

(2012) 02 GUJ CK 0077

In the Gujarat High Court

Case No : Special Civil Application No. 8537 of 1998

Rinki Shashikant Gandhi

APPELLANT

Vs

Mamlatdar Vadodara Taluka and 4

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 9(1), 9(2), 9(3)
Constitution of India, 1950 — Article 226, 227
Gujarat Land Revenue Rules, 1972 — Rule 106, 107, 108, 108(1), 108(2)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 27

Citation : (2012) 2 GLR 1275

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Shalin N. Mehta, for the Appellant; Pranav S. Dave, Learned Asst. Government Pleader for Respondents Nos. 1, 2, 3, 5 and Mr. Sanjay Joshi for Mr. P.R. Thakkar, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Smt. Justice Abhilasha Kumari

1. The challenge in this petition under Articles 226 and 227 of the Constitution of India, is to the order of the Collector, Vadodara, dated 29/08/1998, whereby the order of the Deputy Collector, Vadodara, dated 07/10/1996, has been quashed and set aside and Revenue Entry No. 685 made on the basis of the Sale Deed for the land in question, has been cancelled and the land has been forfeited to the State Government without encumbrances. The factual background of the matter is that, the petitioner purchased land comprising Block No. 72, admeasuring 2 Acres and 1 Guntha, situated in Village Khanpur, Taluka and District Vadodara, by a Sale Deed executed on 15/04/1988, and registered on 24/01/1989, from respondent No. 4, for a consideration of Rs. 28,000/-. On the basis of the Sale Deed, entry No. 685 was mutated in the revenue record on 09/01/1990, in favour of the petitioner, which was confirmed by the Mamlatdar on 12/02/1990.

After a period of four years, much beyond the period of limitation of 60 days as prescribed in Rule 108(5) of the Gujarat Land Revenue Rules, 1972, ("The Rules" for short) respondent No. 4, the original land owner, challenged Revenue Entry No. 685 by filing an appeal, commonly known as an R.T.S. Appeal before the Deputy Collector. By order dated 07/10/1996, the said appeal was rejected on the ground of delay. Carrying the matter further, the original land owner filed an appeal against the order of the Deputy Collector, to the Collector. By the impugned order dated 29/08/1998, the Collector set aside the order of the Deputy Collector, cancelled Entry No. 685, and directed the land to be forfeited to the State Government, on the ground that the sale transaction entered into by the petitioner and respondent No. 4, is violative of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ("the Fragmentation Act", for short). Aggrieved by the above-mentioned order of the Collector, the petitioner is before this Court.

2. Mr. Shalin N. Mehta, learned counsel for the petitioner has made detailed submissions, the crux of which is briefly summarised as below:

1. That the appeal filed by respondent No. 4 is not competent as it has been filed after a period of four years, whereas the period of limitation prescribed in Rule 108(5) is 60 days. The Deputy Collector has rightly rejected the appeal on the ground of delay. However, the Collector has set aside the order of the Deputy Collector on legally unsustainable grounds.

2. That respondent No. 4, who is the seller, has no locus standi to file the appeal. Having pocketed the sale consideration, and being a willing party to the Sale Deed, he cannot now contend that he is an aggrieved party and that the Sale Deed has been obtained by undue influence, inducement, or that there is a violation of the provisions of the Fragmentation Act. The Sale Deed has been executed on 15/04/1988, and registered on 24/01/1989. It was for the first time on 17/06/1994, that respondent No. 4 raised the dispute, having remained silent for four to five years. Conduct such as that of respondent No. 4 has been deprecated in several judicial pronouncements. Respondent No. 4 cannot be termed to be a "person aggrieved" so as to raise a dispute and cannot try to take advantage of his own wrong.

3. That the Collector, who was deciding an appeal under Rule 108(6), had no authority in law to examine the validity, or otherwise, of the Sale Deed, while exercising power under the Rules. Moreover, the question whether the Sale Deed is violative of the provisions of the Fragmentation Act, or not, is not one that can be decided in RTS proceedings. It is now a settled principle of law that revenue authorities cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry is against the provisions of another enactment. While deciding an RTS appeal under the Rules, the Collector could not have cancelled Entry No. 685 evidencing the sale of land in favour of the petitioner, on the ground of violation of the provisions of the Fragmentation Act. Such an action on the part of the Collector has caused serious prejudice to the

petitioner, as there were no proceeding under the Fragmentation Act, and necessary notice under the said statute has never been issued to the petitioner. In any case, the powers of the Collector under Rule 108(6) do not include those of directing forfeiture of the land to the State Government. As such, the order of the Collector dated 29/08/1998 cannot be sustained in law and deserves to be quashed and set aside.

4. In support of the above submissions the learned counsel for the petitioner has placed reliance upon the following judgments:

(a) Ranchhodbhai Lallubhai Patel v. State of Gujarat, 1984 (2) GLR 1225

(b) Rameshbhai Ambalal Shah v. State of Gujarat, 2011(3) GLR 2587

(c) Smt. Ratnaprabhabai v. M/s. Tulsidas V. Patel, 1982(2) GLR 213

(d) Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State,

(e) Letters Patent Appeal No. 433 of 2011 in Special Civil Application No. 6168 of 2010, decided on 28/04/2011

5. Mr. Pranav S. Dave, learned Assistant Government Pleader appearing for respondents Nos. 1, 2, 3 and 5 has supported the impugned order of the Collector by submitting that from the Sale Deed and the order of the Deputy Collector, it is clear that a fragment of land has been created because of the sale transaction. As there is a violation of the provisions of the Fragmentation Act, the order of the Deputy Collector, rejecting the appeal filed by respondent No. 4 on the ground of delay, has been rightly set aside by the Collector and the land has rightly been forfeited to the State Government. The learned Assistant Government Pleader has submitted that the order of the Collector may not be disturbed, and the petition be rejected.

6. Rule has been issued in the petition on 14/10/1998. During the course of the hearing the learned counsel for the petitioner and the learned Assistant Government Pleader addressed their submissions. The matter was adjourned thrice to hear the learned advocate for respondent No. 4. On 12/01/2012, Mr. Sanjay Joshi, learned advocate for Mr. P. R. Thakker on behalf of respondent No. 4, submitted that he is not in a position to make any submissions due to lack of instructions, therefore, an appropriate order be passed. No affidavit-in-reply has been filed on behalf of respondent No. 4, therefore, this Court has to decide the matter on the basis of the material on record and relevant judicial pronouncements.

7. As is clear from the narration of facts, Entry No. 685 was mutated in the revenue record on 09/01/1990, evidencing the sale transaction, by way of registered Sale Deed in respect of the land in question, between the petitioner and respondent No. 4. This entry was confirmed by the Mamlatdar on 12/02/1990. Respondent No. 4 initiated RTS proceedings by filing an appeal

against the said entry before the Deputy Collector under Rule 108(5) of the Gujarat Land Revenue Rules, 1972, and the order of the Deputy Collector rejecting the appeal on the ground of delay was further challenged before the Collector, under Rule 108(6). It would be fruitful to notice the provisions of Rule 108, in order to appreciate the context, legal scope and ambit, in which the proceedings were initiated by respondent No. 4. Rule 108 is reproduced hereinbelow:

108 (1) Disputes entered in the register of disputed cases shall ordinarily be disposed of by the Mamlatdar's First Karkun or by the Mamlatdar, but may be disposed of by the District Inspector of Land Records or by any revenue officer of superior rank to that of First Karkun.

(2) The enquiry shall ordinarily be made in the village in which the land is situated or where the interested parties reside.

(3) The officer making the enquiry shall record his order disposing of the dispute in the said register, and shall then make such entry in the Diary of mutations as may be necessary.

(4) Such officer shall certify the entry in the Diary of mutations to be correct.

(5) An appeal against an order under this rule shall, if the order has been made by the Mamlatdar's First Karkun, the Mamlatdar, the District Inspector or Revenue Officer of lower rank than that of a Deputy Collector, lie to the Sub-Divisional Officer, or to an officer appointed by the State Government in this behalf, and if the order has been made by the Sub-Divisional Officer, the Superintendent of Land Records Officer of a rank not lower than that of a Deputy Collector, to the Collector; such appeal shall be presented within sixty days from the date on which the copy of the order was served on the appellant or was otherwise intimated to him; Provided that the appellate authority may after recording its reasons in writing admit an appeal after the aforesaid period of sixty days if it is satisfied that the appellant had sufficient cause for not presenting the appeal within such period. Subject to the provisions of sub-rule (6) the decision of the appellate authority shall be final. There shall be no appeal against the order of the Collector. No second appeal shall lie in any case.

(6) The Commissioner may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 and sub-rules (1) to (5) of this rule for the purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings. If, in any case, it shall appear to the Commissioner that any proceedings so called for or any decision or order made in such proceeding should be modified, annulled or reversed, he may pass such order thereon as he deems fit.

(7) If the appellate order or the order passed in revision by the Commissioner confirms the previous decision it shall be noted in the remarks column against

the entry which is confirmed. If it alters it, the change shall be entered as a fresh, but not disputable, mutation.

(emphasis supplied)

8. In light of the above-quoted Rule, more especially sub-Rules (5) and (6) thereof, we may now advert to the impugned order of the Collector. A perusal of the said order leaves no manner of doubt that the Collector has found the sale transaction to be violative of the provisions of the Fragmentation Act, and solely on this ground, has concluded that the Deputy Collector ought not to have rejected the appeal of respondent No. 4 on the ground of delay. Further, having set aside the order of the Deputy Collector, the Collector has directed that the land in question be forfeited to the State Government, without encumbrances.

9. The question that arises for consideration is whether the Collector could have set aside the entry on the ground of violation of the provisions of the Fragmentation Act and directed forfeiture of the land, in exercise of power under Rule 108(6) of the Rules, or not?

10. As is clear from the Rule reproduced hereinabove, under sub-Rule (6) of Rule 108 the Collector can call for and examine the record of any enquiry or proceedings of any subordinate Revenue Officer held under Rules 106, 107 or sub-rules (1) to (5) of Rule 108 for the purpose of satisfying himself as to the regularity of such proceedings and the legality or propriety of any decision or order passed in such proceedings. In the event that the Collector finds that any proceedings or any decision or order made in such proceedings deserves to be modified, annulled or reversed, he may pass such order as deemed fit. This is the extent of the power vested in the Collector by sub-rule (6) of Rule 108. It is evident that sub-rule (6) of Rule 108 does not vest the Collector with power to direct forfeiture of the land to the State Government. The entire scope and ambit of Rule 108 is regarding disputes relating to revenue entries. The legality and propriety of an order made under Rule 108 (5) can be examined by the Collector under Rule 108(6). However, sub-rule (6) of Rule 108 does not confer the power to direct forfeiture of the land upon the Collector. In the present case the Collector has not only directed the cancellation of the entry regarding the sale transaction, but has gone a step further by directing forfeiture of the land. This direction is clearly the outcome of the exercise of power not vested in the Collector under sub-Rule (6) of Rule 108. It is, therefore, unsustainable in law, being in excess of jurisdiction vested by law upon a quasi judicial authority.

11. It cannot be lost sight of, that proceedings were initiated at the behest of respondent No. 4 after five years of execution of the Sale Deed and four years of the registration of the said document. In the interregnum, respondent No. 4 sat silently, without any demur. The period of limitation prescribed for filing an appeal under sub-rule (5) of Rule 108, is 60 days. The law is now settled that proceedings cannot be initiated after an unreasonable period of time. What constitutes a reasonable period of time is to be seen from the facts and

circumstances of the case.

12. As already stated hereinabove, respondent No. 4, who is the vendor, has willingly sold the land in question to the petitioner for a sale consideration of Rs. 28,000/- as mentioned in the Sale Deed itself. After four to five years, the vendor (respondent No. 4) cannot be heard to say that the sale transaction is the outcome of undue influence and inducement on the part of the petitioner. Having executed the Sale Deed and pocketed the sale consideration, it does not lie in the mouth of respondent No. 4 to now take the specious plea that the said transaction is violative of the provisions of the Fragmentation Act, especially as he, himself, was party to it.

13. At this sage, it would be illustrative to refer to certain relevant judicial pronouncements.

(1) In *Ranchhodbhai Lallubhai Patel v. State of Gujarat* (Supra) this Court has held as below:

4. Now, it is obvious that the authorities under the Act have been enjoined to pass proper orders under sec.9 for declaring the transactions contrary to the said Act to be null and void and also to pass consequential orders of fine as well as summary eviction. But the said statutory powers like any other statutory powers have to be exercised within reasons time. If that concept is kept out, any statutory powers would be exercised after a number of years or decades. In the meantime, the affected parties would have materially altered their position and irreparable injury would be caused to them and it would be impossible to put the clock back. If such powers can be exercised after unduly long delay. On the peculiar facts of this case, it has got to be held that the power exercised by the concerned authorities under sec. 9 was at grossly belated stage and as there was unreasonable delay in exercise of that power, the exercise would be ex facie unreasonable, unjust and illegal.

(2) In *Rameshbhai Ambalal Shah v. State of Gujarat* (Supra), a Division Bench of this Court he held thus:

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 and 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. [AP State Financial Corporation, (1994) 2 SCC 647]

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 vs. State of Gujarat, 2005 (2) GLH 34 : (2005(3) GLR 1852)].

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 insofar 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.

25. In the present case the Sale Deed has been executed on 15/04/1988, and registered on 24/01/1989. Entry No. 685 in respect of the same was mutated in the revenue record on 09/01/1990, and confirmed on 12/02/1990. Respondent No. 4 raised a dispute regarding this entry on 17/06/1994, whereas the period of limitation as per Rule 108(5) is 60 days. On the facts and in the circumstances of the case the proceedings were not initiated within a reasonable period of time, therefore, in the view of this Court, the Deputy Collector has rightly rejected the appeal of respondent No. 4 on the ground of delay. However, the Collector has, in setting aside the order of the Deputy Collector, exercised power beyond a reasonable period of time, and that too on legally untenable grounds.

14. In The State of Gujarat Vs. Patil Raghav Natha and Others, the Supreme Court has held as below:

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.

(emphasis supplied)

16. Considered in light of the principles of law enunciated in the above-quoted judgments, the impugned order of the Collector cannot be sustained on the ground that power has been exercised, (though erroneously), after an unreasonable period of time.

17. This brings us to the very competence of respondent No. 4 to file an appeal against the entry evidencing the Sale Deed. Respondent No. 4 is the vendor who has executed the Sale Deed willingly, in favour of the petitioner. He has also conveniently pocketed the sale consideration. It appears that after four to five years respondent No. 4 suddenly had second thoughts of disputing the very sale transaction to which he is party, on grounds of undue influence and violation of the provisions of the Fragmentation Act. It is noteworthy that there is no material on record to support the grounds of undue influence or inducement, and RTS proceedings are not the appropriate proceedings for such allegations. Under such circumstances, not only is the conduct of the respondent No. 4 unethical, it is clearly aimed at seeking some pecuniary advantage from the petitioner, by exerting pressure upon her. Such conduct on the part of a vendor has been deprecated by a Division Bench of this Court in *Rameshbhai Ambalal Shah v. State of Gujarat* (Supra), in the following terms:

18. *****

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.

(emphasis supplied)

18. In Smt. Ratnaprabhabai v. M/s. Tulsidas V. Patel (Supra) this Court has held that :

18 *** **

It appears that the petitioner having pocketed Rs. 1,00,000/- years back in 1962 is trying to catch at a straw and is practically indulging in the policy of dog in the manger by seeing that the hanging sword of the present litigation lingers on so that at sometime respondents Nos.1 and 3 may come round and may give some added financial advantage to the petitioner by way of bargain and if the present proceedings are kept pending, such oblique intention of the petitioner may get fructified. The court obviously cannot be a party to such a design. When the petitioner is not a legally aggrieved party, it is impossible to give her any relief in the present proceedings under Article 227 of the Constitution by restoring these proceedings to the file of the Tribunal so that the transaction entered into by the petitioner in favour of respondent No. 1 years back in 1962 may once again be brought in the melting pot.

19. In Letters Patent Appeal No. 433 of 2011 in Special Civil Application No. 6168 of 2010, decided on 28/04/2011, the Division Bench expressed this view in the penultimate paragraph of the judgment:

We have been consistently noticing that many persons like the present appellants have started abusing the process of law and have started taking undue advantage of such proceedings, more particularly, in land matters. 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. Such practice needs to be deprecated.

(emphasis supplied)

20. Considering the above legal and factual aspects of the matter, this Court has no hesitation in concluding that respondent No. 4 is not a "person aggrieved" by the sale transaction. The said respondent is a willing party to the Sale Deed and cannot be permitted to take advantage of his own wrong. He, therefore, had no locus standi to file an appeal after an unreasonable period of time, against the mutation entry evidencing the sale transaction.

21. Having considered the above aspects of the matter, the question whether the Collector could have cancelled the entry of sale and directed forfeiture of the land to the State Government, for violation of the provisions of the Fragmentation Act, would now arise for consideration.

22. The nature of the power to be exercised by the Collector under RTS proceedings is clear from subrule (6) of Rule 108 reproduced hereinabove. As already held by this Court, the said power does not extend to directing forfeiture of the land in question. A more important aspect of the matter is: under which proceedings is the Collector empowered to exercise the power conferred by Rule 108(6)? Under this sub-rule the Collector is exercising power under RTS proceedings regarding disputed mutation entries and certainly not under the provisions of the Fragmentation Act. The impugned order of the Collector very clearly reveals that he has come to the conclusion that the sale transaction between the petitioner and respondent No. 4 is hit by the provisions of the Fragmentation Act, and on this ground has directed forfeiture of the land to the State Government.

23. The Fragmentation Act is a self-contained Code that lays down a detailed procedure to be followed by the competent authority in the event that its provisions are found to be violated. It also envisages giving of notice to the person concerned. The circumstances under which the fragment of land shall vest in the State Government is also laid down. It is significant to note in the present case, that no proceedings, whatsoever, under the Fragmentation Act have been initiated against the petitioner. The proceedings initiated by respondent No. 4 are RTS proceedings, under the Gujarat Land Revenue Rules, 1972. In exercise of power under sub-rule (6) of Rule 108 in RTS proceedings, the Collector cannot exercise power under the Fragmentation Act. Being a quasi judicial authority, the scope of exercise of power by the Collector is confined to the extent permitted by sub-Rule (6) of Rule 108. He is not empowered to transgress the limits of the power vested in him under RTS proceedings, as the power to be exercised by him is a statutory power. It may be possible that the Collector was under the mistaken notion that the power he exercises is inherent in his position or designation, as Collector. If it is so, such a notion is an absolutely erroneous one. The Collector cannot, by virtue of his position or designation, exercise power under another enactment when he is dealing with a matter under a different enactment. The position of law in this regard is no longer res integra.

24. In *Evergreen Apartment Co-operative Housing Society v. Special Secretary, Revenue Department, Gujarat State (Supra)*, this Court has held:

12 *****

So the entire inquiry and revisional power has to proceed under the Bombay Land Revenue Rules and not under any enactments like the Bombay Tenancy and Agricultural Lands Act, Urban Land (Ceiling and Regulation) Act or Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It is quite possible that an officer of the Revenue Department may be occupying different capacities under different enactments. That, however, would not empower him to exercise any powers under one enactment while proceeding under another enactment. So far as the proceedings under Rule 108 of the Rules, popularly known as RTS proceedings, are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by competent authorities under special enactments. Independently the Revenue Authorities, as mentioned in Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. Thus on this second ground also the orders of the Collector and the Additional Chief Secretary appear to be beyond their jurisdiction. The Additional Chief Secretary has held that the sale by auction was not consistent with the provisions of Section 27 of the Urban Land (Ceiling and Regulation) Act. Section 27 relates to prohibition of transfer of any urban land with a building thereon. Apart from legal position that Section 27 has been struck down as ultra vires, it is quite obvious that no such question of transferring urban land with a building thereon has ever arisen in the present case. Thus, the order of the revisional authority has proceeded on a misconception of relevant legal provisions also.

(emphasis supplied)

25. The culmination of the above discussion, in light of the judicial pronouncements and reasons stated hereinabove, leads this court to the following conclusions:

1. The proceedings initiated by the vendor, respondent No. 4, after four years of execution of the sale transaction and five years of the registration thereof, suffer from delay, having been instituted after an unreasonably long period of time. As such, the Collector could not have acted upon those proceedings by passing the impugned order.

2. Respondent No. 4, being the vendor of the land in question has no locus standi to challenge the entry of sale, in respect of a transaction to which he was a

willing party, after pocketing the sale consideration. Under these circumstances, respondent No. 4 is not an aggrieved person and cannot be permitted to take undue advantage of his own wrong.

3. The Collector, under sub-rule (6) of Rule 108 is not vested with power to direct forfeiture of the land to the State Government. The direction in the impugned order, to this effect, is beyond the jurisdiction vested in the Collector under Rule 108(6) in R.T.S. Proceedings.

4. The Collector, in exercise of power under Rule 108(6) in RTS proceedings cannot exercise power under the Fragmentation Act, merely by virtue of his position or designation or the fact that he may be acting in different capacities under different enactments. Being a quasi judicial authority, the Collector is bound to exercise power within the limits prescribed by the particular enactment under which he is called upon to adjudicate, and cannot transgress the limits of such statutory power, in a manner that overlaps a different enactment. By passing the impugned order, the Collector has transgressed the scope and ambit of the power conferred by sub-rule (6) of Rule 108 of the Gujarat Land Revenue Rules, 1972, and has erroneously exercised power under the Fragmentation Act, which is not permissible.

5. No proceedings have been initiated against the petitioner under the Fragmentation Act and no notice has been issued to her under this enactment. By holding the sale transaction to be violative of the provisions of the Fragmentation Act and directing forfeiture of the land to the State Government, the petitioner has been seriously prejudiced, as it virtually amounts to setting aside the Sale Deed in RTS proceedings.

26. Considering the above aspects, in the view of this Court, there is considerable merit in the case of the petitioner.

27. Viewed from every angle and for the aforesaid reasons, the impugned order of the Collector dated 29/08/1998 is wholly unsustainable in law. The petition is allowed. The order dated 29/08/1998 passed by the Collector is quashed and set aside. Rule is made absolute. Parties to bear their own costs.