

(2011) 08 GUJ CK 0070

In the Gujarat High Court

Case No : Letters Patent Appeal No. 602 of 2011 in Special Civil Application No. 13099 of 1994 with Civil Application No. 4467 of 2011 in Letters Patent Appeal No. 602 of 2011

Rameshbhai Ambalal Shah

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211, 65
Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 — Section 9, 9(1)
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 50(4), 50B, 63, 84(C)
Bombay Tenancy and Agricultural Lands Act, 1976 — Section 84C
Constitution of India, 1950 — Article 226, 227
Maharashtra Land Revenue Code, 1966 — Section 211, 257, 51, 51(1), 65

Citation : (2011) 3 GLH 98

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : S.N. Shelat and Mr P.R. Thakkars 1, 1.2.1, 1.2.2, 1.2.3, for the Appellant; Manisha Lavkumar Shah AGP For Respondent 1, Mr. N.D. Nanavati and Mr. B.C. Dave For Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Mr. J.B. Pardiwala, J.—In this appeal, the appellants-original respondent Nos. 2/1 to 2/3 seek to Challenge the judgment and order dated 08.03.2011 passed by the learned Single Judge in Special Civil Application No. 13099 of 1994 whereby, the learned Single Judge allowed the petition preferred by the respondent No. 2 herein by quashing and setting aside order dated 19.08.1994 passed by the Gujarat Revenue Tribunal, Ahmedabad, order dated 31.01.1990 passed in appeal by the Deputy Collector, Land Revenue (Appeal), Gandhinagar and order dated 03.12.1985 passed by the Mamlatdar and ALT, Gandhinagar.

2. Facts relevant for the purpose of deciding this appeal can be summarized as under :-

2.1. Land bearing Survey Nos. 73/1 and 73/2 of village Bhat, District: Gandhinagar was purchased by respondent No. 2 herein from the appellants herein by a registered sale deed dated 06.05.1970. Revenue entries in this regard were mutated in the record of rights and certified by the revenue Authorities on 28.10.1972. On the premise that respondent No. 1 herein-original petitioner is not an agriculturist, as he owns land in Rajasthan and not in the State of Gujarat, the transaction of 1970 was taken up in suo-motu review in purported exercise of powers u/s 84(C) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the "Act") by the Mamlatdar and ALT, Gandhinagar in the year 1985.

2.2. The Mamlatdar and ALT, Gandhinagar declared the sale of 06.05.1970 as illegal being in breach of the provisions of Section 63 of the Act vide order dated 03.12.1985.

2.3. Aggrieved by the said order passed by the Mamlatdar and ALT, Gandhinagar, respondent No. 1 herein preferred Appeal No. 7 of 1987 before the Deputy Collector, Land Revenue (Appeal), Gandhinagar. The Deputy Collector also dismissed the appeal confirming the order passed by the Mamlatdar and ALT, Gandhinagar. Thereafter, respondent No. 1 preferred revision before the Gujarat Revenue Tribunal and the Tribunal also rejected the revision application vide order dated 19.08.1994 confirming the orders passed by the Mamlatdar and Deputy Collector

2.4. It is at this stage that respondent No. 1-original petitioner had to come before this High Court by way of Special Civil Application No. 13099 of 1994 challenging the orders passed by the revenue Authorities declaring the transaction of the year 1970 as hit by the provisions of Section 63 of the Act.

2.5. The learned Single Judge vide judgment and order dated 08.03.2011 took the view that there was gross delay at the end of the revenue Authorities in taking the transaction of 1970 in suo-motu review in purported exercise of powers u/s 84(C) of the Act on the ground that respondent No. 1 herein could not have purchased agricultural land in Gujarat as he was not an agriculturist in so far as the State of Gujarat is concerned, though he had agricultural land in the State of Rajasthan. The learned Single Judge took the view that the Mamlatdar and ALT, Gandhinagar ought to have exercised suo-motu powers u/s 84(C) of the Act within reasonable time and as powers have been exercised after an unreasonable delay of 13 years, the learned Single Judge thought it fit to quash the orders. This is how the petition came to be allowed.

2.6. Very interestingly, the original owners of the property from whom respondent No. 1 purchased the land, are here in this appeal challenging the judgment and order passed by the learned Single Judge. The intention appears to be very clear. The appellants herein, who are the legal heirs of the original owner from whom respondent No. 1 purchased the land, want the land back on the ground that the sale of 1970 was not legal as the same was hit by the

provisions of Section 63 of the Act.

2.7. While deciding Letters Patent Appeal No. 433 of 2011, this Court was constrained to observe that many persons like the present appellants have started abusing the process of law by taking undue advantage of such proceedings of the present nature, more particularly, in land matters. We were also constrained to observe while deciding Letters Patent Appeal No. 433 of 2011 that after entering into a transaction with eyes wide open, knowing fully well that the transaction is in breach of the provisions of the Tenancy Act and after pocketing huge amount when the transaction is declared invalid and subsequently if the purchaser succeeds, the original owner would come before the Court saying that the transaction be declared invalid. We also observed that such practice needs to be deprecated.

3. However, in the present case, the learned Counsel appearing for the appellants has raised many legal issues and submitted that mere delay in initiating suo-motu proceedings by itself is not the ground to validate the transaction which is otherwise in breach of the provisions of the Tenancy Act.

4. We have heard learned Senior Counsel Mr.S.N. Shelat appearing with learned Advocate Mr.P.R. Thakkar for the appellants, learned Senior Counsel Mr.N.D. Nanavati appearing for learned Advocate Mr.B.C. Dave for respondent No. 2-original petitioner and learned A.G.P. Ms.Manisha Lavkumar Shah for respondent No. 1-State.

5. Learned Counsel for the appellants would submit that respondent No. 1 herein original petitioner was not an agriculturist within the State of Gujarat. He is engaged in the business of money lending and is a resident of Rajasthan. He submits that being a resident of Rajasthan, having agricultural land outside the State of Gujarat, he could not have purchased agricultural land within the State of Gujarat and the transaction is hit by Section 63 of the Tenancy Act. Relying on a reported decision of the Division Bench of this High Court in the case of Shamalsha Girdhari Co. Vs. State of Gujarat and Others, learned Counsel submitted that holding agricultural lands in a State other than Gujarat does not remove the disqualification enacted in Section 63. Learned Counsel also submitted, relying on the judgment of Shamalsha (Supra), that the disability is removed by the amendment in the provisions of the Act in 1985, but in this case, the transaction was taken in suo-motu review before the amendment was passed. The learned Counsel placed reliance on paras 10,11,12 and 13 of the said judgment.

6. Learned Counsel further submitted very vehemently that the learned Single Judge ought not to have allowed the petition of respondent No. 1 only on the ground of delay as all the three revenue Authorities have recorded a finding that delay in action has not caused any prejudice to respondent No. 2 because there is no evidence to show that respondent No. 2 has invested any amount in the said land.

7. Learned Senior Counsel further submitted that the Supreme Court in the case of Collector and Others Vs. P. Mangamma and Others, and in case of Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others, has held that mere ground of delay is no ground to determine reasonable period. The learned Counsel submitted that it cannot be determined by any empirical formula and that several factors are required to be considered including complication arising out of upsetting the order. He further submitted that all throughout the tenancy Authorities have come to the conclusion that there is breach of Section 63 and sale is unauthorised and that there was no evidence to establish that respondent No. 1 as purchaser has invested huge amount in the development of the said land and any orders after a period of so many years would cause serious prejudice to respondent No. 1.

8. The learned Counsel further submitted that the provisions of the Tenancy Act are for the benefit of tenant and tenancy Authorities thought it fit to return the land to bring it into original position. In this view of the matter, learned Single Judge ought not to have disturbed the concurrent findings of the revenue Authorities. Learned Counsel further submitted, relying on Supreme Court judgment in the case of V.S. Rahi and Another Vs. Ram Chambeli, that, any transaction between two unequal parties cannot confer any sanctity on the transaction and it is open to the weaker Section whether to seek recourse to the Court of law. The learned Counsel further submitted that if a document is void, it can only be avoided by the parties thereto. The whole provisions of the contract would become nugatory. Lastly it was submitted that no prejudice is caused because the lands are in the status quo position and no prejudice would be caused to respondent No. 1, if the Court were to confirm the decision of the Tenancy Court. Even under Articles 226 and 227, the discretion could have been exercised in favour of the agriculturist rather than outsider, who is a businessman.

9. Over and above the case law, which has been referred to in the above paragraphs, learned Counsel relied upon the following case law :-

(i) Dashrathlal M. Patel and Others v. State of Gujarat and Others reported in 2007(1) G.L.H. 106;

(ii) Dharman v. Sukhi and Others reported in AIR 1923 Allahabad 453;

(iii) State of Punjab and Others Vs. Gurdev Singh,

(iv) State of Orissa v. Brindaban Sharma

(v) Uttam Namdeo Mahale Vs. Vithal Deo and others,

(vi) State of Maharashtra Vs. Pravin Jethalal Kamdar (Dead) by Lrs.,

(vii) Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore,

(viii) Dankha Devi Agarwal (Dead) through LRs. Vs. Tara Properties Pvt. Limited

and Others,

(ix) Smt. Surasaibalini Debi Vs. Phanindra Mohan Majumdar,

10. Per contra, learned Counsel appearing for respondent No. 2-original petitioner, put forward the following contentions.

(i) Learned Counsel submitted that no error, much less an error of law can be said to have committed by the learned Single Judge in allowing the petition on the ground that the revenue Authorities could not have exercised suo-motu powers of review u/s 84(C) of the Act almost after a period of 13 years. The learned Counsel further submitted that the appellants herein-legal heirs of the original owner from whom, respondent No. 1 purchased agricultural land way back in 1970, cannot take advantage of their own wrong. Assuming for the moment that respondent No. 1 not being an agriculturist within the State of Gujarat, could not have purchased agricultural land in Gujarat, the transaction of the year 1970 could not have been set at naught after almost a period of 13 years, more particularly, when the revenue Authorities were very much aware of the transaction. Learned Counsel would further submit that the revenue Authorities have not been able to explain as to why it took 13 odd years for them to take the transaction in suo-motu review.

(ii) The learned Counsel vociferously submitted that any transaction in breach of the provisions of Section 63 would not be a void transaction but the same can be termed as invalid transaction. He tried to draw a distinction between a void transaction and an invalid transaction. The learned Counsel submitted that an invalid transaction per se may be invalid but it will not be invalid unless decided or declared to be so. It is to be invalidated. It thus becomes clear that invalid transaction is made equivalent to a voidable transaction and not a void transaction." He submitted that it is a settled principle of law to say that voidable transaction remains valid till it is annulled or invalid. He further submitted that in order to annul, void or invalidate a voidable transaction, powers for the purpose will have to be exercised within reasonable time. He further submitted that the scheme of the Act itself makes a clear distinction between void transaction on the one hand and invalid transaction on the other. The language of Section 63 thereof also makes it clear that the transaction in contravention thereto would be invalid and not void.

(iii) Learned Counsel further submitted that the appellants have no legal right to claim that since the sale deed was in breach of Section 63 of the Act and the transaction was invalid, the land should be restored to the original owners.

11. Having given our anxious thoughts and considerations to the contentions raised by the respective parties, we are of the view that the appellants herein are not entitled to any relief for the reasons which we may assign hereinafter in this judgment.

12. The position of law so far as the concept of "reasonable time" or "reasonable

period" is concerned, is no longer res integra.

13. In the case of E.S.I.C. Vs. C.C. Santhakumar, the Supreme Court has elaborately explained this principle of action to be taken within a reasonable period of time. It would be appropriate for us to quote paragraph Nos. 35,36,37,38,39 and 40.

35. A "reasonable period" would depend upon the factual circumstances of the case concerned. There cannot be any empirical formula to determine that question. The Court/Authority considering the question whether the period is reasonable or not has to take into account the surrounding circumstances and relevant factors to decide that question.

36. In The State of Gujarat Vs. Patil Raghav Natha and Others, it was observed that when even no period of limitation was prescribed, the power is to be exercised within a reasonable time and the limit of the reasonable time must be determined by the facts of the case and the nature of the order which was sought to be varied. This aspect does not appear to have been specifically kept in view by the Division Bench. Additionally, the points relating to applicability of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, and even if it is held that the Act was applicable, the reasonableness of the time during which action should have been initiated were also not considered. It would be hard to give an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic stands now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by Authority, the decision of the Judge usually determines what is "reasonable" in each particular case; but frequently reasonableness "belongs to the knowledge of the law, and therefore to be decided by the Courts". It was illuminatingly stated by a learned author that an attempt to give a specific meaning to the word "reasonable" is trying to count what is not a number and measure what is not space. It means prima facie in law reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know. (See: Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another, and Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, As observed by Lord Romilly, M.R. in Labouchere v. Dawson (41 LJ Ch 472) it is impossible a priori to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is reasonable under the circumstances. Reasonable, being a relative term is essentially what is rational according to the dictates of reason and not excessive or immoderate on the facts and circumstances of the particular case.

37. These aspects were highlighted in Collector and Others Vs. P. Mangamma and Others,

38. As observed in Veerayee Ammal Vs. Seenii Ammal, it is "looking at all the

circumstances of the case; a "reasonable time" under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than "directly"; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea".

39. According to Advanced law Lexicon by P. Ramanatha Aiyar 3rd Edition, 2005 reasonable time means as follows :-

That is a reasonable time that preserves to each party the rights and advantages he possesses and protects each party from losses that he ought not to suffer.

Reasonable Time" is defined to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case.

If it is proper to attempt any definition of the words "reasonable time", as applied to completion of a contract, the distinction given by Chief Baron Pollock may be suggested, namely, that a "reasonable time" means as soon as circumstances will permit.

In determining what is a reasonable time or an unreasonable time, regard is to be had to the nature of the instrument, the usage or trade or business, if any, with respect to such instrument, and the fact of the particular case.

The reasonable time which a passenger is entitled to alighting from a train is such time as is usually required by passengers in getting off and on the train in safety at the particular station in question.

A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than "directly" such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea.

Reasonable time always depends on the circumstances of the case. (Kinney)

It is unreasonable for a person who has borrowed ornaments for use in a ceremony to detain them after the ceremony has been completed and the owner has demanded their return. (AIR 1930 Oudh 395).

The expression "reasonable time" means so much time as is necessary under the circumstances to do conveniently what the contract or duty requires should be done in a particular case". [See: Joseph Severance and Others Vs. Benny Mathew and Others,

40. In all these cases at hand the factual aspects have not been examined, because the grievance appears to have been focused on the applicability of 77 (1A)(b).

14. In the case of Madhya Pradesh Housing Board v. Shiv Shankar Mandil reported in 2008(14) SCC 531, the Supreme Court held in para 14 as under :--

14. The subsequent stance for reviewing the diversion order is slightly intriguing. The Collector wanted to review his own order u/s 51 of the Code and for that purpose, needed the sanction of the Board of Revenue under sub-Section 1(1) of Section 51 of the Code. Section 51 runs as under :-

51. Review of orders:- (1) The Board and every Revenue Officer may, either on its/his own motion or on the application of any party interested, review any order passed by itself/ himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit: provided that :-

(i) if the Commissioner, Settlement Commissioner, Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an Officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the Authority to whom he is immediately subordinates.

It will be clear from the language that it is a review power and such review power would have to be exercised within a reasonable time. We agree with the Learned Single Judge that in this case, it took more than three years for the State Government to move to the Board of Revenue for reviewing the orders. The Learned Counsel appearing on behalf of appellants tried to suggest that at that time, there was status quo order pending, passed by the High Court on the first Writ petition filed by the respondents herein. We have examined the record carefully and we find nothing in the record suggesting that the State Government could not have exercised the power u/s 51 of the Code. In The State of Gujarat Vs. Patil Raghav Natha and Others, this Court held that the review power should be used in reasonable time. We accept the finding of the Learned Single Judge as confirmed by the Division Bench of the High Court that the power of review has to be exercised within a reasonable time and that in this case, three years of time, without any explanation, could not be viewed as a reasonable time in view of the fact that the petitioner had obtained possession, paid premium, spent money for obtaining the Registered Sale Deed and have also made the initial expenditure for preparing the land for raising structures. The said Government could not have allowed the petitioner to do all these things and then chosen to review its own powers.

15. In the case of State of Andhra Pradesh v. T. Yadagiri Reddy reported in 2008 (16) SCC 299, the Supreme Court in paras 22 and 23 observed as under:--

22. The third decision relied upon is reported in State of A.P. Vs. S. Vishwanatha

Raju and Others, The Learned Senior Counsel relied on this case, as in this case, this Court had taken suo moto action, seeing that there was an attempt to take out substantial acreage of 900 acres of land out of the purview of the Ceiling Act by the device of agreements of sale and the concerned officers were negligent in not carrying out the orders of the Authorities in revision. It is on these circumstances, that this Court took suo moto action. The Learned Senior Counsel urged that we should also take such suo moto action and put the clock back, insofar as, the orders passed by the Tribunal in case of respondents under the Ceiling Act, as also in respect of the Certificates issued u/s 38B are concerned. We do not see as to how we would order a suo moto action. The cases are entirely different cases. In this case, there has been no fraud as in the reported decisions. Lastly, by way of almost a desperate argument, Shri Sundaravardan urged that u/s 50B (4) of the Tenancy Act, the Collector has a suo moto power to call for and examine the record relating to any Certificates issued or proceedings taken by Tahsildar under the Section for the purpose of satisfying themselves as to the legality or propriety of such Certificate or as to the regularity of such proceedings, may pass such order in relation thereto as he may think fit. The Learned Senior Counsel argued that this Court had discussed about this issue in Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others, He suggested that the Certificates issued in favour of the respondents can still be reopened via Section 50B (4) of the Tenancy Act. We have no doubts that there existed such a power in Collector via the said provision 50B(4). The question is whether there was any fraud played or any impropriety shown, more particularly, on the part of the respondents herein, in whose favour the said Certificates were granted. When we see the whole conspectus of the facts, it is apparent that at no point of time, have the respondents or even their late father ever played any fraud against any Authority, nor did they ever suppress any relevant fact from any Authority. They openly came out with a case regarding Agreement executed on 25.2.1956, thereafter, they openly propounded a theory of partition, which theory was accepted by the Tribunal in ceiling matter in their case, as well as, in the case of their father Late Shri T. Papi Reddy and ultimately, they obtained the Certificate u/s 38-B, way back in 1983. Today, 25 years have elapsed after those Certificates have been granted. We do not see any impropriety in the said proceedings, which would justify a suo moto action on the part of the Collector.

23. This Court has considered the nature of that power in the case of Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy and Others (cited supra) and observed in para 9 :--

9... Use of the words "at any time" in sub-Section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo moto power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo moto power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud.. While

exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of the provisions of other Acts (such as Land Ceiling Act)....

From this, the Learned Senior Counsel argued that since there is no period of limitation prescribed for this power, the Collector would be justified in initiating an action. In our opinion the argument is firstly, premature. No such action have ever been proposed. Secondly, the Court has further observed that such action has to be within reasonable time though the words "at any time" are used in the provision. In the same para, the Court further observed :-

9... Use of the words "at any time" in sub-Section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words "at any time", the suo moto power under sub-Section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo moto power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But, that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation.

The observations are extremely fitting in the present case. Here also, after the Certificates have been issued, 25 long years have elapsed. The rights of the parties have already been crystallized. Not only this, but, it is the report of Shri Rao that the said lands have now been converted and sold for to as many as approximately 1100 persons, by way of residential plots. We do not think that there is any justification at this stage to use a suo moto power and to cancel the Certificates, so as to put the clock back. That would be, in our opinion, a completely unnecessary exercise, not warranted by any of the Sections. In that view, even this argument has to be rejected. Before parting, we must observe that the subsequent orders in case of Late Shri Khaja Shakhir Hussain, Shri Khaja Nasir Hussain and Smt. Razia Sultana, seem to have passed without even noticing the earlier orders passed and without even bothering to send notices to the interested parties. That would be the minimum expectation of law. By that, as it may, the Appeal has no merits, and is dismissed with costs.

16. In the case of Shri Santoshkumar Shivgonda Patil and Others Vs. Shri Balasaheb Tukaram Shevale and Others, the Supreme Court in paras 13,14,15 and 16 held as under :-

13. A close look at the aforesaid provision would show that there is no time limit

fixed for exercise of power of revision by the revisional Authority. The question is, could it be exercised at any time. While dealing with the question like the present one, a 3-Judge Bench of this Court in the case of State of Gujarat v. Patil Raghav Nathal, with reference to Sections 65 and 211 of Bombay Land Revenue Act, 1879, held 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.

12. It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act u/s 211. u/s 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This Section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961 i.e more than a year after the order and it seems to us that this order was passed too late.

14. While dealing with the suo-motu revisional power u/s 84C of the Bombay Tenancy and Agricultural Lands Act, 1976, this Court in Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, held that generally where no time-limit is prescribed for exercise of power under statute, it should be exercised within a reasonable time. This is what this Court said :--

Section 84-C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgments of this Court that wherever a power is vested in a statutory Authority without prescribing any time- limit, such power should be exercised within a reasonable time. In the present case the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September 1973. If sale deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant reliance was placed on a judgment of Justice S.B. Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat v. Jethmal Bhagwandas Shah (Spe.WA No. 2770 of 1979) disposed of on 1-3-1990, where in connection with Section 84-C itself it was said that the power under the aforesaid Section should be exercised within a reasonable time. This Court in

connection with other statutory provisions, in the case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, and in the case of *Ram Chand and Others Vs. Union of India (UOI) and Others*, has impressed that where no time-limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power u/s 84-C of the Act was not exercised by the Mamlatdar within a reasonable time.

15. Recently, in the case of *State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd.*, while dealing with the power of revision u/s 21 of the Punjab General Sales Tax Act, 1948, it has been held :-

17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefore, the same would not mean that the suo motu power can be exercised at any time.

18. It is trite that if no period of limitation has been prescribed, statutory Authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-Section (6) of Section 11 of the Act is five years.

16. It seems to be fairly settled that if a statute does not prescribe the time limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the Authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein. Ordinarily, the reasonable period within which power of revision may be exercised would be three years u/s 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub- Divisional Officer u/s 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of Tehsildar passed on March 30, 1976 is flawed and legally not correct. Pertinently, Tukaram Sakharam Shevale, during his lifetime never challenged the legality and correctness of the order of Tehsildar, Shirol although it was passed on March 30,

1976 and he was alive upto 1990. It is not even in the case of Respondent Nos. 1 to 5 that Tukaram was not aware of the order dated March 30, 1976. There is no finding by the Sub-Divisional Officer either that order dated March 30, 1976 was obtained fraudulently.

17. It is clear from the various judgments of the Hon"ble Supreme Court that where a statute provides any suo-motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is "reasonable time" has to be determined on the facts of each case. While exercising such power, several factors need to be kept in mind such as effect on rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bonafide transfers, the orders attaining finality under the provisions of other Acts (such as Land Ceiling Act) etc. Even the two judgments of the Supreme Court which have been relied upon by the learned Counsel for the appellants explain the same principles of law that a reasonable period would be taken upon the factual circumstances of the concerned case. There cannot be any empirical formula to determine the question. The Court/Authority considered the question whether the period is reasonable or not as to take into account surrounding circumstances and the relevant factors to decide that question. In the present case, we find that the original owner i.e. the appellants very consciously entered into a transaction way back in the year 1970 and sold land to respondent No. 1. It is not their case that at the relevant point of time they were mislead by respondent No. 1 herein in any manner or that any fraud was played upon them by respondent No. 1 in entering into the transaction and on their own free will and volition they executed the sale deed in favour of the respondent No. 1 and accepted the sale consideration. No steps were taken by them for a period of almost 15 years and it is only when the Mamlatdar and ALT, Gandhinagar thought fit to take transaction in suo-motu review that all of a sudden a thought came in the mind of the appellants to say that the transaction was illegal or invalid and now the land should be restored to them as it is.

18. Secondly, apart from the issue of reasonable time or reasonable period, what is that legal right in favour of the appellants herein to claim that the land should be restored in their favour? We have answered this issue quite elaborately in an identical case while deciding Letters Patent Appeal No. 433 of 2011 on 28.04.2011 wherein, we have observed as under :-

We are of the view that the learned Single Judge has rightly rejected the petition on the ground that the appellants have no locus standi and, therefore, no relief can be granted in favour of a transferor who himself has violated the provisions of law by entering into a transaction.

We are of the view that the position of law is very clear. Firstly, to maintain a petition under Article 226 or 227 of the Constitution of India, the party aggrieved must show that any of his fundamental rights or any other legal rights have been infringed and thereby the party is aggrieved by such infringement. Who can be

said to be "a person aggrieved" ? One of the meanings is that "a person will be held to be aggrieved by a decision", if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved, if a legal burden is imposed upon him. Can it be said that the appellants would fall within the words "persons aggrieved" or "a person who has a genuine grievance because an order has been made which prejudicially affects his interest". On the contrary, this is an appeal by persons who are trying to take advantage of their own wrong. The maxim: "Nullus commodum capere potest de injuria sua propria" (No man can take advantage of his own wrong) is very much applicable in the facts and circumstances of the present case. The maxim: "Nullus commodum capere potest de injuria sua propria" (No man can take advantage of his own wrong) is one of the salient tenets of equity. The appellants cannot secure the assistance of a Court of law for enjoying the fruit of their own wrong.

We may refer the decision of the Supreme Court explaining this principle of law. in the matter of Union of India and others Vs. Major General Madan Lal Yadav (Retd.), In paragraph 28, the Supreme Court observed as under :-

In this behalf, the maxim nullus commodum capere potest de injuria sua propria - meaning no man can take advantage of his own wrong - squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2). In Broom's Legal Maximum [10th Edn.] at page 191 it is stated :-

...it is a maxim of law, recognized and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognized in Courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim frustra legis auxilium invocat quaerit qui in legem committit. He relies on Perry v. Fitzhowe [(1846) 8 Q.B. 757]. At page 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At page 193, it is stated that "it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned". At page 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". At page 199 it is observed that "the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed.

19. We may now deal with last and important contention as regards the parties

in pari-delicto. This term "in pari-delicto" as explained by Blacks Law Dictionary is as under :-

in pari delicto :- [Latin "in equal fault] Equally at fault: the Court denied relief because both parties stood in pari delicto. (Cases: Action 4; Equity)

in pari delicto doctrine: [Latin] (1917) The principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing. [Cases: Action 4; Contracts : 139; Equity-65.]

20. The principle that the Courts will refuse to enforce an illegal agreement at the instance of a person who is himself a party to an illegality or fraud as expressed in the maxim "in pari-delicto potior est conditio defendentis".

21. Learned Counsel for the appellants, relying on the Supreme Court judgment of Sitaram (Supra), submitted that in exceptional cases like the present one, person will be relieved of the consequences of an illegal contract into which he has entered-cases to which the above referred maxim would not apply. The learned Counsel has relied upon the following paragraph of the Supreme Court judgment in the case of Sitaram (Supra) :

The principle that the Courts will refuse to enforce an illegal agreement at the instance of a person who is himself a party to an illegality or fraud is expressed in the maxim "in pari-delicto potior est conditio defendentis". But there are exceptional cases in which a man will be relieved of the consequences of an illegal contract into which he has entered-cases to which the maxim does not apply. They fall into three classes:(a) where the illegal purpose has not yet been substantially carried into effect before it is sought to recover money paid or goods delivered in furtherance of it; (b) where the plaintiff is not in pari delicto with the defendant; (c) where the plaintiff does not have to rely on the illegality to make out his case.

Where the parties are not in pari delicto, the less guilty party may be able to recover money paid, or property transferred, under the contract. This possibility may arise in three situations.

First, the contract may be of a kind made illegal by statute in the interests of a particular class of persons of whom the plaintiff is one.

Secondly, the plaintiff must have been induced to enter into the contract by fraud or strong pressure

Thirdly, a person who is under a fiduciary duty to the plaintiff will not be allowed to retain property, or to refuse to account for moneys received, on the ground that the property or the moneys have come into his hands as the proceeds of an illegal transaction.

22. As explained by Law Lexicon;

In pari delicto. In equal fault; equally culpable or criminal; in a case of equal

fault or guilt. A person who is in *pari delicto* with another differs from a *pariceps criminis* in this, that the former term always includes the latter, but the latter does not always include the former. (Black's Law Dict.)

Where both parties are equally at fault, the condition of the possessor (or defendant) is the stronger. (Latin for Lawyers).

In pari delicto potior est conditio possidentis.

Where the parties are equally in the wrong. The condition of the possessor is better. Where a certain person transferred her land to a near relative *benami* in order to defeat her creditor and continued in possession of the same for a long period and subsequently the heirs of the *benamidar* turned her out of possession by asserting their rights and the rightful owner brought a suit for a declaration of her title and for possession and mesne profits, held that the original transfer was tainted with fraud and that the maxim *in pari delicto potior est conditio possidentis* would apply to the case. Held on the facts that the original owner was entitled to the possession of the property, for damages and mesne profits but not for a declaration of her title to the land.

23. Even if now, so far as the three classes as explained by the Supreme Court are concerned, the only class which the appellants herein may be able to invoke is that the contract if it is illegal by statute in the interest of a particular class of persons of whom seller of the land is one, then as per this contention, the seller is relieved of the consequences of an illegal contract into which he has entered and the maxim of *pari-delicto* will not apply. We are afraid it is not as easy as contended by the learned Counsel for the appellants to accept this because if restoration of possession is to be made at the instance of the seller of the property, then the seller will have to establish before the competent Court that when the transaction of sale was entered into, it was disclosed by the seller to the purchaser that the permission of the competent Authority before entering into the registered sale deed was required and in spite of the same, the purchaser has at his own risk agreed to purchase the land without permission of the competent Authority. If the purchaser establishes that the seller of the property has withheld this information from the purchaser and has made the purchaser to believe that on account of sale transaction, the rights and titles of the seller are fully conveyed and he would become the absolute owner of the property, the Court may decline the relief to the seller for declaring the sale as illegal or void. If the seller establishes that the seller himself as well as the purchaser, both were under the bonafide mistake that the permission of the competent Authority for sale is not required, then in the given case, the Court keeping in view the intent of the legislature may declare the transaction of sale as invalid. But, in those circumstances also the Court may decline the equitable relief of restoring the possession back to the seller and even if the Court decides to restore the possession back to the seller, the Court may also put the seller on condition of repaying the sale consideration and the compensation also if circumstances so demand. All these questions of facts can only be examined in the proceedings of

civil suit.

24. In one of the recent pronouncements by Full Bench of this High Court, rendered in Letters Patent Appeal No. 1875 of 2007 and analogous appeals, decided on 21.07.2011, the Full Bench in almost an identical fact situation with the only distinguishing feature that it was a case arising from Bombay Prevention of Fragmentation of Consolidation of Holdings Act, 1947, has held as under :-

Article 226 of the Constitution is an equitable extraordinary jurisdiction, it should be exercised to prevent perpetration of legal fraud and to promote good faith and honesty. It cannot be exercised in favour of a defaulting party to frustrate legitimate claim of the other party. [Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another,

Even the void transaction u/s 9(1) if allowed to remain effective for considerably long period, the Authority named therein will be precluded from initiating proceedings to annul it. Even the void transaction cannot be said to be nonexistent in all cases and in all situations. It can remain effective and in existence till it is invalidated and set aside. If its existence is allowed to remain for a considerable period and with the passage of time it brings about several changes, creating valuable rights in favour of considerable Section of people, it is difficult to accept the proposition that despite the change the Collector would be entitled to exercise power under Sub-Section (3) of Section 9 of the Act. When the things have been allowed to remain as such for years together, the purchaser cannot be deprived of his possession so as to render indirect benefit to the seller who was equally responsible for entering into such illegal transaction. When the Authority had considerable opportunities to know about the transaction and despite that, has not taken any action thereon for years together, such Authority cannot be allowed to exercise powers conferred upon it at a belated stage. The concept of reasonableness of time will equally apply in such cases. Therefore, even powers conferred upon the Collector under sub-Sections (2) and (3) of Section 9 are required to be exercised within a reasonable time. [Valjibhai Jagjivanbhai v. State of; Gujarat, 2005 (2) GLH 34].

25. In the above conspectus of the entire matter, we are of the view that after all these years i.e. almost 31 years, the original owners i.e. the appellants cannot say that the transaction of 1970 be declared as invalid and the possession of the property be restored in their favour. We have confined our discussion only in so far as the legality and validity of the order passed by the learned Single Judge and the settled position of law in so far as powers of the Authorities to take transactions in suo-motu review after an unreasonable period of time is concerned. It would also not lie in the mouth of the appellants that they are agriculturists and they should not be deprived of their right to undertake the agricultural operations almost after a period of 30 years. All of a sudden the thought of doing agricultural work has come in the minds of the appellants is inconceivable.

26. We do not find any error or any infirmity in the impugned judgment and order passed by the learned Single Judge. In this view of the matter, we dismiss the appeal with no order as to costs.

27. As we have dismissed the appeal, the interim order passed by us on 06.04.2011 directing the parties to maintain status quo with regard to the land in question, also stands vacated forthwith.

FURTHER ORDER

Learned Counsel for the respondent prays for suspension of the impugned judgment, but in view of the reasoning given in the order, the prayer is rejected.