beyond period of limitation and, therefore, only on this sole ground, the petitioner needs to be allowed. He has prayed to allow the petition.

11. In case of the State of Gujarat v. Patel Raghav Natha and Ors (Supra), Paras-13, 14 and 15 read as under:

“13. The question arises whether the Commissioner can revise an order made under s. 65 at any time. It is true that there is no period of limitation prescribed under sSection 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.

14. It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Under s. 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading 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.

15. We are also of the opinion that the order of the Commis-sioner should be quashed on the ground that he did not give any reasons for his conclusions. We have already extracted the passage above which shows that after reciting the various contentions he badly stated his conclusions without disclosing his reasons. In a matter of this kind the Commissioner should indicate his reasons, however, briefly, so that an aggrieved party may carry the matter further if so advised”.

12. In case of Mohamad Kavi Mohamad Amin V. Fatmabai Ibrahim, (Supra), this Court in connection with other statutory provisions, and relying upon the case of State of Gujarat v. Patil Raghav Natha and in the case of Ram Chand v. Union of India [1994 (1) SCC 4] has impressed that where no time-limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time.

13. In the case of Ravjibhai Mavji Jogani v. State of Gujarat (Supra), it has been observed in Paras 13 and 14 that:

“13. Recently, the Apex Court has also considered the power which has been exercised by respondent authorities under section 84-C under suo motu inquiry by Mamlatdar should be initiated within reasonable time. Sale of land taking place in December, 1972, the suo motu inquiry started in September, 1973, it was held that suo motu power under section 84-C, not exercised within reasonable time.

14. In all the decisions which have been cited by the learned advocate Mr. Hathi of this Court as well as of Apex Court, the question of exercise of powers by the authorities within reasonable period or not has been examined in light of the facts that when no period of limitation has been specified under the statutory provisions. In case of MOHAMAD KAVI MOHAMAD AMIN V/s. FATMABAI IBRAHIM (1997) 6 SCC 71, even more than 1 year delay has been considered by the Apex Court unreasonable while exercising the suo motu powers under section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976 and, therefore, considering this decision of the Apex Court and the facts of the present case, wherein at least more than 29 years period have been passed for initiating the proceedings under Rule 108(6) of the Bombay Land Revenue Rules. In the light of these judicial pronouncements, the transaction of sale deed and necessary entries which were made pursuant to the sale deed during the period from 1965 to 1991 which has been taken into revision by exercising the suo motu powers under Rule 108(6) of the Bombay Land Revenue Rules by issuing the show cause notice dated 13th July, 1994. The show cause notice was issued to the petitioner under the provisions of Rule 108(6) of the Land Revenue Rules, as to why the revenue record entry certified during the period from 1965 to 1991 should not be revived, therefore, there is a delay of about 29 years for initiating the proceedings under Rule 108(6). In such situation, it must be presumed that meanwhile the land in question remained with the petitioners and according to the petitioners many subsequent transaction has been executed between the parties and during this period, the interest and equity in favour of third party has also created on the basis of various transactions in respect of lands in question executed by the respective parties. Meanwhile, the petitioner and third party has also created interest and equity in their favour and the possession of the lands in question which has been remained with the third party since many years and, therefore, considering all facts which are on record totally unreasonable exercise of powers after about more than 29 years by the respondents - authorities. According to my opinion, considering the various decisions of this court as well as Apex Court as referred to above, I hold that the action under the Act which was taken by the respondent authorities after undue and unreasonable delay of more than 29 years which requires to be set aside".

20. In the case of Pune Municipal Corporation v. State of Maharashtra and Ors (Supra), it is observed in Paras 22, 23, 33 and 34 as under:

"22.Now it is true that no period for revision is provided in the Act. It was, therefore, submitted on behalf of the land-owners that when the Legislature did not think it fit to prescribe period of limitation, such power can be exercised 'at any time' and no Court by a 'judicial fiat', usurp legislative power and prescribe period of limitation. It is no doubt true that the statute does not fix period of limitation within which revisional power should be exercised under Section 34 of the Act. The Legislature, in its wisdom, has not fixed period of limitation as it had empowered the State Government to exercise revisional power suo motu. In our judgment, however, only in such cases i.e. where the period of limitation is not prescribed that the concept of 'reasonable time' can be invoked and power must be exercised within such period.

23.In this connection, it would be profitable to refer to a leading decision of this Court in State of Gujarat v. Patel Raghav Natha & Ors., (1969) 2 SCC 187. In that case, an application was filed by the land-owner under Section 65 of the Bombay Land Revenue Code, 1879 for converting agricultural land to non-agricultural use. The permission was granted. The Municipal Committee, however, objected to such permission and the Commissioner, in purported exercise of revisional power under Section 211 of the Code, set aside the order passed earlier. When the matter reached this Court, it was contended by the owners, that though Section 211 did not prescribe period of limitation, revisional powers ought to be exercised within a reasonable time.

33. A similar question came up for consideration before this Court in State of Punjab & Ors.. v. Gurdev Singh, (1991) 4 SCC 1. In Gurdev Singh, a suit for declaration was instituted by the plaintiff contending that the order dismissing him from service was ultra vires, unconstitutional, violative of principles of natural justice and void ab initio and he continued to be in service. Such suit, in accordance with the provisions of Article 113 of the Limitation Act, 1963, must be filed within three years from the date of passing of order or where departmental appeal or revision is filed from the date of dismissal of such appeal/ revision. The suit was, however, filed beyond the period of three years. The High Court held that since the order was void, the provisions of Limitation Act would not apply to such order. The aggrieved State approached this Court.

34. Setting aside the decree passed by all the Courts and referring to several cases, this Court held that if the party aggrieved by invalidity of the order intends to approach the Court for declaration that the order against him was inoperative, he must come before the Court within the period prescribed by limitation. "If the statutory time of limitation expires, the Court cannot give the declaration sought for".

The Court then stated;

"If an Act is void or ultra vires it is enough for the Court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs".

21. In the rest of the cases relied upon by learned advocate for the petitioner are pertaining to same legal points regarding the action to be taken in a reasonable period of time and if action is not taken by the revenue authority within reasonable time, then such actions were not justified and, therefore, all these decisions are not dealt with in detail.

22. Having considered the submissions made on behalf of both the sides coupled with the material placed on record and the decisions relied upon by both the sides, there is no dispute regarding the fact that the original land was belonging to the deceased Dhayashankar Tuljaram Dave who has died on 25.4.1993. It is also admitted fact that upon his death, entry No. 2591 came to be mutated and certificate in respect of name of his legal heirs, which includes the present petitioner. It also appears from the record that there was some partition between the two brothers and entry to that effect was mutated while entry No. 2627 dated 30.7.1994 regarding the land bearing Block No. 319 which came to the share of Pravinchandra Dhayashankar Dav. It also appears that since petitioner's name was deleted, she mad an application to enter her name in revenue record and accordingly in 1998, her name came to be entered into the revenue record by mutation entry No. 2826 , which was also confirmed by Deputy Mamlatdar. It also appears that Pravinchandra Dhayashankar Dave has died and upon his death, names of his legal heirs including the name of the present petitioner came to be mutated in the revenue record vide entry No. 3284 on 30.10.2003, which came to be taken in suo-motu revision by respondent No.1 after almost 10 years of the mutation of the said entry. It also appears that in the said proceedings, the private respondent herein and the present petitioner was also made party and in that said proceedings, the private respondents have consented that they have not objection in continuing the name of the petitioner in the revenue record along with the stand of the revenue authority that since in year 199, as per entry No. 2592, the mother and two daughters have relinquished their shares in favour of the two brothers, name of the present petitioner cannot be re-entered in the revenue record. But this action taking into suo-motu revision against the mutation of the name of the present petition as heir of Pravinchandra Dhayashankar Dave in the year 1998, is exercise almost 10 years. At this juncture, it is pertinent to note that the learned AGP has heavily relied upon Section 135C of the Gujarat Land Revenue Code and has submitted that the present petitioner cannot get any right in the property and cannot acquire such right. It is worthwhile to reproduced Section 135C of the Gujarat Land Revenue Code, which reads as under:

"135C. Acquisition of rights to be reported:- Any person acquiring the right on any land by succession, survivorship, inheritance, partition, purchase, mortagage, gift, lease or Certificate of No Dues made under sub-section (2) and (3) of section 125L and section 133(2), or otherwise any right as holder, occupant,owner, mortagagee, assignee of the rent thereof, shall make a report of such acquisition of such right, either manually or electronically, to the designated officer within the period of three monthsfrom the date ofsuch acquisition, and the said designated officer shall at once, give a written acknowledgment of the receipt of such report to the person making it :

Provided that where the person acquiring the right is a minor, or otherwise disqualified, his guardian or other person, having charge of his property, shall make the report to the designated officer.

Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the designated officer.

23. Thus, as per the provisions of Section 135C of the Code, any person can acquire right on any land by succession, survivorship, inheritance, partition, purchase, mortagage, gift, lease or Certificate of No Dues made under sub-section (2) and (3) of section 125L and section 133(2), or otherwise any right as holder, occupant,owner, mortagagee, assignee of the rent thereof. Thus, the acquisition of right does not include only succession, survivorship, inheritance, partition, etc., but it also includes “otherwise”. There is no legal ban of acquirement of any right under Section 135C on the ground that the person concerned has earlier relinquished his or her right. It is an admitted fact that the petitioner is daughter and sister of the deceased Pravinchandra Dhayashankar Dave. It is also admitted fact that on the basis of the application and Kabulatnama, the entry of joint ownership has been reflected in the revenue record pertaining to land of deceased Pravinchandra Dhayashankar Dave, which includes name of the present petitioner. The other heirs of late Shri Pravinchandra Dhayashankar Dave who was real brother of the petitioner, has also accepted that the petitioner has right on the Suit land. Thus, the case of the petitioner would fall under the expresssion “otherwise” in Section 135C of the Code.

24. In case of Manjibhai Nagjibhai Mangukia v. Special Secretary (Appeals), Revenue Department and Others (Supra), the fact is entirely different to the effect that the land was sold by the petitioner to respondent Nos. 3 and 4 thereto and respondent Nos.3 and 4 had also applied for NA, which came to be rejected by Deputy Collector. Subsequently, Deputy Collector review his own decision and granted permission to respondent Nos. 3 and 4, which came to be challenged before this Court. It is a fact that there was a suit filed for cancellation of the sale-deed. Under the facts of that case, it was held that by virtue of sale-deed, the petitioner has seized to be owner of the land and, therefore, the petitioner has no locus to make grievance as regards to order of the Deputy Collector granting NA permission to the respondent Nos. 3 and 4. It was also held in view of the decision of this Court in case of Niranjanbhai Bhagwanbhai Patel v. State of Gujarat, reported in 2015 (2) GLR 1493, the authority exercising power under Section 65 of the Gujarat Land Revenue Code is empowered to review its own decision.

Thus facts of the cited decision is different from the facts of the present case and, therefore, this decision is not applicable to the facts of the present case.

25. In the case of Yunus Ibrahim Adam Patel v. Special Secretary Revenue Department (Appeals) and Others (Supra), there was question as to whether there is any power of review available to the State Government under Section 211 of the Code. It was also held in Para-18 as under:

“18. It is now a settled position of law that a quasi-judicial authority derives its powers from the statutory provisions under which it is empowered to Act and cannot exercise power not vested in it by the statute. The extent of power to be exercised by a quasi-judicial authority is circumscribed by the language of the statute. The position of law whether the State Government has power to review its own order under Section 211 of the Code is no longer res-integra. In Bhagwanji Bawanji Patel v. State of Gujarat And Anr. (supra), the Court has observed in Paragraph 9 that:

“9. The contention of Mr. Padia, the learned Advocate for the appellant, is that the Government can exercise its powers under sec.211 only once, and once any such powers are exercised by the State Government either suo motu or at the instance of some one else under any provision of law which entitles it to revise the same, its powers stand exhausted. In other words, according to him, it cannot revise the order passed by it, or, rather, it cannot review its own order once passed in absence of any specific provision whereby such powers are given to it in law. Now, it is common ground and over which no dispute is raised by Mr.Chhaya, the learned Assistant Govt. Pleader for the state, that there is no provision in the Land Revenue Code, whereby the State Government can review its own order already passed in exercise of its powers under sec.211 of the Land Revenue Code, and, therefore, if the contents of the letter dated 23-8-60 can be taken as a decision so communicated in the matter, the remedy of the State Government under sec.211 would not survive. It may, if permissible in law, have recourse to a remedy by filing a suit in a civil Court. But it cannot review its own order. No such powers are shown to have been in the State Govt. under the provisions of the Land Revenue Code”.

Thus, the facts and legal points involved in the said decision is different from the one involved in the present Petition.

26. Now, it is admitted that that the suo-motu action was taken after almost 10 years and, therefore, it is beyond reasonable period. The entire exercise taken over by the Collector is beyond the period of 3 years. Therefore, the action of the respondent authority cannot be sustainable in the eyes of law and the same deserves to be set aside.

27. In view of the above discussion, the present petition is allowed. The impugned order passed by the Collector respondent No.2 in Suo-motu Revision Application on 22.1.2009 cancelling the mutation entry No. 2826 made on 15.5.1998 and the impugned order passed by the learned Additional Secretary Revenue Department (Appeals) respondent No.3 on 27.2.2012 rejecting the revision application of the petitioner, are hereby quashed and set-aside. Rule is made absolute.

No order as to costs. Direct Service permitted.

