
(2010) 12 GUJ CK 0050
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1001 of 2009 in Special Civil Application No. 850 of 1999 and Civil Application No. 5648 of 2009 in Letters Patent Appeal No. 1001 in Special Civil Application No. 850 of 1999

Patel Somabhai Devidas

APPELLANT

Vs

Dahyaji Somaji Thakor and Others

RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211, 65
Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 31(2), 34, 6, 6(2), 7

Citation : (2010) 12 GUJ CK 0050

Hon'ble Judges : S.J. Mukhopadhaya, C.J;K.M.Thaker, J

Bench : Division Bench

Advocate : Dilip L. Kanojiya, for the Appellant; Amit C. Nanavati, for Respondent 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7 and 1.2.8, for the Respondent

Judgement

K.M. Thaker, J.—This appeal under Clause 15 of the Letters Patent is directed against the judgment and order dated 21.10.2008 passed by the learned Single Judge rejecting the writ petition preferred by present Appellant against the order dated 05.10.1998 passed by Deputy Secretary (Appeals).

2. Mr. Sanjanvala, learned Senior Counsel has appeared with Mr. Dilip Kanojiya, learned advocate for the Appellant and Mr. Pranav Trivedi, learned AGP has appeared for the Respondent Nos. 2 and 3. Mr. A.C. Nanavati, learned advocate has appeared for the Respondent Nos. 1/1 to 1/8. Having regard to the rival contentions, Rule. Mr. Trivedi, learned AGP has waived service of notice of Rule on behalf of the Respondents. At the request and with the consent of the learned Counsel for the contesting parties, the appeal is taken up for hearing and final decision.

3. The facts involved in and relevant for the purpose of this appeal can be briefly summarized thus:

3.1 The Appellant-original Petitioner purchased agricultural land of Block No. 357 bearing Survey No. 280/3 admeasuring about 1 acre and 14 gunth as (hereafter referred to as the "land in question") from the Respondent No. 1 on 23rd June, 1977. The Appellant has claimed that inadvertently certain mistake had crept-in, in the sale deed hence a "Durasti deed" was executed between the parties on 30th June, 1981.

3.2 On the premise that at the time of the said transaction, the land in question was "fragment", the Mamlatdar, Mehsana made a report about the said transaction stating that the said transaction was in violation of the statutory restrictions imposed by virtue of the provision under the Bombay Prevention of Fragmentation and Consolidation Holdings Act, 1947 (hereinafter referred to as the "Act") pursuant to which the action for breach of Section 7 read with Section 9 of the Act was initiated vide communication dated 16.12.1986.

3.3 It is appropriate and necessary to note, at this stage, that the consolidation scheme was approved on 09.03.1972 as per which the land in question was declared "fragment" and the entry describing the land in question as "fragment" was duly registered in the revenue record on 25.04.1973 by virtue of Entry No. 990/181.

3.4. Upon conclusion of the aforesaid proceedings, the Prant Officer, by his order dated 30.07.1992, held the transaction illegal and while directing summary eviction of the Appellant, imposed fine of Rs. 250/- on Respondent No. 1. Against the said order dated 30.07.1992, present Appellant had preferred Revision Application before the Revenue Secretary, who, by his order dated 05.10.1998 rejected the Revision Application and confirmed the order dated 30.07.1992. Against the said orders, the Appellant preferred the writ petition which also came to be rejected by the impugned judgment dated 21.10.2008. Hence present appeal.

4. Mr. Sanjanvala, learned Senior Counsel submitted that the Appellant is in possession of the land in question and has yet not been evicted. The learned Counsel has assailed the order submitting that any notice u/s 6(2) of the Act was not issued or published and that the revenue record also did not show the land in question as "fragment". The learned Senior Counsel, as his paramount contention, submitted that the impugned action stands vitiated since it was initiated after long delay of almost, nine years (from the date of sale) or at least five years (from the date of Durasti deed). He also submitted that the statutory action has to be taken within the prescribed time and where the statute does not prescribe any time limit then within reasonable time and even if the transaction is void, the action must be taken within prescribed limitation or reasonable time. He further submitted that since the disputed transaction has been entered into between the two terminus viz. 19.02.1969 and 23.03.1979, the transaction is saved in view of the provision u/s 31(2)(b). The learned Senior Counsel relied upon the judgment in the case of *Jadav Prabhatbhai Jethabhai Vs. Parmar Karsanbhai Dhulabhai*, in the case of *State of Punjab and Others Vs. Gurdev*

Singh, in the case of Jiviben v. State of Gujarat [1998(2) GLH 556] , in the case of Pune Municipal Corporation Vs. State of Maharashtra and Others, in the case of Ram Chand and Others Vs. Union of India (UOI) and Others, in the case of Uttam Namdeo Mahale Vs. Vithal Deo and others, and in the case of State of The State of Gujarat Vs. Patil Raghav Natha and Others,

4.1. The appeal is resisted by the Respondents. Mr. Trivedi, learned AGP has submitted that the Entry No. 990/181 declaring the land in question as fragment was made in the revenue records as back as in April-1973. At that point of time, the survey number of the land in question was 21813. The learned AGP has relied on Form No. 6 carrying the said entry and submitted that the Appellant's contention that the land in question was not declared fragment, is contrary to the fact and also contrary to the record. The learned AGP has further submitted that the aforesaid entry was deleted by virtue of Entry No. 1110 which was mutated on 22.12.1982 and certified on 03.07.1984. Since the disputed transaction was entered into during the period when the land was under the declaration, it was hit by the provision under the Act and it is, therefore, void. The learned AGP also submitted that neither the Appellant owned any contiguous land nor the vendor was owner of any contiguous land. Hence, the disputed transaction is in breach of the provision of the Act. He further submitted that under the Act no time limit is prescribed for initiating action for breach of the provisions is legal and justified.

5. We have heard the leaned counsel of the contesting parties and perused the record.

5.1 The Appellant's contention founded on the premise of the provision u/s 31(2) (b) may be considered first. The Appellant has contended that the transaction in question was executed between two terminus viz. 19.02.1969 and 23.03.1979, and that therefore, the transaction would be saved in view of the provision u/s 31(2)(b). The relevant part of the said provision reads thus:

31. Restrictions on alienation and sub-division of consolidated, holdings:

(1)

(a)

(b)

(2) Nothing in Sub-section-(1)

(a)

(b) Shall be deemed over to have applied to a transfer of a holding allotted under this Act, made after the 19th February, 1969, but before the date of the commencement of the Bombay Prevention of Fragmentation and Consolidation of Holdings, (Gujarat Amendment) Act, 1978 (Hereinafter referred to as "the said date" where such transfer was of an entire holding not involving any sub-division thereof and....

5.2 Section 31(1) imposes prohibition against transfer, whether by way of sale or gift, exchange etc. of the "holding", or part thereof, allotted under the Act. The prohibition imposed by Sub-section (1) of Section 31 is in respect of and is applicable to "holding allotted under the Act" (hereinafter referred to as the "allotted holding" for sake of convenience) or part thereof, which, by necessary implication, would be applicable only to allotted holdings and not to other transaction i.e. not to the transaction which do not relate to or do not involve "allotted holding". Clause-(b) of Sub-section (2) of Section 31 carves out an exception to the prohibition prescribed under Sub-section (1) of Section 31 and provides that nothing contained in Sub-section (1) of Section 31 shall apply to the transfer of holding allotted under the Act made between 19th February, 1969 and the date of commencement. Hence, the said exception carved out under Clause (b) of Sub-section (2) of Section 31 would be applicable only in respect of the transaction involving "allotted holding" and would not be applicable to other transfers.

5.3 Present case concerns transfer of "fragment" and not transfer of "holding allotted under the Act". Where the cases pertain to or are related to and involve transfer of a "fragment" the provision u/s 7 would be attracted and applicable and Section 31 of the Act, including Clause (b) of Sub-section (2), will have no applicability.

5.4 It can be seen from Section 7 of the Act that it prescribes complete restriction on transfer of any "fragment" for which notice u/s 6 is given. The only exception under the Act in respect of transfer of "fragment" is transfer (of fragment) to a contiguous holder. Any transfer in breach of Section 7 will be hit by the provision u/s 9 of the Act and the provision u/s 31(2)(b), which is applicable to the case of "allotted holding" will not be attracted in the cases to which Sections 7 & 9 are applicable because the said Sections 7 and 9 are applicable to the cases of transfer of fragment. Further, the saving provision under Clause (b) of Sub-section (2) is available only in respect of and in the event of the applicability and operation of Sub-section (1) of Section 31 and not in respect of any other provision under the Act. Hence, in view of the language, scope, object and effect of the provision u/s 31(2)(b) the contention raised on the strength of said provision is unsustainable and is not accepted.

6. The learned Single Judge has after considering the submissions of present Appellant, confirmed the two concurrent orders passed by the statutory authorities. The learned Single Judge has noted that when the transaction took place the land in question was fragment and that therefore, it cannot be said that the authorities have committed any error.

6.1 On perusal of the record, the following facts emerge:

(a) The original survey number of the land in question was 21813.

(b) By Entry No. 990/181, made in April-1973, the land in question was declared as "fragment".

(c) The transaction in question was executed on 23.06.1977 and the rectification document (Durasti deed) was executed on 30.06.1981 i.e. after the entry declaring the land in question as fragment, which was made in April-1973, and while the entry was in operation.

(d) The subsequent Entry No. 1110 cancelling the said earlier Entry No. 990/181, releasing the land from being fragment, was made on 22.12.1982 - i.e. much after the transaction in question - and it was certified on 03.07.1984.

(e) The said land was, thus, released from the status of being "fragment" only after and by virtue of the said Entry No. 1110 hence the land in question was fragment land and it remained under such declaration between April-1973 and 03.07.1984, or at least until 20.12.1982.

(f) The communication by the Mamlatdar initiating the impugned action was issued on 16.12.1986.

The Petitioner has failed to place any material on record to dislodge and disprove the said facts.

6.2 The Appellant has contended that the notice u/s 6 was not issued in respect of the land in question and it was not declared fragment. From the record, it emerges that the Petitioner has failed to establish that the land in question was not declared fragment. On the strength of Form No. 6 the Respondent authorities have asserted that by Entry No. 990/181, which was mutated on 23rd April, 1973, the land in question was declared "fragment" and it remained under declaration until the subsequent Entry No. 1110 (releasing the land in question) came to be certified on 03.07.1984 or at least until 22.12.1982 (when the said Entry No. 1110 was mutated). The Appellant has failed to dislodge the aforesaid assertion of the Respondent. Thus, the aforesaid contention fails. The disputed transaction being in respect of "fragment" will be hit by Sections 7 & 9 of the Act. A conjoint reading of the Sections 7, 8 and 9 of the Act makes it clear that transfer of "fragment" land or transfer of the land in a manner which may create "fragment", is prohibited and is void.

6.3. Now, when the Petitioner failed to establish that the land was not "fragment" at the relevant time and also failed to prove that the Entry No. 990/181 describing the land in question as "fragment" was not made, the finding of fact recorded in the orders that the land in question, at the time of transaction, was fragment and the transaction was effected in breach of statutory restrictions, cannot be faulted and we do not find any error in the said concurrent findings of fact recorded by the two statutory authorities, which is confirmed by the learned Single Judge. We also do not see any reason or justification to take any different view and to interfere with such concurrent findings of fact.

7. In this view of the matter, the Appellant has contended that the said findings of fact, conclusions and the orders by the authorities would hold good and have effect, if the proceedings had been initiated within reasonable time because such

declaration cannot be made and such order cannot be passed after expiry of prescribed period of limitation or after reasonable time if any time limit is not prescribed and since in present case, the proceedings were not initiated within reasonable time, the impugned proceedings, findings of fact and the orders would not hold good and should not be allowed to operate and take effect and/or enforced and they are required to be set aside.

7.1 If the proceedings in which the impugned orders are passed were not initiated within reasonable time then, though the findings of facts and the order otherwise do not suffer from error, the impugned order, ordinarily, may not be held, of course subject to other relevant aspects to be good in law.

7.2 This brings in picture the contention about delay in initiating acting the suomotu proceedings.

7.3 On this count, it is not in dispute that in present case the impugned action was initiated in December-1986 i.e. almost five years after the Durasti deed.

The Petitioner has, therefore, contended that the impugned action was not taken within reasonable time, hence it should be set aside.

8. It is settled position that whether the disputed action can be said to have been initiated within reasonable time or not would depend upon the facts of each case and would differ from case to case.

9. So as to determine as to whether the statutory power was exercised within reasonable time or not, it would be necessary to ascertain the "starting point" which, ordinarily, would commence from the date of knowledge, about the transaction in question, to the concerned statutory authority.

9.1 The date of knowledge so far as the authority is concerned, would be the date on which the transaction comes to the notice of, or is brought to the notice of, the concerned statutory authority.

9.2 The transaction can be, usually, brought to the notice of the authority by giving specific intimation and he who claims or asserts to have given such intimation will be obliged to prove the mode and time when the intimation was given.

9.3 In other cases, where the transaction is not brought to the notice of the authority by the party to the transaction by giving specific initiation the principle of "deemed notice" will come in picture as per which the disputed transaction can be deemed to have come to the notice or can be deemed to be within the knowledge of the concerned authority when the transaction is entered into the revenue record. After the date of entry it can be assumed (i.e. knowledge can be attributed to the authority) that from the date of entry the authority has the notice of the transaction. Hence, unless the facts of the case prove otherwise, ordinarily the date of the entry can be considered the "starting point" to trigger the "reasonable period" or "reasonable time".

10. In present case, the Petitioner has claimed that the action was initiated after nine years, however, for the reason discussed hereinafter, the said claim is not found tenable. In view of the time-gap before the action was initiated, it may, at the first blush, appear that the impugned action was not initiated within reasonable time. However, in view of the facts of present case, the crucial question is as to when did the disputed transaction actually come to the notice of, or was brought to the notice of, the concerned statutory authority.

10.1 The Petitioner claims that the date of transaction (23.06.1977) should be taken as the relevant date. However, it is necessary to note that in the order dated 05.10.1998/09.11.1998, the authority has recorded the submission on behalf of the opponents that though the "Durasti deed" was got registered, however, the original sale deed (23.06.1977) was not registered/not got registered. The said submission of the opponents made before the authority is not disputed by the Petitioner. Interestingly, neither the Petitioner nor the opponent has mentioned the date on which the "Durasti deed" was, as claimed, registered. It is not the case of the Petitioner that the factum about the transaction was separately brought to the notice of the authority. In this view of the matter, the Petitioner's case claiming that the authority initiated the proceedings after delay of nine years would not stand or hold good in view of the opponents' aforesaid submission (which is not disputed by the Petitioner) because until the entry regarding the sale deed/transaction is mutated, it cannot be presumed that the authority had the notice about the transaction and knowledge cannot be attributed to the authority when it is not the case of the Petitioner that specific intimation about the transaction was given. The Petitioner, therefore, has alternatively claimed that the date on which the rectification document was executed (i.e. 30.06.1981) should be taken as the relevant date.

10.2. However, even the said contention overlooks the fact that the said "Durasti deed" also would not automatically come to the knowledge-notice of the authority except it is, in appropriate manner, intimated to the authority or is entered into the relevant record. If the transaction is not reflected in the record then, unless it is established by cogent and conclusive material that by appropriate means the transaction was expressly brought to the notice of the concerned authority, the knowledge about the disputed transaction to the concerned authority cannot be assumed. The "reasonable time" would not commence until the entry is mutated in the record or the transaction is, in appropriate manner, expressly brought to the notice of the authority.

11. In present case, the Appellant, right from beginning, appears to have remained conveniently silent about the date on which the entry, if at all it was made, in the name of purchaser Appellant was actually made/effectuated in the relevant record. In his statement, the Appellant is said to have admitted that at the time when the disputed transaction was originally executed (i.e. 23.06.1977) the entry was not mutated, in the record. The Petitioner did not place on record of the petition the date on which the entry about the transaction or the "Durasti

deed" was mutated. It is nobody's case, not even of the Petitioner, that the factum of the transaction or the Durasti deed was separately intimated to the authority.

11.1 In that view of the matter, the learned Single Judge has observed and recorded that "the Petitioner though contended that the power were exercised after long delay there is nothing on record to suggest as to when was the entry was made in the record reflecting the sale between the parties. For want of any material on record it would be difficult to hold that the initiation of the proceedings was belated

11.2 In present case, until present appeal came to be filed there was no material on record before the learned Single Judge and also probably before the revisional/appellate authority to establish the date on which the concerned and competent authority got the notice or the knowledge about the disputed transaction or about the "Durasti deed". Unless and until the date on which the entry about the disputed transaction was mutated is established from the record or unless it is established that the authority had been duly and appropriately notified about the transaction, any assumption about the knowledge regarding the transaction cannot be made.

11.3 Now, in present Letters Patent Appeal, the Appellant has, by way of a Civil Application being Civil Application No. 5649 of 2009 sought to place on record certain additional documents, which, inter-alia, include photocopy of the document purporting to be the copy of Village Form No. 6. The said documents, including the aforesaid document were, undisputably, not on record of the petition before the learned Single Judge. The Respondent authorities have, by filing reply affidavit, opposed the application and the request for permission to place additional documents on record of this appeal. However, for the reasons recorded in the order passed on the said Civil Application and also in light of the view which we propose to take in present appeal, we have disallowed the request made in the said Civil Application. Therefore, so far as present appeal is concerned, we have to and we shall proceed on the basis of and in light of the record as it obtained on the file of the petition before the learned Single Judge.

12. Thus, when the Appellant did not care to place on record relevant details and evidence, at this stage we cannot hold that the view taken by the learned Single Judge is erroneous or that it is not in conformity with the legal position.

13. The Appellant would contend, relying upon different judgments, that the statutory power was not exercised within reasonable time and that therefore, the impugned action is unsustainable and liable to be set aside. However, in the facts of present case, until the relevant date (i.e. the date of knowledge to the concerned authority) is properly established, it is not possible for us to hold, at this appellate stage that the impugned action was not initiated within reasonable time.

14. The legal position as regards belated statutory action or belated exercise of

statutory power is, by now, well settled. In this context, we may, at this stage, refer to the judgments in the case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, wherein the Apex Court, while considering the provision u/s 211 of Bombay Land Revenue Code observed thus:

11. 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.

(b) Subsequently in 1992, in the case between *State of Punjab and Others Vs. Gurdev Singh*, the Hon"ble Apex Court, while considering the belated challenge against the dismissal order, has observed that:

6. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court....

8. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for.

(c) Thereafter in the judgment in the case of *Ram Chand and Others Vs. Union of India (UOI) and Others*, while considering the issue arising in light of the provision under the Land Acquisition Act the Apex Court, held that:

14. ...It is settled that in a statute where for exercise of power no time-limit is fixed, it has to be exercised within a time which can be held to be reasonable....

(d) In the case of *Pune Municipal Corporation Vs. State of Maharashtra and Others*, the Hon"ble Apex Court has observed thus:

27. Now it is true that no period for revision is provided in the Act. It was, therefore, submitted on behalf of the landowners 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" can 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 u/s 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 *suomotu*. 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.

41. In the present case, no period of limitation is prescribed for preferring revision u/s 34 of the Act. The principle laid down in *Patel Raghav Natha*, hence

applies. If, therefore, the revisional authority was inclined to exercise jurisdiction, it ought to have been satisfied that such power was invoked by the Petitioner within reasonable time. Merely on the ground that the order passed in 1977 was unlawful was not sufficient to ignore length of delay and other attenuating circumstances.

(emphasis supplied.)

15. Thus, in the cases where period of limitation is not prescribed, the statutory power is required to be exercised within reasonable time, except the case where the transaction is tainted by fraud or suppression of relevant facts. The concept and the principle of "reasonable time" would not be applicable in the cases tainted by fraud or suppression and such cases are exception to the said general rule. In given case if the facts and/or law so require or, so as to give precedence to the object of the Act or having regard to the nature of the order, they so justify, the Court may decline to accept contention on concept of "reasonable time".

16. In this view of the matter, though at first blush it may appear that the action impugned by the Appellant was initiated belatedly and beyond reasonable time, in the facts of the case it is not possible at this stage to reach to definite conclusion, about the relevant date on which the transaction came to the notice, or can be said to have come to the notice, of the statutory authority.

17. Should we, therefore, dismiss the appeal on this ground, is, now the question before us.

18. We are of the view that when prima-facie the impugned action appears to have been initiated after lapse of five years (from the date of durasti/rectification deed) which, in the facts of present case, can hardly be considered "within reasonable time", out-right dismissal of the appeal would not be justified. At the same time, allowing the appeal and setting aside the impugned orders, and that too in face of the Appellant's failure to establish the relevant details from the record of the petition also would not be justified.

19. Therefore, it would also be necessary to consider the concept of "reasonable time".

19.1 In the above referred judgment in the case of Patel Raghav Natha, the Apex Court has observed that "the length of reasonable time must be determined by the facts of the case and nature of the order which is being revised". In the judgment in the case of Gujarat Khet Kamdar Union, the Division Bench observed that "what is reasonable period during which a particular statutory power is to be exercised would depend on the facts and circumstances of each case". Thus, it is the facts and circumstances of the given case as well as the nature of the order in question which would, ordinarily, be relevant to determine the length of reasonable time. In our view while considering the challenge against any order/proceedings on the ground of delay, the authority or the Court, as the case may

be, if the facts and circumstances of the case so require and justify, may also take into consideration the object of the Act or the provision under which the order is to be passed so that the real and main object of the Act may not be lost or frustrated. In a given case apparently there might be delay in initiating the proceedings, however, in all such cases, where limitation is not prescribed in the Act, it may not be justified to quash the proceedings on the ground that the action was not initiated within reasonable time (where limitation is not prescribed) since in a given case such approach may, instead of furthering the object of the Act, frustrate the object of the Act and in such case, the Court may give precedence to the object of the Act over the contention against the order/proceedings on the ground of limitation of proceedings after reasonable time (i.e. delay in initiating the proceedings beyond reasonable time).

19.2 So far as the concept of "reasonable time is concerned, in Bhanabhai Morarbhai Solanki Vs. State of Gujarat, , Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, the said issue has been taken into consideration. A close look at the observation in the judgments in the said cases shows what, ordinarily, is considered to be reasonable time.

19.3 In the case between Bhanabhai Morarbhai Solanki Vs. State of Gujarat, the Hon"ble Court has observed "5. ...this Court has held that the initiation of the proceedings u/s 84C of the Act has to be made within reasonable time and if such proceedings are taken after five years or so they cannot be said to be taken within reasonable time.... (emphasis supplied)

19.4 In the case between Bhaniben Mankanbhai Tandel Vs. State of Gujarat and Another, the action u/s 84(c) of the Tenancy Act and the said period of 5 years was not considered as reasonable time. In the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, the sale was recorded in February-1973 and the action u/s 84(c) of the Tenancy Act was initiated in September-1976, the Apex Court held that the action which was initiated after 3 years cannot be considered to have been initiated within reasonable time. In the case of Pune Municipal Corporation Vs. State of Maharashtra and Others, the action was initiated after about a decade and the Apex Court observed that "merely on the ground that the order passed in 1977 was unlawful was not sufficient to ignore the length of delay...."

19.5 Reference needs to be made to the recent decision of the Hon"ble Apex Court in the case between Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others, wherein it has been observed in para-23 that:

23. The legislature in its wisdom did not fix a time limit for exercising the revisional power nor inserted the words "at any time" in Section 34 of the Act, 1976. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case, it is assumed that the

legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure.

The Court has to construe the statutory provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute.

In view of the above, we reach the inescapable conclusion that the revisional powers cannot be used arbitrarily at belated stage for the reason that the order passed in Revision u/s 34 of the Act, 1976, is a judicial order. What should be reasonable time, would depend upon the facts and circumstances of each case.

(Emphasis supplied)

19.6 Reference may also be made to the judgment dated 28.10.2010 in the case of Labhubhai Valjibhai Gajera v. Secretary (Appeals), Revenue Department, Gujarat State and others, wherein the action was initiated after about three years, it has been observed in para-14 that:

14. In present case, it is not in dispute that the proceedings have been initiated after delay of more than about three years, it is also not in dispute that in present case there is no allegation of fraud and/or suppression of facts by the Petitioner. In present case, it is also not the case of the Respondent authorities that the authorities were not aware about the transaction.

Having regard to the fact that the proceedings came to be initiated after delay of more than about three years and that the Petitioner is not guilty of fraud or suppression the impugned proceedings and order cannot be said to have been initiated within reasonable time inasmuch as undisputedly the notice under the Act was issued in 2005. The proceedings and the order are hit by the vice of delay.

(emphasis supplied)

20. When the Appellant has not been able to establish from the material which was available on record of the petition before the learned Single Judge, the date on which the entry reflecting the sale of land in his (i.e. purchaser/Appellant's) name and/or the entry reflecting the "Durasti deed" was made and/or that the entry was made immediately in the relevant record and yet the impugned action was not initiated within reasonable time, the appeal cannot be allowed, at this stage, in to and the impugned orders cannot be set aside at this stage.

21. However, so as to not deprive the Appellant of the consequences of the inaction and delay, if any, in initiating the action and at the same time to also ensure that the Appellant does not get undue advantage of the absence of relevant details, it is necessary to balance the equities.

22. Therefore, though ordinarily a matter which has consumed almost 14 years ought not be remanded and though, ordinarily, in a Letters Patent Appeal we

would not interfere with concurrent orders, in the peculiar set of facts and circumstances, we are of the view that for want of relevant details and in absence of other effective option the following order would protect the interest of the Respondents and would also not deprive the Appellant of his interest. Hence, in the facts and circumstances of the case and so as to balance the equities, it is held and directed that:

(i) The conclusion of the authorities, confirmed and approved by the learned Single Judge, that (a) at the relevant time, the land in question was fragment; and that (b) duly declared fragment land has been sold in breach of the statutory provision and the restrictions, are not disturbed. However, the said decision and the declaration shall be subject to the result of the exercise to be carried out as per following directions.

(ii) With a view to ascertaining as to whether the action was initiated within reasonable time or not, that the case is being remanded to the Deputy Collector so as to ascertain the time when the concerned authority can be said to have got the notice/knowledge about the transaction and the "Durasti deed".

(iii) The Deputy Collector shall conduct inquiry for the aforesaid purpose and he shall, after examining the relevant record and upon hearing the Appellant and the concerned parties including the concerned Revenue Officer, ascertain the date on which the relevant entry with regard to the disputed transaction and/or the "Durasti deed" were mutated in the relevant record. After the dates is/are determined in light of the relevant record/facts, it shall be considered the "relevant date" when the competent authority can be said (or it can be assumed) to have the notice about the transaction and the "Durasti deed".

(iv) Such inquiry shall be completed by 05.03.2011.

(v) The Deputy Collector may also ascertain as to whether the Form No. 6, which the Appellant sought to place on record of this LPA by way of Civil Application No. 5649 of 2009 (claiming that it was on the record of the original proceedings before the Mamlatdar) was actually on record of the file of the parent case or not. It would be open to the Deputy Collector to consider such material as may be permissible in law and subject to the confirmation of veracity and genuineness of such material, to decide the issue.

(vi) After determining the relevant date, the competent authority would record the conclusion regarding the gap of the length between the relevant date and the date when the action was initiated and record the decision, keeping in focus the legal position explained in the above referred judgments, on the issue whether the proceedings were initiated within reasonable time.

(vii) If it is found that the action was initiated within reasonable time from the relevant date (see paras-19 to 19.6), the challenge raised by the Petitioner and present appeal shall stand dismissed and the impugned orders shall stand confirmed.

(viii) However, if the gap between the relevant date and the date on which the action was initiated, is found to be more than, or beyond, reasonable time, the concerned notice by which the action was initiated and the impugned action as well as the impugned orders shall stand quashed and set aside. Consequently, the appeal shall stand partly allowed to the said extent.

With the aforesaid directions, the appeal is disposed off. In the facts of the case, there shall be no cost.

In view the order passed in Letters Patent Appeal No. 1001 of 2009, Civil Application No. 5648 of 2009 does not survive. Hence, the Civil Application No. 5648 of 2009 accordingly stands disposed off.