
(2010) 05 BOM CK 0037

In the Bombay High Court

Case No : Public Interest Litigation No. 47 of 2008

Mr. Chetan Kamble and Mr. Vilas V. Devrukhkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 142, 19, 19(1)

Maharashtra Land Revenue Code, 1966 — Section 126

Salsette Estates (Land Revenue Exemption Abolition) Act, 1951 — Section 258

Citation : (2010) 4 BomCR 144

Hon'ble Judges : J.H. Bhatia, J; Ferdino I. Rebello, J

Bench : Division Bench

Advocate : Uday Warunjikar, Manoj Shirsat, Nitesh Bhutekar, Rahul More, Nitin Patil and Paravartak Pathak, for the Appellant; V.A. Thorat, D.A. Nalawade, Government Pleader for Respondent No. 1, Ravi Kadam, General, Geeta Shastri, AGP for Respondent No. 2, Aspi Chinoy, instructed by Chitnis Vaithy and Co. for Respondent No. 3, D.D. Madon and Y.R. Shah, for Respondent Nos. 4 to 13, for the Respondent

Judgement

Ferdino I. Rebello, J.—Rule. Respondents waive service. They have already filed their replies. With consent of the parties heard forthwith.

2. On March, 13, 2008 this Court passed an order that Writ Petition No. 1657 of 2006 be tagged with the P.I.L. On April 3, 2008 direction was given that copies of the petition be given to the Counsel appearing for the petitioner in P.I.L. On 10th July, 2008 an order was passed to produce original records. Further direction was given on 2nd September, 2008 once again in respect of the connected matter. However, arguments have been advanced only in respect of the P.I.L. Petition. The Petition is in respect of property bearing Old S. No. 98 now C.T.S. 229. Respondent Nos. 4 to 13 claim title to that land. They shall be referred to as the Gonsalves Family. Respondent No. 1 now claims title through them.

3. The relevant facts. The land originally was included in Survey No. 98 admeasuring 10 Acres 36 Gunthas and belonged to Khot under grant made to

them under a Deed of 1819 with the East India Company. An enquiry was conducted under the Salsette Estate (Land Revenue Exemption Abolition) Act, 1951 hereinafter referred to as the "Act" as to whether the lands originally given to ex- Khot of Kurla had been appropriated prior to the passing of the Act. Survey No. 98 was also included in the subject matter . When the enquiry had started an area of 5 Acres 16 Gunthas out of Survey No. 98 were under acquisition and the enquiry was restricted to an area of 5 Acre 20 Gunthas out of the said survey number. By order dated 25th November, 1953 this land admeasuring 5 Acres 20 Gunthas out of Survey No. 98 was declared as Government land. Against that order Civil Suit was filed being Civil Suit No. 921 of 1954 by the Khot which ended in a Consent decree.

4. A fresh enquiry was ordered for the whole of Bombay Suburban District u/s 126 of the Maharashtra Land Revenue Code in and around the year 1962. The land bearing Old Survey No. 98 of village Sahar was given two independent city Survey numbers (i) C.T.S. No. 229 for the lands which have been declared as Government land and (ii) the balance other land was shown as part of C.T.S. No. 145 and shown as Airport land. We need not refer to this C.T.S. No. though ultimately it appears that a portion of the land was not acquired. The orders of the Survey Officer were upheld in the Appeals preferred. Against which a Revision was preferred on behalf of the Gonsalves Family. By S. Kapoor as the Constituted Attorney of Smt. Kolati D'Souza and 6 others.

5. The Minister for Revenue in Revision Application in RTS No. 2692/CR/201/L-6 by order dated 10th October, 1995 allowed the Revision preferred by Mrs. Colette D'Souza and six others who are Respondent Nos. 4 to 13 in P.I.L. No. 47 of 2008.

By the order passed in Revision, the Minister for Revenue set aside the order of the Revenue Authorities, who had rejected the claim of the Revision Applicants that their names be included in the revenue records. The Revision has been preferred against the order of the Additional Collector dated 19th December, 1989 passed in Appeal and confirmed by the Additional Commissioner, Konkan Division by order dated 30th August, 1991. The stand of the State had been that in the City Survey enquiry it had been held that the State Government is the holder and that the portion of the land now bearing C.T.S. No. 229 had vested in the State Government. Reference was also made to the consent decree passed by this Court in Suit No. .921 of 1954 filed by the Trustees of the will of late A.H. Wadia against the State Government. That suit was settled in terms of the consent terms dated 2nd May, 1963. By the consent terms it was reiterated that the subject land stood appropriated to the State Government under the Salsette Estates (Land Revenue Exemption Abolition Act) 1951 That decree subsists till date and has not been set aside by any other Competent Court. However, the Gonsalves family has filed a suit being C.S. No. 698 of 1971 against an order arising from subsequent proceedings under the Land Revenue Code claiming the subject land as theirs. The Gonsalves family admittedly were not parties to the consent decree in Suit No. 921 of 1954. The consent decree merely affirms the

finding of the Authorities in favour of the Government under the Act. The learned Minister proceeded on the footing that the Applicants before him had proved that they were legally in possession of the land since the Deed of Exchange. Further it was observed that though the revision applicants had not produced a copy of the Deed of Exchange of 1894 signed between their predecessors in title and Wadia the Deed was accepted by the representative of Shri Wadia before the Lower Court and the statement recorded before the Lower Court would clearly indicate existence of the Deed of Exchange of 1894. The then Revenue Minister, the Minister proceeded to hold that the possession of the land was proved beyond doubt and whether the possession is authorised or he is an encroacher is to be decided on the basis of evidence. The Minister further proceeded to hold that as the land was in possession of Shri Gonsalves before the consent terms and as such holding an enquiry under the provisions of Salsette Inam Abolition Act, 1951 did not arise and the land which vested in the Government is other than C.T.S. No. 299. Learned Minister based on this possession based on title by the Deed of Exchange allowed the Revision.

6. At this stage we may also make reference to L.C. Suit No. 698 of 1971 as we have directed those records to be produced considering the P.I.L. Petition and the controversy before us. In that suit the prayer sought is that the Gonsalves family are the full and absolute owners of the suit land and entitled to exclusive possession and that the orders passed in the Survey Enquiry are bad in law, illegal, null and void, that the consent decree dated 11th October, 1963 in Suit No. 921 of 1954 is not binding on the Plaintiffs and for a permanent injunction. Temporary injunction was also prayed for. There is nothing on record to indicate whether any injunction was granted. The Gonsalves Family in the suit did not claim their right to the land based on the Deed of Exchange of 1894 for their title to the suit land but the plea was of adverse possession against Wadias who are Defendant Nos. 2 to 6 in that suit.

The State has filed its written statement in the suit. The stand of the State is that the entire land was comprised in Survey No. 98 as per the extract from the record of rights. The State specifically denied that Gonsalves family were cultivating the land and was using it for grazing of cattle or for any other agricultural purposes. It is mentioned that out of Survey No. 98 which admeasures 10 Acre 30 Gunthas, about 6 Acres were notified for acquisition for Santacruz Aerodrome. Finally out of 6 Acres only an area of 1 Acre 16 Gunthas was acquired. It was also set out that enquiry officer recorded a finding that the applicants were encroachers on the suit land. It is not necessary to refer to the other averments.

7. Against this order a Review was preferred by the Revenue Authorities which came up for hearing before the Minister for Revenue, (other than the one who had passed the earlier order in Revision). The parties were the Director, Anjali Real Estate Private Ltd., by the Constituted Attorney of Gonsalves family. After referring to the various orders passed, it is noted that the notices were issued to

Smt. D'Souza and others. As per the request the hearing on 3rd September, 1997 was adjourned and fixed on 13th September, 1997. It was again fixed on 29th September, 1997. As nobody remained present for the Gonsalves family and Anjali Real Estates decision was taken to proceed exparte. It is also mentioned that when the matter was pending, the Gonsalves family were desirous of compromising the matter with the Government and by an application a proposal was made to give the land on lease to the Gonsalves family which the Government did not agree to. The Minister proceeded to hold that the order passed by the Additional Commissioner was legal. There was no entry of Smt. Koleti D'Souza or her relatives in the revenue records and in these circumstances set aside the earlier order with a further direction to confiscate the land bearing Survey No. 229 and directed entry be made to that effect in the revenue records.

8. Writ Petition No. 1657 of 2006 has been filed against that order by Esteem Properties and Another.

The State has filed a reply through Avinash Hajare, Deputy Secretary, Revenue and Forests Department. Reference is made to the order passed by the S.D.O., where a finding had been recorded that the Gonsalves family had been unable to prove that they had acquired any title whatsoever in so far as Survey No. 98 of village Sahar and that the Deed of Exchange was non-existent. These findings had been upheld. The petition was filed by the petitioners based on Agreement dated 22nd February, 1996 between the petitioners and Respondent Nos. 6 to 15. The Government stand is that the same is not binding on the Government. There are now slum dwellers on the suit land and neither the petitioners nor their predecessors are in possession of the suit land which belongs to the State Government. Rule was issued in the Petition on 22nd September, 2006 The parties were directed to maintain status quo. Liberty was granted in the event there was any change of circumstances.

9. During the pendency of the Petition, Notice of Motion No. 333 of 2007 was taken out before this Court. A Bench presided over by the then Chief Justice recorded that Counsel appearing for the petitioners seeks to withdraw the Motion with liberty to make representation before the Competent Authority.

10. Subsequent to the withdrawal of the Motion an application was moved by Esteem Properties Private Limited before the Minister for Revenue. Gonsalves family were not the applicants in the said application. Except for the agreement to sell with the Gonsalves family, Esteem Properties Private Limited had no other right to the property. The learned Minister proceeded to hold that the Power of Attorney given to Shri Kapoor has been cancelled by the Gonsalves family and a suit had been filed before this Court and this Court (Writ Petition) had granted status quo and this had not been taken into consideration by the Minister. The order, therefore, it was submitted, is against the principles of natural justice. It was noted that u/s 258 it was necessary to give a hearing. It is not necessary to go into this aspect as the earlier order of the Minister shows that notices were

sent It was noted that Shri Gonsalves or the Power of Attorney of Gonsalves had agreed that the land was of the Government and had required to be given on lease. The Minister then proceeded to hold that the High Court had sent the matter to the Government for decision and as opportunity had not been given to the original Revenue Applicants, reviewed the earlier order. Whilst reviewing the order set aside the earlier order. P.I.L. has been filed against the said order.

11. In suit No. 921 of 1954 which was filed by the Wadias against the State Government the prayer was for declaration that the Salsette Estates (Land Revenue Exemption Arbitration) Act, was in contravention of Article 19 and 31 of the Constitution of India. It is in this suit, that the consent terms were filed wherein the subject matter was amongst the land vested in the State Government. The land was described as Survey No. 98 (1) of village Sahar.

12. The following questions arise in the P.I.L., which require to be determined:

1. Whether the petitioners have locus standi to maintain this petition?
2. Whether a person who was not a party to the revisional proceedings without succeeding to the property from the original applicant merely based on an agreement to sell could have maintained the second Review Application (Procedural Review)?
3. Whether it was open to the Minister in exercise of review (substantial review) moved at the instance of the State Government when there was a consent decree holding that the land has vested in the Government and further as the title to the land, being the subject matter of a civil suit by persons claiming to be the owners (Gonsalves family) other than on the Deed of Exchange could have passed an order, decreeing the land to be entered in the revenue records in favour of such owners and against the Government without the consent decree of 1953 being set aside in the suit which was pending.

13. We shall first deal with the preliminary objection raised in the P.I.L. that the petitioners do not have locus standi to maintain this Petition:

The objection raised on behalf of the contesting respondents to the locus of the petitioner No. 1 is that there are various orders passed against him by the Aurangabad Police and several criminal cases, during the period from 1994 to 2005. The petitioner has described himself as the President of Bhimshakti Vichar Manch and as an activist, who takes necessary steps for exposing acts of corruption including the allotment of gas agencies and kerosene agencies scam of 2002 when he had filed a Writ Petition before this Court. The petitioner No. 2, it is contended, is a social worker and an office bearer of an organisation Pradnya Prabhodhini which is in the field of Education, Sports, Cultural and social activities and connected with Pradnya Vidya Niketan School and was the Vice President of the Khadi Gram Udyog Board for the period of three years between 1997-2000.

In our opinion, merely because against the petitioner No. 1 there were and/or

are some criminal cases by itself can be no reason for this Court not to entertain the petition if in law otherwise the petition raises questions which can be considered in a P.I.L. The challenge no doubt is to a quasi judicial order, but the larger question is, when a quasi judicial authority, holds land which has vested in the State Government as not public land and the State Authorities take no steps to challenge an order which would result in affecting the public revenue, can locus be denied to public spirited citizens who bring these facts to the notice of this Court. Can such an order be allowed to stand, if it otherwise be illegal and can not this Court in the exercise of its extra ordinary jurisdiction of superintendence interfere with the same.

We may also point out that we are surprised at the reply filed by Respondent Nos. 1 and 2 by Shri Ramakant Asmar, Joint Secretary, Revenue & Forest Department in the petition, considering the earlier stand of the Government in the suit filed by the Gonsalves family and also the reply filed in Writ Petition No. 1657 of 2006 challenging the order of the Minister passed in review. In our opinion, the affidavit which seeks to support the subsequent order ignoring the earlier affidavits filed by the State in earlier pending proceedings, by itself would be sufficient for this Court to invoke the PIL jurisdiction, if not in its supervisory jurisdiction irrespective of any other issue. This is to ensure that public officers discharging public functions whether administrative or as quasi judicial capacity discharge their functions and exercise their jurisdiction in a manner which is fair, transparent and to uphold the rule of law. When public revenue is involved inconsistent stand of the State itself leads to "suspicion. This Court as the Sentinal of Justice in such matters cannot remain a mute spectator and must exercise its extra ordinary jurisdiction, so that quasi judicial authorities act within jurisdiction.

14. In support of the contention that review would not lie against the quasi judicial order learned Counsel have placed reliance on the judgment of the learned Division Bench of the Delhi High Court in M.K. Agarwal and Another Vs. Union of India and Others, . The issue for consideration before the Delhi High Court was arising from a petition by the petitioner there, that the fundamental rights and those of citizens of India arising from Article 14, 19(1)(a) and 21 would be affected, if not destroyed, if foreign newspapers and journalists were allowed to publish their respective newspapers and journals in India. One of the prayers was restraining the Registrar of newspapers and Registrar of Trade Marks from registering any foreign newspaper with a title which was the same as that of publication of the petitioner. The petition there was filed by a Chartered Accountant and Advocate. The Court held that it will not be open to the Court to grant relief against the orders of the quasi judicial authority which orders are subject to review and Appeal. While disposing of the matter the learned Bench relied on the earlier judgment in the case of Common Cause v. The Commissioner of Municipal Corporation of Delhi (1991) 3 DL 118. The judgment in Common Cause (supra) was a judgment of a learned Single Judge. The petition was filed as a PIL against a notice issued to various property owners for

enhancing rateable value of their property. The Court noted that such property owners could file objections to the proposed rateable value against which revision was available. As the persons affected had legal remedy the petitioners could have no right to file a petition on their behalf. While so holding the Court further observed that in another petition, the Court had taken a view that judicial and quasi judicial orders should not be challenged by way of public interest litigation. We may examine some other judgments and the issue as to whether in matters where there is remedy available against an order impugned, PIL could be maintained. Further whether such orders can be said to be orders violative of fundamental rights of the petitioners so approaching the Court. In *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, on the aspect of fundamental rights the majority opinion was expressed by Gajendragadkar, C.J. Dealing with whether Article 19(1) would be attracted, the Court held that it was based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Article 19(1). Reference was placed in the judgment in *Budhan Choudhary v. State of Bihar* AIR 195 S.C. 191 . One of the questions raised there was whether the judicial decision itself could be said to contravene Article 14. The Court there observed that the judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination. The Court observed that this may best be said to assume that a judicial decision may conceivably contravene Article 14. After so saying it was noted that the learned Judge who delivered the judgment took the precaution of adding that the discretion of judicial officers is not arbitrary and the law provides for revision by superior Courts of orders passed by the Subordinate Courts. In such circumstances, there is hardly any ground for apprehending any capricious discrimination by judicial tribunals. Reference was then made to the judgment in *The Parbhani Transport Co-operative Society Ltd. Vs. The Regional Transport Authority, Aurangabad and Others*, where the Supreme Court had taken the view that where the authority was acting as a quasi judicial body and if it has made any mistake in its decision there are appropriate remedies available to the petitioner for obtaining relief. It cannot complain of a breach of Article 14. The Court itself noted that a larger question as to whether the orders passed by quasi judicial tribunals can be said to affect Article 14, does not appear to have been

fully argued. In that case the Court was considering a petition under Article 32 of the Constitution of India. In the minority judgment Hidayatullah, J., was of the view that the court is satisfied that a fundamental right has been trampled upon it is not only its duty to act to correct it but also its obligation to do so.

15. Coming to the era where this Court started exercising jurisdiction by way of public interest litigation, we may refer to the judgment in *Rural Litigation and Entitlement Kendra Vs. State of U. P.*, . The Supreme Court there observed that:

At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court.

In *Indian Banks' Association, Bombay and Others Vs. Devkala Consultancy Service and Others*, a petition was filed by a forum of Chartered Accountants. It was contended by the petitioners that on account of the action on the part of the Banks as also Reserve Bank of India citizens had to pay higher amount of tax as also higher amount of interest for no fault on their part and recovery had been made without any authority of law. The Court answering the issue observed that while entertaining Public Interest Litigation this Court in exercise of the jurisdiction under Article 32 of the Constitution and the High Court under Article 226 thereof are entitled to entertain a petition moved by person having knowledge in the subject matter of the lis and, thus, having an interest therein as contradistinguished from a busybody, in the welfare of the people. The rule of locus has been relaxed by the courts for such purpose with a view to enable a citizen of India to approach the courts to vindicate legal injury or legal wrong caused to a section of the people by way of violation of any statutory or constitutional right. The Court then considering the judgment in *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, quoted amongst others the following paragraph:

44. The people of India have turned to courts more and more for justice whenever there has been a legitimate grievance against the State's statutory authorities and other public organisations. People come to courts as the final resort, to protect their rights and to secure probity in public life.

In *Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar and Others*, the issues pertained to grant of a caste certificate to a person belonging to a Scheduled Caste or Tribe. The question before the Court was whether after the certificate had been validated, could it be reopened even after the orders are passed by the High Court earlier. Considering the locus in such a case the Court observed:

This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suo motu. It may not treat the SLP as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter though it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find

out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far-reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so.

The Court then proceeded to observe that the petition could have been dismissed on the ground that the appellant has no locus standi, but the Court did not do so because as a constitutional court the Court felt that it was duty of Court to lay down the law correctly so that similar mistakes are not committed in future. Then the Court observed as under:

Apart from the general power of the superior courts vested in it under Article 226 or Article 32 of the Constitution of India, this Court is bestowed with a greater responsibility by the makers of the Constitution in terms of Articles 141 and 142 of the Constitution.

16. Bearing these principles in mind, in our opinion, this would be a fit case where this Court exercise its extra ordinary jurisdiction. The land pursuant to decisions of various quasi judicial authorities had earlier been held to be Government land. Esteem Properties Private Limited which filed the procedural review claim through Gonsalves family and subsequent to the decision by the Minister in the procedural review have entered into a sale deed and now claim title in the land, when that issue was in issue also before this Court in the suit filed by the Gonsalves Family itself. The reply of the State before this Court in this petition contrary to the stand in the suit and the companion petition. In the other two proceedings the State has challenged the right claimed by the Gonsalves family. This by itself warrants, that the Court should exercise its extra ordinary jurisdiction. In our opinion under these circumstances if this Court declines to entertain the petition on the specious plea that the petitioners have no locus standi on the ground, what is being challenged is a quasi judicial order, it would amount to abdication of our constitutional duty to see that the Courts and Tribunals exercise their jurisdiction according to law. In our opinion the matter involves public revenue. The fact that large considerations have been paid by Esteem Properties Private Limited to the Gonsalves family and other parties who were claiming right in the property for settlement of the dispute itself will give the value of the property and loss to public revenue if the matter is not examined. The public revenue cannot be allowed to suffer, if the action of the quasi judicial authorities disclose error apparent on the face of the record or exercise of jurisdiction in excess or want of jurisdiction. We, therefore, decline to accept the contention that the petition be dismissed on that ground.

17. At the outset we accept that a remedy by way of procedural review would lie if the matter was heard without an opportunity to the Respondents. The law was considered by the Supreme Court in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, and thereafter reiterated in several judgments including in *Kapra Mazdoor Ekta Union v. Management of Birla Cotton Spinning and Weaving Mills Ltd.* and Ors. AIR 2005 SC 1783. The Court observed that the

procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. Such party has to establish that the procedure followed by the Court or the quasi judicial authority suffered from an illegality that vitiated the proceeding and invalidated the order made therein, inasmuch one of the parties concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which such party could not attend for no fault of theirs. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be re-called and reviewed not because it is found to be erroneous, but because it as passed in a proceeding which stands vitiated by an error of procedure or mistake which goes to the root of the matter and invalidates the entire proceeding. A procedural review would, therefore, lie before the Minister. The question whether the present Respondent No. 2 could have maintained the Review would be examined independently.

18. Was the Review Application maintainable at the instance of Esteem Properties Private Limited and another? Review u/s 258 lies at the instance of a party interested. The substantive review was not preferred by Esteem Properties. What they preferred is the procedural review. The order states that notices were served on the Gonsalves family. Whether in fact they were served, the material before us does not show whether the observations in the order are correct. The only persons who can complain of no notice are the persons who were parties to the proceedings. Gonsalves family did not move the authority for procedural review. More importantly the order was the subject matter of a pending Writ Petition. Order dated 17th March, 1998 was the subject matter of a petition filed not by the Gonsalves family, but by Esteem Properties Private Limited and another in the year 2006. The Motion taken out being Notice of Motion No. 333 of 2007 which was withdrawn to make representation before the Competent Authority was allowed by order of this Court dated 17th August, 2007. That would not mean that if otherwise there was no locus an order of the Court would give locus to such a party to maintain a review petition. The Review Application was made thereafter again by Esteem Properties Private Limited and not by Gonsalves family. The matter was pending and status quo had been ordered. Even the power of procedural review has to be exercised within reasonable time.

When the petitioner filed the petition before this Court if they were entitled they could have moved the application for review. That was not done. Instead they challenged the order by petition before this Court by invoking its extra ordinary jurisdiction. An application was thereafter moved only on 17th August, 2007. The petition itself was filed on 22nd June, 2006. Ordinary time of filing Review is within 90 days from the date of the order. In the instant case the petitioners cannot contend that they had no knowledge. The issue of petitioners having knowledge would not arise as they were not parties and question of giving notice to them consequently would not arise. Procedural review has to be by parties to the original proceedings. Esteem Properties were not parties to the proceedings. They would have no locus standi to file the procedural review. In our opinion, therefore, this was not a case where the Minister could have exercised his review jurisdiction on two counts (i) that there was a delay and (ii) that the Esteem Properties Ltd., had no title to the land on the date the application for review was made and they were not parties to the proceedings. There were proceedings between them and the Gonsalves family for enforcement of the agreement. They, therefore, could not have complained that no notice was given to them. They therefore, had no locus to maintain the review. Further this Court was seized of the matter and had admitted the petition. In our opinion, on this ground itself the impugned order is liable to be set aside and the original order passed in review restored.

19. The issue also raises a larger question as to whether the Authorities under the Maharashtra Land Revenue Code when the issue of title is in issue before the Civil Court could have by-passed those proceedings and proceeded to pass an order in favour of the Gonsalves family. The first order of the Minister was passed on 11th October, 1995 allowing the Revision Application preferred by the Gonsalves family. That order was totally perverse on two counts. The Gonsalves family had filed a suit bearing L.C. Suit No. 698 of 1971 which was pending before this Court wherein they have claimed a prayer to declare them as owners. This was because the Revenue Authorities had held that they had no title to the land and they were encroachers upon the land. In the suit the claim to the land was that they were in open possession, for more than 60 years, and had acquired absolute title by adverse possession. They did not claim right to the land based on the Deed of Exchange which as rightly pointed out by the Revenue Authorities was never produced. The mere statement on the part of the Wadia Trust that there was a deed of exchange in the absence of documents produced, could not have been accepted when the Gonsalves family themselves had not relied upon the said Deed of Exchange in their suit. The land was earlier of the Khot. The Gonsalves family, therefore, had to establish their title by adverse possession. Secondly, the Wadias in the consent terms filed in the suit filed by them had admitted the right of the State to that land under the Salsette Abolition Act. This was only application of the authority under Salsette Act. Once an order had been passed under the Salsette Act, the Revenue Authority examining jurisdiction under the Land Revenue Code could not hold that order could not

have been passed.

Material has come by way of affidavit in the companion petition that the land is in occupation of slum dwellers. In our opinion considering these aspects the original order dated 17th March, 1998 passed in the review preferred by the State against the order passed in Revision was correctly passed. The question, therefore, of recalling the order and upholding the earlier order in revision was really arbitrary and per se illegal. In our opinion, the issue being in issue before the Competent Civil Court at the instance of the Gonsalves family, the Revisional Authority ought to have declined to exercise jurisdiction.

20. Consequently, in our opinion, the impugned order dated 10th December, 2007 which is the subject matter of the PIL will have to be set aside and the order dated 17th March, 1998 is restored subject to the outcome in the suit. It will be open to all the parties to agitate their grievance in the suit which is pending.

21. Rule made absolute in Public Interest Litigation No. 47 of 2008. In the circumstances of the case each party to bear their own costs.