

(1984) 03 GUJ CK 0023

In the Gujarat High Court

Case No : Spl. Civil Application No. 5580 of 1982

Minish K. Sheth and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 26-03-1984

Acts Referred:

Limitation Act, 1963 — Section 10, 17

Urban Land (Ceiling and Regulation) Act, 1976 — Section 34, 4(5)

Citation : AIR 1985 Guj 56 : (1985) 1 GLR 202

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : P.M. Raval, for the Appellant; G.D. Bhatt, AGP for B.K and G., R.N. Mehta, for the Respondent

Judgement

1. The petition arises out of an order passed by the state Government under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act"). The petitioners were carrying on business in partnership which came into existence on Feb. 8, 1963. There were changes in the constitution of the firm from time to time. Ultimately on Dec. 25, 1974 a partnership deed was executed which is produced at Annexure "E" to the petition. As per the partnership deed on record, the capital of the partnership firm was to the tune of Rs. 2,80,000. One minor Master Shailesh S. Sheth was also admitted to the benefit of partnership. This partnership has been dissolved as per the deed of dissolution dated April 25, 1981. The deed of dissolution is produced at Annexure A/1 to the petition. The deed of partnership as well as the deed of dissolution have not been registered under the provisions of the Indian Registration Act. It may not be obligatory to get the partnership deed and the deed of dissolution registered under the provisions of the Indian Registration Act, but having regard to the facts and circumstances of the case, this circumstance has some relevance and therefore it is necessary that it may be borne in mind. It appears that the stamp papers on which the partnership deed as well as the deed of dissolution are executed are not in accordance with the provisions of

Bombay Stamp Act. Probably the stamp papers utilised area s per the provisions of Tamil Nadu Stamp Act, As stated in the partnership deed .the business of the firm was to be carried on at 22,First Line Madras-1.

2. On Sep.17.1976 the petitioner- firm filled in a form tinder S. 6 of the Act .The competent authority under the Act passed an order dated March 6. 1980 which is produced at Annexure? "B" to the petition By this order the competent authority held as follows:

"On examining the evidence produced oil record there are 14 partners in the firm. Calculating the land falling to their share proportionately each one gets land to his share below the ceiling limit. Therefore in this case. there is no question of declaring any, land to be in excess of the ceiling . Hence t is ordered that the case be removed from the file."

3. As per the deed of dissolution the firm held .36 plots of land in all admeasuring 22,084.04 sq.yds. which is equivalent to 18.464.77 sq.mt.. in urban agglomeration area of Rajkt. Rajkot is a C category town where the ceiling limit prescribed under the Act is 1500 sq.mt.. The plots held by the petitioner, firm were forming part of survey No.74 and 75 of village Nana Mava In this area no person can hold land In excess of 1500 sq. mt. which is the ceiling limit prescribed tinder the Act. Therefore. if the provisions of the Act are held applicable and if the firm is considered to be a person then the land in excess of 1500 sq.mt. will be the excess land. i.e. beyond the ceiling limit. Thus deduction 1500 sq. mt. front the total land holdings of 18.464.77 sq. mt. the remaining land of 16,964.77 sq. mt will be the excess land which can be taken over by the State Government in accordance with the provisions of the Act.

4. The Government issued notice dated Oct.5.1982 (Annexure"A" to the petition) and informed the firm of the petitioners that for the reasons stated in the notice, it has been decided to take into revision the case disposed of by the competent authority. The date of hearing was fixed on Oct 19. 1982. The firm was also informed that pending, the decision of the revision no construction whatsoever be made oil the land without the permission of the State Government. It is not clear from tile record of the case as to what happened on the date of hearing However, it is clear that the petition is filed on.Dec.15. 1982. Later on this Court has granted interim relief and has restrained the Government from implementing, or proceeding, further with the notice dated Oct.5.1982 till the hearing and final disposal of the petition.

5. The petitioners have challenged the legality and validity of the aforesaid notice dated Oct. 1982.by which the Government has taken the proceedings in suo motu revision and has fixed the date of hearing of the revision application, The petitioners contend that the Government has no jurisdiction to take Lip the matter in revision under the provisions of S. 34 of the Act Assuming that the Government has such jurisdiction. the Government has no power to issue interim orders u/s 34 of the Act. It is further contend that the powers if any have been

exercised after a period of about two years from the date of order passed by the competent authority. The competent authority passed order on March 6.1980 and the notice of taking up the matter in suo motu revision has been issued on October 5.1982 i.e. after a period of more than two years Hence after such an inordinate delay the Government has no power to exercise its suo motu jurisdiction.

6. The contentions so raised by the petitioners may be examined Sec.34 of the Act reads as follows:

"The State Government may on its own motion, call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred u/s 12 or Section 30 or Section 33 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit.

Provided that no such order, shall be made except after giving the person affected it reasonable opportunity of being heard ill the matter.

The Counsel for the petitioners. relies upon the words "and against which no appeal has been preferred". in this case, against the order passed by the competent authority on March 6.1980 (Annexure to the petition). no appeal has been preferred by either party. This is an admitted position. It is contended by the counsel for the petitioners that against such order no appeal lies. Therefore. Such orders are not capable of being taken

revision by the Government. Hence it is submitted that such orders fall beyond the scope of of the Aet.

7. First of all there is no warrant for adopting the construction by the counsel for the petitioners. Such construction puts constraint on the powers of tile Government. Any restrict toll or constraint oil the power of the "Government call be read or implied only it the same follows from the wordings of the section. If the argument advanced by the co tinsel for the petitioners is accepted, the following results Would follow:

1. Only the appealable orders can be revised, meaning thereby, orders passed by the authority tinder the Act which are not appealable cannot be made the subject of revision by the Government.

2. Another result would be that only if a party who could have appealed against the order does not prefer appeal against such order, then only revisional powers can he exercised by the Government. This would mean that a party in whose, favour the order is passed would never like to prefer appeal and challenge tile order but the party against whom the order is passed if fails to prefer appeal, then only the Government will have power to take tip matter in revision.

8. Even if one looks at the entire scheme of the Act and the objects underlying,

the ,same, tile construction suggested by the counsel for the petitioners does not seem to be correct. The object of the Act is to provide for imposition of ceiling on vacant land in urban agglomeration area. The ceiling is provided for the acquisition of land in excess of ceiling limit so that the construction of building on such land and matters connected therewith can be regulated. Such regulation is necessitated with a view to prevent concentration of lands in the hands of few persons and also with a view to prevent speculation and profiteering therein so as to bring, equitable distribution of land in urban areas to subserve the common good.

9. In the background of the aforesaid objects of the Act, can it be said that the construction suggested by the counsel for the petitioners, if accepted, would serve the object underlying the Act. The wording of the objects underlying the scheme of the Act do not suggest that there is any constraint or limitation on the power of the Government. The constraint on the power of the Government if any should flow from the clear wording of the section. Thus read the only restriction which arises in the plenary power of the Government to take in provision the orders passed by the authority under the Act can be read in the words "against which no appeal has been preferred under S. 12 or S. 30 or S. 33". The Government cannot take up the matter in revision in which appeal has been preferred under Ss. 12, 30 and 33 of the Act. In other words, proceedings in which order is passed and the same is challenged in appeal under the provisions of S. 12 or S.30 or, S.33 of the Act (and the appeal is pending). the Government will not have power to take up the matter in revision. From the wordings of the section there does not seem to be any other restriction whatsoever on the powers of the Government. Thus

1. where the statute provides for appeal,
2. and that appeal is filed by the party concerned, and
3. again the appeal is pending,

only then it will not be possible for the Government to resort to the provisions of S. 34 of the Act and exercise its suo motu Powers. All the aforesaid three conditions should be fulfilled before it can be said that the Government cannot exercise its revisional jurisdiction under the provisions of Section 34 of the Act.

10. It may be noted that when an order is passed under S. 12 of the Act, the second appeal can be preferred to the High Court as per the provisions of Section 13 of the Act. Therefore it is quite reasonable to construe

that whenever the order is passed under S. 12 of the Act and the appeal preferred under the provisions of S. 13 of the Act is pending, the Government cannot exercise its revisional power under S. 34 of the Act? Similarly an order passed under S. 30 of the Act is appealable as provided under sub-section 2 of S. 30 any person aggrieved by an order of the competent authority passed under sub-section 2 of S. 30 can prefer an appeal to the "Tribunal" having jurisdiction

over the area in which the building is situated and in respect of which demolition or modification of the construction is ordered. The appeal is to be preferred within the period specified in the order of demolition or modification of the construction to which it relates, It is clear that in respect of such orders also, the Government cannot invoke its revisional jurisdiction so long its the appeal is pending before the appellate authority. Similarly under the provisions of S. 33 of the Act all appeal lies to a prescribed authority against an order passed by the competent authority not being, an order passed under S. 11 or sub? section (1) of S. 30 of the Act. Thus tile matter in which the competent authority has passed order and the appeal is pending, before the prescribed authority under S. 33 of the Act, will also be outside the purview of the provisions of S. 34 of the Act. In such cases only, the Government cannot take up the matter in suo motu revision.

11. Further, as per the provisions of S. 34 of" the Act. the Government can take in suo motu revision "even the Proceedings taken under the provisions of this Act". The phrase "proceedings taken under the provisions of this Act" takes in its sweep even the pending proceedings before the competent authority in which no order contemplated under the provisions of S. 33 or under the provisions of S. 8 or S.9 of the Act is passed. Thus the revisional powers of the Government are very wide. The Government calls for the papers for the purpose of"satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure". Even where the lower authority and particularly the competent authority under the Act do not follow the proper procedure, the revisional powers can be exercised by the Government. If the construction canvassed by the counsel for tile petitioners is accepted. the phrase" proceedings taken under the provisions of this Act" will become redundant inasmuch has if the argument is accepted the Government will have power only, in cases where the appeal is provided and the same is not preferred. This Would amount to rendering the said phrase redundant. This cannot be done for the simple reason that the Legislature does not use a single word without purpose. Tile proviso to S. 34 of the Act requires that a person who may be affected be given an opportunity of being heard. A person likely to be affected would be one in whose favour the order has been passed by the lower authority. Since the Government may not have preferred any appeal against such an order the order would have become final in his favour. The proviso requires that when the Government takes the matter in suo motu revision. such a person who is likely to be affected should be afforded an opportunity of being, heard. Therefore the aforesaid proviso makes it clear that even in cases where the Government may not have preferred appeal, the Government can exercise its revisional jurisdiction.

12. "From the aforesaid discussion the position which emer1ges is as follows:

1. The orders passed under the Act and the proceedings taken under the Act can be taken in revision by the Government irrespective of the fact as to whether the order is appealable or not appealable. The only restriction on the powers of the Government is that which flows from the phrase against which no appeal has,

been preferred under S. 12 or under S. 30 or S. 33". This indicates that when an appeal is preferred under any of the aforesaid sections and the same is pending the revisional powers u/s 34 cannot be exercised (It may be clarified that as far as the orders passed under S. 33 of the Act are concerned even after the appeals have been decided the proceeding may or may not be subject to the revision taken. Since the question does not directly arise before me in this petition, no opinion is expressed on this point).

2. The Government can exercise its power in respect of any proceedings taken under the Act and which is pending before the competent authority. The proceedings before the appellate authority will not be within the purview of powers conferred upon the Government u/s 34 of the Act.

3. The appellate proceedings in which the orders under S. 30 of the Act have been passed may also be the subject matter of revision by the Government.

In above view of the matter, the contention that the Government has no power to take up the matter in revision has got to be rejected

13. It is next contended by the counsel for the petitioners that the Government has no power to issue interim orders under the provisions of S. 34 of the Act. The contention is that the power to pass interim order has not been conferred expressly under the provisions of S.34 or in any other provisions of the Act. Therefore the Government cannot pass any interim order. This very contention has been dealt with by me while deciding Special Civil Appln. No. 4077 of 1982 decided on March 22, 1984. Therein while dealing with this question it is observed as follows:

..... For the purposes of determination of this question. it would be necessary to look at the scheme and object of the Act. The object of the Act is:

(1)(a) to impose ceiling on the vacant land under urban agglomeration.

(b) acquisition of such land in excess of ceiling limit;

(c) regulation of construction of buildings on such land and other matters connected thereto:

(2) for the prevention of;

(a) concentration of urban lands in the hands of few persons and.

(b) prevention of speculation and profiteering therein:

(3) for the purposes of equitable distribution of land in urban agglomeration to sub serve the common good

For the purpose of carrying out the functions and duties conferred under the Act, the competent authority is conferred with the powers under S. 31. The competent authority has all the powers of Civil Court while trying a suit under the CPC in respect of the matter of summoning, and enforcing the attendance of

any person and examining him on oath; requiring the discovery and production of any documents; receiving evidence on affidavits; requisitioning any public record or copy thereof from any court or office issuing commissions for the examination of witnesses or documents and any other such matter which may be prescribed. S. 32 of the Act deals with the jurisdiction of the competent authority and tribunal in special cases. Sec. 33 provides for appeal. Section 34 provides for suo motu revision by the State Government.

The authorities under the Act are required to see that the objects with which the Act has been enacted are fulfilled. If the authorities under the Act do not possess the power to direct a person to maintain status quo, the very purpose and the object of the Act and the proceedings under the Act would be frustrated. A person who is holding land in excess of ceiling limit would dispose of the land in a given case. He may start construction over the land and make the vacant land unavailable for the purposes of calculation in the Act. In this respect a reference may be made to the decision of the Supreme Court in the case of *Sub?Divisional Officer. Sadar, Faizabad v. Shambhoo Narain Sing* reported in AIR 1970 SC 140. In para 8 of the judgment it is held that where an Act confers a jurisdiction it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution. But before implying the existence of such a power, the court must be satisfied that the existence of that power is absolutely essential for the discharge of the power conferred. If the Government has no power to issue interim orders, operation of the Act and functioning under the Act would become impossible. The implementation of the Act would be at the mercy of the landholders, inasmuch as before the proceedings under the Act are finally concluded they may either transfer or make construction over the land and change the entire situation to the disadvantage of the society. Therefore it has got to be held that existence of power to pass interim orders has got to be implied or read.

14. For the aforesaid reason the contention that the Government has no power to pass interim order whenever the powers under S. 34 of the Act are invoked by the Government, has got to be rejected.

15. It is next contended by the counsel for the petitioners that the power of revision cannot be exercised after a period of about two years. Reliance is placed on the decision of the Supreme Court in the case of *State of Gujarat v. Raghav Natha*, reported in 10 Guj LR 992 : (AIR 1961) SC 1297. That decision pertains to the revisional powers of the Government under S. 211 of the Bombay Land Revenue Code. In para 12 of the judgment, it is held as follows:

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

On the basis Of the aforesaid observation made by the Supreme Court it is submitted that under S. 65 of the Bombay land Revenue Code if the Collector does not inform the applicant of his decision on the application Seeking permission for N. A. use of the land within a period of three months then in that case, permission shall be deemed to have been granted. Thus three months time was considered enough for the Collector lo make up his mind The Legislature considered that the matter was so urgent that the permission should be deemed to have been granted if decision is not taken with in a period of three months. The Supreme Court further observed that reading S. 211 and S. 65 of the Bombay Land Revenue Code together. the reasonable time for exercise of revisional powers would be few months from the date of order passed by the Collector. In that case the revisional powers were sought to be exercised after a period of about one year and therefore it was considered to be too late, Therefore, contends the counsel for the petitioners looking at the provisions of the Act. an appeal is provided against the order passed under S. 12 of the Act to the High Court as provided under S. 13 of the Act; such appeal should be filled within 90 days. There are other two provisions in the Act which provide for appeal, They are S. 30 and 33. Therein the period of limitation for filing appeal is 30 days On this basis it is submitted that the reasonable period for exercising the revisional jurisdiction by the Government under the provisions of S 34 of the Act should he considered to be at the most one year from the date of the order sought to be taken in revision under S. 34 of the Act.

16. The fie contention so raised be examined The Supreme Court has clearly referred to "this power" meaning thereby, the power under S. 211 of the Bombay Land Revenue Code, The Supreme Court has not laid down any general principle of universal applicability regarding the time limit within which the revisional Jurisdiction call be exercised suo motu by the authority concerned Where no period of limitation is prescribed under the statute, the Supreme Court has not laid down the principle that the reasonable time and the length Of reasonable time be determined by having recourse to the other provisions of the Act which provides for appeal and prescribe the time limit for filing the appeal. As far as the aforesaid decision of the Supreme Court is concerned it Must be clear that the Supreme Court was dealing with the powers of the Government under S. 211 of the Bombay Land Revenue Code and the Supreme Court was not dealing with the powers of revisional authority to take up the matter in revision in all cases where no period of limitation has been prescribed under the statute. In that case also the Supreme Court has laid down that the reasonable time and the length of reasonable time must be determined by

(1) the facts of the case, and

(2) the nature of the order sought to be revised

Nowhere the Supreme Court has indicated that the reference be made to the provisions of the Act for finding out the reasonable time and the length of reasonable time.

17. It may be noted that S. 65 of the Bombay Land Revenue Code inter alia provides that an occupant of the land may apply to the Collector for permission to put the land for use to any other purpose other than agricultural purpose. If the application is not decided within a prescribed time limit. i.e three months, the Collector shall be deemed to have granted the permission Sought for. Section also provides that whenever the land is put to use for a purpose unconnected with agriculture, the Collector may himself impose it fine upon the occupant of the land. Thus it is clear that the section deals with the rights of an individual to put his land to a particular use. There is a statutory embargo upon the user of the land .The land cannot be used for any other purpose except for agricultural purpose, unless the permission of the Collector is obtained This embargo is removed if the office of the Collector does not take decision within a period of three months from the date of receipt of the application seeking permission to put the land for any other use. The provision is contained in the Bombay Land Revenue Code enacted in the year 1879. The provision restricts the property right of an individual an individual cannot use his property in the manner he likes without obtaining appropriate permission from the authority prescribed tinder the Code.

18. The decision of the Supreme Court was rendered in the year 1969 when the property right was a fundamental right. By amendment of the Constitution in the year 1978 (i e. by 44th Amendment) the property right has been taken out of Chap. III and is placed under Art. 300A of the Constitution. Thus the property right has been reduced to the level of a constitutional or a legal right.

19. In the aforesaid background we may have a look at the object of the Act. The Act has been enacted with a view to achieve certain social purpose. It has been enacted to prevent the concentration of urban land in the hands of few and also it prevent speculation and profiteering in the land. The ultimate object of the Act is to bring about equitable distribution of land in urban agglomeration to sub serve the common on the other hand, the Bombay Land Revenue Code is the Act which deals with collection of revenue and the purpose to which the land may be used. The Bombay Land Revenue Code has no other social purpose except the regulation of the user of lands. Thus the entire background of both the situations is quite different. In cases arising out of the provisions of S, 65 of the Bombay Land Revenue Code. they essentially purport to restrict in individual right. namely, right of an individual to put his land to a particular use. I he question involved in such cases does not have wider social implications. as far as the question involved in the cases arising under the provisions of the Act and which may he taken Under revision in exercise of power u/s 34 of the Act is concerned the interest of the society conies in conflict or in competition with the interest of an individual. One of the purpose of the Act to redistribute the material wealth of the society to subserve the Common good. This is as per the Directive Principles enshrined in Art. 39 of the Constitution. Reference may be made to the decision of the Supreme Court in the case of State of Uttar Pradesh and Others Vs. L.J. Johnson and Others, . In para thereof the Supreme Court has observed :

.....the pith and substance of the Act is that a ceiling should be imposed on vacant lands situated in urban areas, which may or may not have buildings constructed thereon. Side by side the other dominant object to be achieved seems to be to prevent the concentration of urban land in the hands of a few persons so as to checkmate speculation and profiteering therein on the one hand and to bring about an equitable distribution of land amongst the urban population....

From the aforesaid discussion it should be clear that the time when the Supreme Court made observation in the case of Ahmedabad Manufacturing and Calico Printing Co. Ltd. Vs. Commissioner of Excess Profits Tax, Bombay North Kutch and Saurashtra, . the socio economic background of the society was different. The property right was a fundamental right and it had its place in Chapter III of the Constitution The observations have been made in the context of the power under S. 211 of the Bombay Land Revenue Code which has little socio economic relevance except the regulation of the user of the land Can these observations be made applicable to the provisions of Urban Land (Ceiling and Regulation) Act. In this context reference may be made to the decision of the Supreme Court in the case of S.P. Gupta Vs. President of India and Others, . In para 62 there of Bhagwati. J. has observed :

"???..The interpretation of every statutory provision must keep pace with changing concepts and values and it must to the extent to which its language permits or rather does not prohibit suffer adjustments through judicial interpretation so as to accord with the requirements of the fast changing society which is undergoing rapid social and economic transformation The language of a statutory provision is not a static vehicle of ideas and concepts and as ideas and concepts change, as they are bound to do in a country like ours with the establishment of a democratic structure based on egalitarian values and aggressive developmental strategies, so must the meaning, and content of the statutory provision undergo a change. It is elementary that law does not operate in a vacuum. It is not an antique to be taken down, dusted, admired and put back on the shelf but rather it is a powerful instrument fashioned by society for the purpose of adjusting conflicts and tensions which arise by reason of clash between conflicting interests. It is therefore intended to serve a social purpose and it cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate

In above view of the matter. it is clear that the observation made by the Supreme Court in the case of The State of Gujarat Vs. Patil Raghav Natha and Others, cannot be applied while deciding the nature of the order sought to be revised under the provisions of Section 34 of the Act and also while determining the length of reasonable time within which the power under S. 34 of the Act can be exercised by the Government. Both, i.e., the Act and the Code, operate in different fields. The provision under S. 65 of the Code and the orders that may be passed in that connection by the appropriate authority under the Code have

essentially consequences pertaining to an individual property rights of the person concerned. In cases of the proceedings under the Act the order passed will have the consequences which will have socio, economic repercussions also. The very object of the Act is to impose ceiling on the vacant land and to acquire land in excess of the ceiling limit with a view to prevent concentration of urban lands in the hands of few and to prevent speculation and profiteering in urban land. The Act is enacted with a view to secure equitable distribution of land in urban agglomeration so as to sub serve the common good. Thus, both from the view point of the nature of the order and the consequences that flow from the order that may be passed the same yardstick with regard to the length of reasonable time cannot be made applicable while determining the question of exercise of powers of the Government under S. 34 of the Act.

20. In this connection a reference may be made to the decision of the Supreme Court in the case of *Swastik Oil Mills Ltd. Vs. H.B. Munshi*, Deputy Commissioner of Sales Tax, Bombay, wherein the provisions of Bombay Sales Tax Act S. 22 of Act of 1946 and S. 31 of Act of 1953 came up for consideration. The Sales Tax Officer made assessment on January 2, 1954 and rejected certain claims made by the assessee. The assessee preferred appeal before the Assistant Collector of Sales Tax who decided the appeal on Oct 29, 1956 and accepted the claim of the assessee in respect of the dispatches to its various Depots or Branches in other States in India. However, the appellate authority disallowed the balance of the claim. This order was sought to be taken in revision by the Deputy Commissioner of Sales Tax by his notice dated January 7, 1963. Thus after a period of about seven years, the proceedings were sought to be taken in revision by the authority on whom the powers were conferred. In such a factual situation, it was contended that it should be held that the proceedings sought to be instituted are barred by time because limitation of a reasonable time within which the revisional powers are to be exercised must be implied in the statute itself. In para 8 of the judgment the Supreme Court while referring to an earlier decision has observed that the only limitation to which that power can be subjected is that "the revising authority should not trench upon the powers which are expressly reserved by the Acts or by the Rules to other authority and should not ignore limitation inherent in the exercise of those powers". The Supreme Court further held that when S. 22 of the Bombay Sales Tax Act of 1946 and S. 31 of the Bombay Sales Tax Act of 1953 did not lay down any period of limitation for exercise of power by the revisional authority suo motu, it cannot be said that limitation of reasonable time within which the revisional powers are to be exercised must be implied in the statute.

21. The decision of the Supreme Court in the case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, was considered by a Full Bench of the Kerala High Court in the case of *Achuthan Pillai and Others Vs. State of Kerala and Others*, wherein Mathew, J. (as he then was) speaking for the Court, has observed as follows (at p. 43):

"The fact that the government did not exercise the power immediately when it became aware of the circumstances vitiating Ext. P1 order cannot prejudice the interest of the devaswom. If the contention of the petitioner were to prevail, it would mean that because the Govt. was not very vigilant in exercising the power the interest of the devasom should suffer. Section 10 of the Limitation Act, 1963 provides no period of limitation for a suit against a person in whom the trust property has become vested for any specific purpose or against his legal representatives or assigns for the purpose of following in his or their hands such property. The reason behind the section is that an express trust ought not to suffer by the misfeasance or non feaisance of a trustee. Therefore, considering the fiduciary character of the power under S. 99 when invoked to cancel a sanction, and the object for which it is to be exercised, namely to protect the interest of religious institutions, we do not think that the decision of the Supreme Court in *The State of Gujarat Vs. Patil Raghav Natha and Others*, should govern the decision of this case."

Just in the case before the Kerala High Court, in this case also what the Government seeks to achieve by invoking S. 34 of the Act is not an individual interest or is not trying to seek favour for any person. The Act casts certain obligations upon the Government. The obligation is to see that the mandate of the Constitution is carried out. The constitutional mandate expressed in Art. 39 is reflected in the provisions of the Act. The Government is charged with a duty to see that the provisions of the Act are carried out.

22. As per S. 10(3) of the Act the excess vacant land in respect of which necessary notifications have been published shall be deemed to have been acquired by the State Government and upon certain declarations having been made such land shall be deemed to have been vested absolutely in the State Government free from all encumbrances. Section 23 of the Act provides disposal of vacant land acquired under the provisions of the Act. Section 24 of the Act makes special provisions regarding disposal of vacant land in favour of certain persons. An express provision is made in S. 42 of the Act which gives overriding effect to the provisions of the Act so as to override the provisions of other laws which may be inconsistent with the Act. Thus, if the power conferred upon the Government under S. 34 is sought to be exercised to achieve the object underlying the Act, it is clear that the Government exercises power in the larger interest of the society. It is the duty of the Government to exercise this power. The Government merely fulfils an obligation cast upon it by the Legislature.

23. Just as in *Swastik Oil Mills Ltd. Vs. H.B. Munshi*, Deputy Commissioner of Sales Tax, Bombay, , the Supreme Court refused to read any period of limitation, it is possible to say that having regard to the Scheme and the object of the Act, no period of limitation can be read in S. 34 of the Act. It may be noted that the Government exercises its power u/s 34. The Government seeks to fulfill its obligation towards society. The State or the Government is not an interested party to take excess land from the individual. The interest of the Government is

to see that the objects of the Act, namely, the prevention of concentration of urban land in few hands and prevention of speculation and profiteering in the land, be achieved so that the land is equitably distributed to all. The Government cannot be absolved from its obligation towards society because some officers of the Government are negligent and/or indolent and do not take action in time. In such cases the principle underlying S. 10 of the Limitation Act can very well be applied. Section 10 of the Limitation Act grants a total exemption from the bar of limitation in regard to the suits mentioned therein. The reason behind the section is that an express trust ought not to suffer by the misfeasance or non-feasance of a trustee. Similarly, it may be stated that on account of the negligence or, complacent behaviour of a Government officer, the society should not be made to suffer. The land which otherwise would have vested in the Government as per the provisions of the Act should not be allowed to be used by an individual on account of technical pleas of limitation. From the aforesaid discussion and having regard to the decision of the Supreme Court in *Swastik Mill's case* (AIR 11468 SC 843) (supra), the only limitation which can be read on the powers of the Government will be as follows :

1. Is the revising authority trenching upon the powers which are expressly reserved by the Act or Rules to other authority? If so, it would be beyond the powers of the revising authority.

2. Is the revising authority ignoring the limitation, meaning thereby, inherent constraints in the exercise of these powers? No such inherent limitation is pointed out.

24. In the instant case it is not pointed out that the powers sought to be exercised by the Government under S. 34 of the Act are reserved to any other authority either under the provisions of the Act or the rules framed under the Act. It is obvious from the provisions of the Act that the powers sought to be exercised under S. 34 of the Act are those of the Government. In this connection what is held in Spl. Civil Appln. No. 4077 of 1982 decided by me on March. 22, 1984 may be reproduced :

.....What is important is that the power bestowed upon an authority, should be exercised in a reasonable manner and within reasonable time. The time element enters into consideration only from the limited point of

view to see as to whether it is a genuine exercise of power. The exercise of power must be reasonable and the reasonableness would in its sweep include the time element also."

Incidentally this is the view taken by the Division Bench of this High Court (Coram : P. S. Poti, C. J. and S. B. Majmudar, J.) in Letters Patent Appeal No. 378 of 1983 decided on Dec. 21, 1983 : (Reported in 1985 Lab IC 42). There is nothing on record to show that simply because the power is sought to be exercised after a period of two years, the exercise of power becomes unreasonable. Therefore the argument that there is inordinate delay and

therefore the Government should be restrained from exercising the power, has got to be rejected.

25. Even if the provisions of Limitation Act are required to be taken into consideration, in such cases the principles underlying S. 17 of the Limitation Act, 1963 can also be invoked. Where on account of fraud, mistake or concealment, the other side has remained in dark from the knowledge of such right or of the title, the time limited for instituting such suit or making such application against the person, who is guilty of fraud or mistake, shall be computed from the time when the fraud, mistake or concealment has first become known to the person injuriously affected thereby. In the Act there is no provision which requires the competent authority to communicate the decision taken by it to the Government. No notice of the decision by the competent authority is required to be given to the Government by either party. In the instant case, it is clear that the term, "person" as defined under the provisions of S. 2(i) of the Act has not been taken into consideration. The term includes an individual, a family, a firm or an association or body of individuals whether incorporated or not. Thus firm is to be taken as a unit irrespective of the number of partners it consists of. In this case it may or may not be possible to infer fraud on the part of the petitioners. But it is clear that there was a mistake, a mistake common to both i.e. the competent authority as well as the petitioners. Both of them proceeded on the footing that the holding of land is to be considered in respect of each partner of the firm and not in respect of the firm treating the firm as a unit. Now the mistake has been discovered. Therefore the proceedings by way of suo motu revision have been started. This is the reason specified in the notice. It is stated in the show cause notice Annexure "A" that the firm is included in the definition of "person" given in S. 2(i) of the Act. Therefore the land in excess of the ceiling limit, i.e. 1500 sq. mt. held by the firm was required to be declared as excess. Still however, the same has been divided amongst 14 partners. Thus it is clear that even if the principles underlying the provisions of the Limitation Act are held applicable to the provisions of S. 34 of the Act, the Government can exercise the powers under S. 34 of the Act.

26. It was contended by the counsel for the petitioners that the partners of the firm own property as co-owners. Therefore in view of the provisions of S. 4(5) of the Act, the firm could hold the land as decided by the competent authority. The argument proceeds on a clear misconception of law that partners in a firm are not co-owners. They do not hold property as joint owners or co-owners. So long as the partnership continues, the property is that of the partnership firm. The share of all individual partner is in profit or loss of the firm as may be clue after taking proper accounts. The position of law has been well settled by the Supreme Court as decided in the case of *Champan Cane Concern Vs. State of Bihar and Another*, . In para 8 of the judgment Justice S. K. Das., speaking for the Court, while pointing out the difference between co-ownership and partnership, has observed to the following effect :

1. One of the principal difference is that co-ownership is not necessarily the result of agreement whereas the partnership is.
2. The second difference is that co-ownership does, not necessarily involve community of profit or loss, but partnership does.
3. That one co-owner can without the consent of the other, transfer his interest, etc. to a stranger. A partner cannot do this.
4. In a partnership each partner acts as an agent of the other. In a co-ownership one co-owner is not as such the agent, real or implied, of the other.

The aforesaid legal position has been reiterated by the Supreme Court subsequently in the case of Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, and in the case of Commissioner of Income Tax, Madhya Pradesh Vs. Dewas Cine Corporation, . The position of law has been made clear by the Full Bench of this High Court in the case of Chief Controlling Revenue Authority v. Chaturbhuji, reported in 17 Guj LR 898: (AIR 1977 Guj 1). After discussing the case law on this point the Full Bench held as follows (at P.8):

".....There is no concept of co-ownership, amongst partners during the subsistence of the partnership. The partnership properties are not held by the partners as co-owners. The property belongs to the firm and it merely vests in all the partners because the firm has no legal entity. But such vesting does not mean that all the partners are the co-owners of the property"

Thus as far back as in the year 1963 the position of law has been made clear and reiterated by the Supreme Court as well as by this Court in a series of decisions. The petitioners, as it appears from the documents produced on record, are well educated persons and are in land business since the year 1963. They are in a position to get expert legal advice. Even otherwise it would be reasonable to presume that the petitioners knew the position of law. as regards the right and interest of a partner in the partnership property. Still however, the petitioners appear to have misled the competent authority. Prima facie this presumption arises in view of the following facts and circumstances:

1. The fresh deed of partnership was executed on Dec. 25, 1974 on a stamp paper bearing No. 6465 dated November 6, 1965. This is curious and rather intriguing. There is no satisfactory explanation on this point.
2. Minor Shailesh S. Sheth has been admitted to the benefit of partnership who was to attain majority on Nov. 2, 1975. In clause 8 of the partnership deed it is stated that after he attains majority on, Nov. 2, 1975, he shall become a full-fledged partner and shall have equal share in profit and loss like others. Insertion of such clause is doubtful. Minor, when attains majority, would be entitled to express his choice. In Clause 4 of the partnership deed, this option has been kept open in favour of the minor but the same has been foreclosed in clause 8 of the partnership deed, This creates suspicion about the genuineness of the document.

3. In the deed of dissolution dated April 25, 1981 (Annexure A/1 to the petition), by referring to the order dated March 6, 1980 passed by the Addl. Collector, it is mentioned that the division of plots between the partners does not amount to a transfer. The order passed by the Addl. Collector dated March 6, 1980 is produced at Annexure "B" to the petition. There is no such express statement in the order. Nowhere it is stated in the order that the division of plots between the partners does not amount to transfer.

27. All the aforesaid circumstances were pointed out to the counsel for the petitioners and the explanation was sought for. But no satisfactory explanation has been given. Moreover, the original documents are also not on record. Prima facie in the absence of satisfactory explanation and it, the absence of other evidence on record, it does appear that the documents by which the changes in the constitution of the partnership have been brought out and the dissolution has been effected are not genuine. However, this is a question of fact and therefore no firm opinion is expressed on these points. It will be open to the revisional authority to go into these questions and come to its own findings.

28. In above view of the matter, the argument that the partners hold property as co-owners and therefore the provisions of S. 4(5) of the Act and the guidelines issued by the Government and produced at Annexures "F" and "G" to the petition should be made applicable has no basis whatsoever. In the guidelines nowhere the term "partnership firm" is mentioned. The reference is to co-owners and to the joint Hindu Family. The case of the petitioners is not at all covered by the guidelines. Hence the argument fails.

29. No other contention is raised. Hence the petition is liable to be rejected.

30. In the result the petition is rejected. Rule discharged with no order as to costs.

31. The counsel for the petitioners prays that the further proceedings before the revisional authority may be stayed for a period of one month from today so as to enable him to obtain appropriate order from the superior forum which may be available to the petitioners. In the facts and circumstances of the case, the prayer is granted subject to the clarification that grant of such prayer would not entitle the petitioners to make any change whatsoever in the position of the land either by way of transfer or by way of making construction over the land.

32. Petition dismissed.