(1996) 10 GUJ CK 0027

In the Gujarat High Court

Shailesh Jadavji Varia APPELLANT

Vs

Sub-registrar and Others RESPONDENT

Date of Decision : 05-10-1996

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 27, 56
Army Act, 1950 — Section 122, 19, 31, 89
Bombay Stamp Act, 1958 — Section 2(f), 3, 30, 31, 32
Constitution of India, 1950 — Article 14, 19, 226
Criminal Procedure Code, 1973 (CrPC) — Section 473
Urban Land (Ceiling and Regulation) Act, 1976 — Section 34

Citation : (1996) 3 GLR 783

Hon'ble Judges : R.M. Doshit, J;R.A. Mehta, J;M.S. Parikh, J;C.K.Thakker, J;B.C. Patel, J

Bench : Full Bench

Judgement

C.K. Thakker, J. (Cav.)

1. All these petitions have been placed before a Larger Bench in view of an order of Reference made by our learned brother N.N. Mathur, J. on March 23, 1995. When the matters were placed for hearing before the learned single Judge, it was contended that the orders passed by different Division Benches were inconsistent and contradictory. There was also discrepancy and disagreement between Full Bench decisions. The learned single Judge felt that there was some conflict between the Full Bench Judgment, "in order to reconcile between two Full Bench Judgments and to have a proper ratio decided to cover a field and also keeping in view of public importance of the issue", it was desirable to refer the matters to a Larger Bench. The Full Bench decisions are Gorva Vibhag Co-Operative Housing Societies Association and Another Vs. State of Gujarat and Others, and H.P. Dave v. Sub-Registrar, Rajkot 1994(2) GLR 1222 (Second Full Bench). The question is what is reasonable time? Is there any outer limit for referring the question of proper stamp duty?

2. Section 32A(1) of the Bombay Stamp Act, 1958 requires the Registering

Officer (when he has reason to believe that the consideration set forth in the instrument does not approximate to the market value of the property) to refer the instrument to the Collector for determining the true market value of the property. No period of limitation is provided by the legislature in Sub-section (1), whereas the same legislature has provided a period of two years (now six years) in Sub-section (4) of the same Section 32A which empowers the Collector to call for any instrument suo motu.

3. The contention of the petitioners is that two years (or six years) must be read as the outer limit of reasonable time for exercise of power u/s 32(1). The rival contention is that the reasonable time depends on the facts and circumstances of each case and no fixed period for exercise of such power can be laid down by judicial pronouncement when even the legislature has thought if fit not to do so.

4. The learned single Judge formulated following two questions for consideration of the Larger Bench:

(1) Whether the Registering Officer u/s 32A(1) or the Collector u/s 32A(4) can exercise the respective powers beyond the period of two years even on facts justifying the delay?

(2) Whether Rule 3(2) and Rule 4(2) of the amended Rules are mandatory in nature and non-compliance vitiates the entire proceedings u/s 32A?

5. It further appears that after the above order was passed and Reference was made on March 23, 1995, the attention of the learned single Judge was drawn to an amendment in Sub-section (4) of Section 32A of the Bombay Stamp Act, 1958 as amended by the Bombay Stamp (Gujarat Amendment) Act, 1994. Though the said amendment was brought in force during the pendency of the Second Full Bench decision, the attention of the Court was never invited to the said amendment and Full Bench was not called upon to express any opinion one way or the other regarding the said provision. The learned single Judge, therefore, thought it appropriate to refer even that question and accordingly by an order dt. April 20, 1995, the following question was referred to a Larger Bench:

(3) Whether the limitation of six years provided u/s 32A(4) of the Bombay Stamp (Gujarat Amendment) Act, 1994 will have effect on the limitation with respect to cases in which notices have been issued or action has been taken prior to the date of the amendment?

6. To appreciate the controversy raised in the present petitions, relevant facts of the first petition, i.e., Spl. C.A. 5253 of 1993 may now be briefly stated.

6.1 This petition is filed by one Shailesh Jadavji Varia of Vadodara. It is his case that he purchased one immovable property situated in the sim of village Gorva, District and Sub-District Vadodara. He presented a document for registration in accordance with the provisions of the Registration Act, 1908 on August 14, 1986 in the office of the Sub-Registrar, Vadodara. The Deputy Collector, Stamp Duty

Valuation Organisation Unit II issued notice dt. January 13, 1992 u/s 32 of the Bombay Stamp Act, 1958 read with Rule 4 of the Bombay Stamp (Determination of the Market Value of the Property) Rules, 1984. It was stated in the said notice that the petitioner was liable to pay stamp duty in accordance with the provisions of Section 30 of the Act. u/s 32A of the Act, market value of the property which is subject-matter of conveyance, requires to be determined and the Deputy Collector, Stamp Duty Valuation, respondent No. 2, after taking into account market value of other properties situated in the said locality was tentatively of the opinion that market value of the property in dispute was much more than what was mentioned in the instrument. The petitioner was, thus liable to pay deficit stamp duty as well as penalty. The petitioner was, therefore, called upon to show cause why deficit stamp duty should not be recovered from him. He was also asked to produce evidence to show that market value of the property shown in the instrument was true and correct. The petitioner was asked to submit his written reply alongwith necessary documents within fifteen days from the receipt of the notice. He was also asked to remain present on the date and time mentioned in the notice if he wanted to say anything further in the matter. It appears that the petitioner neither remained present nor submitted his reply and, hence, second notice was issued on April 23, 1992 asking him to remain present on April 30, 1992, failing which an ex-parte order would be passed against the petitioner presuming that he had nothing to say in the matter. The petitioner submitted his reply and by a communication dt. July 2, 1992, the petitioner was called upon to remain present on July 7, 1992 with necessary evidence in the matter.

6.2. It is the case of the petitioner that without considering the binding decisions of this Court and without hearing the petitioner, by an order dt. March 15, 1993, respondent No. 2 held that the market value of the property in dispute was Rs. 88,900/-. Since the petitioner had paid stamp duty of Rs. 1,920/-, he was directed to pay deficit stamp of Rs. 5,192/- + penalty of Rs. 250/- thus, total amount of Rs. 5,442/-, within fifteen days from the date of the receipt of the order, failing which the said amount would be recovered as arrears of land revenue. It is that order which is challenged in the present petition.

When the matter was placed for hearing a Division Bench passed the following order on May 31, 1993:

Rule. S.O. to 14th June 1993 for hearing of ad interim relief.

Dt. 31-5-1993.

Sd/- Y.B. Bhatt J.

Sd/- D.G. Karia J.

On 14th June, 1993 ad interim relief was granted and the following order was passed:

Rule. By way of ad interim relief the recovery of the amount of deficit stamp duty pursuant to the impugned order is stayed on condition that in case the petitioner loses in the petition, and he is required to pay the amount of deficit stamp duty as per the order, or as it may be directed by this Court, the same shall be paid by the petitioner with 15% interest.

Dt. 14-6-1993.

Sd/- A.P. Ravani J.

Sd/- C.V. Jani J.

7. In other petitions, almost similar notices are issued and identical orders are passed and hence, it is not necessary to give details of those petitions.

8. Before dealing with the contentions raised by the learned Counsel for the petitioners and before answering the questions referred to us, it would be appropriate to refer to the relevant provisions of the Bombay Stamp Act, 1958 (hereinafter ferred to as "the Act") as amended from time to time and the provisions of the Bombay Stamp (Determination of the Market Value of the Property) Rules, 1984 (hereinafter referred to as "the Rules).

9. The Act has been enacted in the year 1958. In the Preamble it is stated that the Act was enacted with a view to consolidate and amend the law relating to Stamp and Stamp Duties in the State of Gujarat. Chapter I is Preliminary in nature and also defines various terms. Chapter II deals with stamp duties and the instruments chargeable with duty, bonds and securities, valuation for duties, mode of payment and by whom such duty is payable. Chapter III enacts law relating to adjudication as to stamps. Chapter IV covers those cases where instruments are not duly stamped. Chapter V provides for allowances for stamps in certain cases. Chapter VI relates to reference and revision. Chapter VII specifies offences and procedure for trying such offences. It also prescribes penalty. Chapter VIII contains supplemental provisions for proper implementation of law.

10. The term "Collector" is defined in Section 2(f) as "the Chief Officer in charge of the revenue administration of a district, and includes any officer whom the State Government may, by notification in the Official Gazette, appoint". "Conveyance" is defined in Clause 2(g) which includes a conveyance on sale and every instrument by which property, whether movable or immovable is transferred inter vivos and which is not otherwise specifically provided for by Schedule I. The definition of the word "instrument" is also inclusive and it includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt. The expression "market value" is defined in Clause (na) as inserted by Gujarat Act 21 of 1982 and it reads thus:

(na) "market value", in relation to any property which is the subject-matter of an instrument means the price which such property would have fetched if sold in open market on the date of execution of such instrument.

11. Sub-section (1) of Section 31 states that when any instrument whether executed or not and whether previously stamped or not, is brought to the Collector to have Collector''s opinion as to the duty with which it is chargeable and pays a fee on such document, the Collector shall determine the duty with which the instrument is chargeable. Sub-section (2) lays down the procedure to be followed by the Collector in adjudicating the question. Section 32 authorises the Collector to issue certificate on the basis of his determination u/s 31. Section 32-A as inserted by the Gujarat Act 21 of 1982, provides for determination of market value of property which is the subject-matter of Conveyance. The said provision is material for our purpose and requires to be quoted in extenso.

32A. (1) If any officer registering under the Registration Act, 1908, an instrument of conveyance, exchange, gift, partition, partnership or settlement or power of attorney or any person referred to in Section 33, before whom such instrument is produced or comes in the performance of his functions, has reason to believe that the consideration set forth therein does not approximate to the market value of the property which is the subject-matter of such instrument, or, as the case may be, the market value of the property which is the subject-matter of such instrument, has not been truly set forth therein, he may after registering the instrument or, as the case may be, performing his functions in respect of such instrument, refer the instrument to the Collector of such district in which either the whole or any part of the property is situated for determining of the true market value of such property and the proper duty payable on the instrument under this section.

(2) On receipt of the instrument under Sub-section (3) of Section 31 or Sub-section (1) of this section, the Collector of the district shall, after giving the parties concerned a reasonable opportunity of being heard, and in accordance with the rules made by the State Government in this behalf, determine the true market value of the property which is the subject-matter of the instrument and the proper duty payable thereon.

(3) Upon such determination, the Collector of the district shall require the party liable to pay the duty, to make payment of such amount as is required to make up the difference between the amount of duty determined under this sub-section and the amount of duty already paid by him and shall also require such party to pay a penalty which shall not be less than such difference and not more than twice the amount of such difference, and on such payment, return the instrument to the officer referred in Sub-section (5) of Section 31 or, as the case may be, Sub-section (1) of this section:

Provided that, no such party shall be required to pay any amount to make up the difference or to pay any penalty under this sub-section if the difference between the amount of the consideration or, as the case may be, the market value as set forth in the instrument and the market value as determined by the Collector of the district does not exceed ten per cent, of the market value determined by the Collector of the district.

(4) The Collector of the district may, suo motu or on receipt of information from any source, within two years from the date of registration of any instrument referred to in Sub-section (1), (not being the instrument upon which an endorsement has been made u/s 32 or the instrument in respect of which the proper duty has been determined by him under Sub-section (3) or an instrument executed before the date of the commencement of the Bombay Stamp (Gujarat Amendment) Act, 1982) call for and examine the instrument for the purpose of satisfying himself as to the correctness of the consideration or of the market value of the property which is the subject-matter of such instrument and the duty payable thereon; and if on such examination, he has reason to believe that the consideration does not approximate to the market value of such property or, as the case may be, market value of such property has not been truly and fully set forth in the instrument, he shall proceed as provided in Sub-sections (2) and (3).

12. We may also take note at this stage that this provision did not find place in the original Act of 1958 but inserted in 1982. It came to be amended again by the Gujarat Amendment Act of 1994. The amended provision now reads as under:

32A, Determination of market value of property which is the subject-matter of conveyance, etc.: (1) Every instrument of conveyance, exchange, gift, certificate of sale, partition, partnership, settlement, power of attorney to sell immovable property when given for consideration or transfer of lease by way of assignment presented for registration under the provisions of Registration Act, 1908 shall be accompanied by a true copy thereof; and if an officer registering such instrument under the aforesaid Act or any person referred to in Section 33 before whom such instrument is produced or comes in the performance of his functions, has reason to believe that the consideration set forth therein does not approximate to the market value of the property which is the subject-matter of such instrument, or as the case may be, the market value of the property which is the subject-matter of such instrument has not been truly set forth therein, he may either before or after registering the instrument or as the case may be, performing his functions in respect of such instrument refer the instrument or true copy thereof to the Collector of such district in which either the whole or any part of the property is situated for determining the true market value of such property and the proper duty payable on the instrument under this Sections.

(2) On receipt of the instrument under Sub-section (3) of Section 31 or instrument or true copy of instrument under Sub-section (1) of this section, the Collector of the district shall, after giving the parties concerned a reasonable opportunity of being heard, and in accordance with the rules made by the State Government in this behalf, determine the true market value of the property which is the subject-matter of the instrument and the proper duty payable

thereon.

(3) Upon such determination, the Collector of the district shall require the party liable to pay the duty, to make payment of such amount as is required to make up the difference between the amount of duty determined under this sub-section and the amount of duty already paid by him and shall also require such party to pay a penalty of two hundred and fifty rupees (or the amount of the proper duty or of the deficient portion thereof whichever is less) and on such payment, return the instrument to the officer referred in Sub-section (3) of Section 3 or, as the case may be, Sub-section (1) of this section:

Provided that, no such party shall be required to pay any amount to make up the difference or to pay any penalty under this sub-section if the difference between the amount of the consideration or, as the case may be, the market value as set forth in the instrument and the market value as determined by the Collector of the district does not exceed ten per cent for the market value determined by the Collector of the district.

(4) The Collector of the district may, suo motu or on receipt of information from any source, within six years from the date of registration of any instrument referred to in Sub-section (1), not being the instrument upon which an endorsement has been made u/s 32 or the instrument in respect of which the proper duty has been determined by him under Sub-section (3) or an instrument executed before the date of the commencement of the Bombay Stamp (Gujarat Amendment) Act, 1982 (Guj. 21 of 1982) call for and examine the instrument for the purpose of satisfying himself as to the correctness of the consideration or of the market value of the property which is the subject-matter of such instrument and the duty payable thereon; and if on such examination, he has reason to believe that the consideration does not approximate to the market value of such property or, as the case may be, market value of such property has not been truly and fully set forth in the instrument, he shall proceed as provided in Sub-sections (2) and (3).

13. Section 32-B covers cases of persons aggrieved by an order of the Collector determining the market value u/s 32 of Section 32-A. It enacts that any person aggrieved may after depositing 75% of the amount of duty with the Collector, by an application presented within 60 days from the date of the order and by fee of Rs. 100/- require the Collector to draw up a statement and refer it to the Chief Controlling Revenue Authority and the Collector shall draw up the statement of the case within 60 days of the receipt of such application and refer it to such authority. The Chief Controlling Revenue Authority has, however, discretion to reduce or dispense with the amount of deposit, if he is of the opinion that the deposit of an amount by the applicant will cause undue hardship to him. The authority will consider the case, decide it and send a copy of the decision to the Collector who shall proceed to assess and charge the duty in conformity with the decision of the Chief Controlling Revenue Authority. The decision of the Chief Controlling Revenue Authority is made final. Section 53 permits the Collector

acting u/s 31, 32-A, 39 or 40, if he feels doubt as to the amount of duty with which instrument is chargeable, to make reference to the Chief Controlling Revenue Authority. In such cases, the authority will consider the case and decide it and the Collector shall proceed to assess and charge duty in conformity with such decision. The Chief Controlling Revenue Authority has also power to refer a case to the High Court in certain circumstances enumerated in Section 54 of the Act. A person aggrieved by the decision of the Chief Revenue Controlling Authority u/s 53 regarding the amount of the duty with which any instrument is chargeable may also request the authority to refer the case to the High Court as provided in Sub-section (1 A) of Section 54 of the Act.

14. u/s 70, the State Government has power to make Rules to carry out generally purposes of the Act. By such Rules, the State Government may prescribe fines not exceeding Rs. 500/- for committing breach thereof. Section 71(1) of the Act provides for publication of Rules in the Official Gazette. Sub-section (2) states that "All Rules published as required by this section shall upon such publication have effect as if enacted by this Act". Section 75 makes a salutary provision that the State Government will translate the Act in the principal vernacular language and sell a copy thereof cheaply.

15. Having seen the relevant provisions of the Act, we may now turn to Rules. As already mentioned, Section 70 of the Act enables the State Government to frame Rules to carry out generally purposes of the Act. Section 32-A deals with the cases of determination of market value of property which may be the subject-matter of conveyance and provides machinery for such determination. It also enables Collector to take such action suo motu. In exercise of powers conferred by Section 70 of the Act read with Section 32-A, the Government of Gujarat framed Rules known as "Bombay Stamp (Determination of Market Value of Property) Rules, 1984". Rule 3 lays down procedure to be followed by Registering Officer under Sub-section (1) of Section 32A, whereas Rule 4 lays down procedure to be followed by the Collector for determining true market value of the property which may be the subject-matter of instrument. Both the Rules are material. They read as under:

3. Statement to be furnished to the Registering Officer: (1) Whenever any instrument is presented to any officer registering under the Registration Act, 1908 the person presenting the instrument for such registration shall along with the instrument furnish a true statement in Form I as well as a certified copy of the valuation report, if any, for the purpose of enabling the Registering Officer to determine whether the consideration set forth in the instrument approximate to the market value of the property which is the subject-matter of such instrument or the market value of the property which is the subject-matter of such instrument has been truly set forth therein, or not.

(2) Where the Registering Officer after taking into consideration the information furnished in the statement and any other information available with him has reason to believe that the consideration set forth in the instrument does not

approximate to the market value of the property which is the subject-matter of such instrument or as the case may be, the market value of the property which is the subject-matter of such instrument, has not been truly set forth therein, he may before making a reference to the Collector under Sub-section (1) of Section 32-A give intimation of his belief to the person concerned.

(3) Where a person to whom intimation is given under Sub-rule (2) offers to the Registering Officer the amount required to make up the proper duty chargeable on the instrument, the Registering Officer shall accept the same and proceed as provided in Section 40 of the Act and where the person concerned does not offer the amount required to make up proper duty on the instrument he shall make a reference to the Collector under Sub-section (1) of Section 32-A.

4. Procedure to be followed by the Collector for determining the true market value of the property which is the subject-matter of the instrument:

(1) On receipt of the instrument under Sub-section (3) of Section 31 or Sub-section (1) of Section 32-A, the Collector of the District where he thinks fit to do so, may for the purpose of his inquiry-

(a) call for any information or record having a bearing, on the question before him from any public office, officer or authority under the Central Government, State Government or any local authority;

(b) examine and record statements from any members of the public, officer or the authority under the Central Government or State Government or any local authority, and

(c) inspect or empower any officer under him to inspect the property after due notice to the parties concerned.

(2) After examining the said information, records and evidence, if any, before him the Collector of the District shall issue a notice showing the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him to every person to whom according to the provisions of Section 30 is liable to pay stamp duty in respect of such instrument requiring such person to submit within 15 days from the date of the service of the notice upon such person, his representation in writing alongwith all the evidence in support of such representation.

(3) The Collector of the District shall after considering the representation, if any, received by him under Sub-rule (2) pass an order determining the true market value and the proper duty payable on the instrument.

16. Manner of service of notice under Rule 4 is provided in Rule 7. Rule 8 declares certain factors which are to be taken into consideration by the Collector for determining market value. Rule 9 makes a penal provision and imposes fine for breach of Rule 3 upon a person presenting an instrument fails to furnish statement as required by Sub-rule (1) or furnishes untrue statement.

17. Like the parent Act, the rules also came to be amended from time to time. By Bombay Stamp (Determination of the Market Value of the Property) Amendment Rules, 1985, Rule 9 was substituted and was re-numbered as Sub-rule (1). Sub-rules (2) and (3) came to be added. Sub-rule (2) incorporated the principles of natural justice and provided for giving of opportunity of being heard to the person liable to pay fine under Sub-rule (1). Sub-rule (3) enabled the authority to recover the amount of fine as arrears of land revenue, if there is failure on the part of the person on whom fine is imposed to pay within a period of thirty days from the date of the receipt of intimation.

18. By the Bombay Stamp (Determination of the Market Value of the Property) Amendment Rules, 1990, Rule 4 was substituted. The said Rule as it stands to day, reads thus:

4.(1) On receipt of the instrument under Sub-section (3) of Section 31 or Sub-section (1) of Section 32-A, the Collector of the District, where he thinks fit to do so, may for the purpose of his inquiry:

(a) call for any information or record having a bearing, on the question before him from any public office, officer or authority under the Central Government, State Government or any local authority;

(b) examine and record statements from any member of the public, officer or the authority under the Central Government or State Government or any local authority, and

(c) inspect or empower any officer under him to inspect the property after due notice to the parties concerned.

(2) After examining the said information, records and evidence, if any, before him the Collector of the District shall issue a notice showing the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him, to every person to whom according to the provisions of Section 30 is liable to pay stamp duty in respect of such instrument requiring such person to submit within 15 days from the date of the service of the notice upon such person, his representation in writing alongwith all the evidence in support of such representation.

(3) The Collector of the District shall after considering the representation, if any, received by him under Sub-rule (2) pass an order determining the true market value and the proper duty payable on the instrument.

19. Further amendment was made in Rule 3 in 1992. We are, however, not concerned in the present reference with that amendment. It is, therefore, not necessary to refer to the said amendment.

20. We have extensively heard Mr. M.C. Bhatt, Mr. R.S. Sanjanwala, Mr. P.B. Majmudar, Mrs. Ketty Mehta and Mr. A.J. Patel, for the petitioners and Mr. S.N. Shelat, Additional Advocate General instructed by Mr. M.R. Raval, for the

respondents.

21. The learned Counsel for the petitioners raised the following contentions:

(1) Power under Sub-section (1) of Section 32-A of the Act must be exercised by registering officer within a reasonable period of three months. In no case, however, such period can exceed two years inasmuch as the Collector exercising revisional jurisdiction under Sub-section (4) has no jurisdiction to go beyond a period of two years. If the Higher authority on whom the competent legislature has conferred suo motu power cannot exercise the said power beyond two years, lower authorities cannot exercise the power to refer the instrument at any time at his sweet will.

(2) While upholding constitutional validity of the Act, the Full Bench of this Court considered relevant provisions as also various circulars issued by the Government and a solemn statement made by the Advocate General at the Bar that the power u/s 32-A(l) would be exercised within a stipulated period. It is not open to the State Government now either to withdraw the said statement or to contend that power u/s 32-A (1) can be exercised at any time.

(3) Even if circulars are in the nature of administrative instructions not having the force of law, they are issued by the State Government in exercise of administrative powers declaring policy of the State Government. It is not open to the State Government to ignore it. Such an action would be arbitrary, unreasonable and violative of Articles 14 and 19 of the Constitution of India.

(4) In Gorva Vibhag Cooperative Housing Society Association (supra) the First Full Bench of this Court held that power u/s 32-A(l) must be exercised within reasonable period of two years. The decision was rendered by M.B. Shah, J. (as he then was). In Spl. C.A. No. 7144 of 1992 and cognate matters decided on 23rd December 1992, a Division Bench presided over by M.B. Shah, J. (as he then was) author of the decision of the First Full Bench held that power u/s 32-A(l) can be exercised latest within a period of two years and not more. Thereafter, it was not open to other Division Bench (R.A. Mehta and R.K. Abichandani, JJ.) to refer the matter to Full Bench for interpretation of the judgment of the First Full Bench. It was equally not open to the Second Full Bench to take a different view than the one taken by the First Full Bench.

(5) If this Court holds that the second Division Bench had power to refer the matter to a Full Bench for interpretation of the decision of the First Full Bench, then also the view taken by the Second Full Bench in Harshad P. Dave (supra) is erroneous, contrary to law and requires to be upset.

(6) Even if it is assumed that reasonable period can be extended in appropriate cases, in the facts and circumstances, no case has been made out by the authorities for extension of time. In 1984, only partial interim relief was granted by this Court. In spite of such relief, the authorities could have proceeded further with inquiry and could have passed appropriate orders in accordance with law,

which was not done. There was default, negligence and carelessness on their part. The authorities cannot be allowed to take undue advantage of their own inaction causing serious prejudice and gross injustice to petitioners.

(7) The function to be exercised by registering officer under Sub-section (1) of Section 32-A is quasi-judicial in nature and not administrative. Hence, before taking any action or passing any order, it was incumbent on his part to comply with principles of natural justice.

(8) Section 32-A of the Act pertains to imposition of stamp duty which is in the nature of tax and not fee. As per settled law, such provisions must be construed strictly in favour of subjects and if two interpretations are possible one which is favourable to subjects must be accepted than the other which may prejudicially affect them.

(9) Non-compliance with the provisions of Section 32-A would result not only in payment of deficit stamp duty but also imposition of penalty. Sub-section (3) of Section 32-A enjoins the Collector to require defaulting party to pay duty as well as penalty. This provision is mandatory in nature. If the provisions of Rules 3 and 4 are held to be directory, a person would be condemned unheard and would be liable to pay deficit stamp duty and penalty without observing principles of natural justice.

(10) The Amendment Act of 1994 cannot have retrospective operation. The amendment relates to a substantive law. All substantive laws are presumed to be prospective unless retrospective effect is given by a competent legislature either expressly or by necessary implication. In absence of such intention, the provisions of Sub-section (4) of Section 32-A cannot apply to pending cases.

22. Mr. S.N. Shelat, on the other hand, supported the order passed by the authorities. He submitted that the contentions raised by the petitioners are not well founded and cannot be upheld for the following reasons:

(1) Constitutional validity of the Act and the Rules has been upheld by the Full Bench and the provisions are held to be intra vires and constitutional.

(2) Circulars issued by the Government are not for general public. They are not policy decisions. They are in the nature of inter-departmental communications. No right flows from such circulars, much less a justiciable right so as to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

(3) Even if it is assumed that circulars lay down administrative guidelines, they cannot curtail or take away the power conferred on statutory authorities by competent legislature. A legislative enactment cannot be challenged on the ground that it is contrary to administrative instructions issued by Government.

(4) The function exercised by Registering Officer under Sub-section (1) of Section 32-A is administrative pure and simple and not quasi-judicial. Principles

of natural justice have no place in exercise of executive functions. It is, therefore, not necessary to issue notice, call for explanation or afford opportunity of hearing by Registering Officer before making reference u/s 32-A(l).

(5) Formation of opinion under Sub-section (1) of Section 32-A of the Act by Registering Officer is on the basis of objective facts before him when he has ''reason to believe'' that consideration set forth in instrument does not approximate market value of the property which is the subject-matter of instrument. Formation of opinion based on objective facts cannot be held arbitrary or irrational.

(6) Provisions of Rules 3 and 4 are directory and not mandatory. Non-compliance thereof would not invalidate or vitiate an action.

(7) According to the First Full Bench, the power u/s 32-A(l) must be exercised within reasonable period. In fixing reasonable period, it is not open to the Court to prescribe any outer limit. No straight-jacket formula can be adopted by a Court of law. It depends on the facts and circumstances of each case and in every case, the Court will have to decide whether the power was exercised within reasonable period.

(8) When the First Full Bench held that the power u/s 32A(1) can be exercised within reasonable period and that such power ordinarily be exercised within two years "unless the facts justifying delay are pointed out", it was not open to a Division Bench to hold that exercise of power beyond two years would be ultra vires. It was, therefore, open to another Division Bench to refer the matter to Full Bench and it was equally open to Full Bench to hold that the power could be exercised within reasonable period, without prescribing maximum or outer time-limit.

(9) When a decision is taken after issuing notice, calling for explanation and affording opportunity of being heard, no objection can be raised against such action. Adjudication may result in payment of deficit stamp duty and penalty. Since the action is in consonance with law, consequences would necessarily ensue.

(10) In present cases, no prejudice is caused to the petitioners inasmuch as even though notices under Rule 4 were issued to show cause why they should not be ordered to pay proper stamp duty in accordance with law, they have neither remained present nor sufficient material supplied and the orders were passed. The orders, therefore, cannot be said to be bad in law.

(11) In earlier petitions, interim relief was granted by this Court. Though ''Jantri'' (Valuation Tables) was one of the important modes for deciding market value of property, the authorities were restrained from taking into account that material. If in these circumstances, the authorities could not decide lacs of cases, it cannot be said that there was inaction, carelessness or negligence on their part.

(12) From the record, it is clearly established that lacs of documents were

accumulated with the respondent authorities. It was, therefore, humanly impossible to dispose of all the cases after the proceedings were finalised. Upholding of contention of the petitioners would result in depriving the authorities of their obligation to act in consonance with law.

(13) Provision of Sub-section (4) of Section 32-A of the Act as amended by 1994 Act is procedural and not substantive. Procedural laws are always retrospective operation and not prospective. Sub-section (4) of Section 32-A, therefore, will apply to all pending cases.

23. Before we deal with the contentions raised by the respective parties, it would be worthwhile to refer to earlier decisions of this Court. Gorva Vibhag Co-Operative Housing Societies Association and Another Vs. State of Gujarat and Others, is the first leading decision of the Full Bench (hereinafter referred to as the ''Gorva'' for the sake of brevity) wherein Constitutional validity of the Act was challenged. The petitioner contended that it was beyond legislative competence of the State Legislature to enact an Act and the Act was, therefore, ultra vires and unconstitutional. The method of valuation of property prescribed under the Act was also unreasonable, arbitrary and irrational. It was also contended that Section 32A(1) conferred arbitrary, uncanalised and uncontrolled power on Registering Officers to initiate action without fixing any time-limit and hence it was liable to be struck down.

24. Considering the relevant provisions of the Act and Rules in the light of various decisions of the Supreme Court, the Full Bench held the Act to be intra vires and Constitutional. The Full Bench also held that the provisions of the Bombay Stamp Act were not repugnant to or inconsistent with the Indian Stamp Act and the State Legislature was competent to enact a law determining basis for valuation. Negativing the contention that the method of valuation of property was arbitrary or unreasonable, the Court observed that the procedure prescribed under the Act and Rules was scientific and rational. They embodied principles to be taken into account for determination of market value. The procedure laid down therein afforded adequate opportunity of hearing at all stages. None of provisions of the Act or Rules could, therefore, be said to be ultra vires or unconstitutional.

25. Regarding time-limit for exercise of power by registering officers, the Court negatives the contention that such powers could be exercised at any time at the sweet will of the officers. Considering the circulars issued by the State Government and the statement made by the learned Advocate General, speaking for the Full Bench, M.B. Shah, J. (as he then was) observed in para 36:

It was also contended that, as no time-limit is prescribed for initiating the action by the registering officer, it gives arbitrary powers to the registering officer to initiate proceedings after lapse of unreasonable time and to harass the concerned person by misusing the provisions contained u/s 32A. In our view, this contention requires to be rejected because it is a settled law that the powers under the statutory provisions are to be exercised within the reasonable period. The reasonable period varies in the facts and circumstances of each case and various provisions of the Act. It should be noted that u/s 32A (4) the Legislature has prescribed maximum period of two years from the date of registration of any instrument for initiating suo motu proceedings by the Collector for examining the instrument for the purpose of satisfying himself as to the correctness of the consideration or the market value of the property which is subject-matter of the conveyance and the duty payable thereon. Therefore, in no set of circumstances the registering officer can exercise his power of referring the instrument to the Collector beyond the reasonable period (under Section 32A). Not only this, the learned Advocate General stated that the Superintendent of Stamps and Inspector General of Registration, Gujarat State, has issued a Circular dated 7th December, 1991 to the effect that the registering officer should issue a notice within one month from the date of presentation of the document for registration for payment of the amount of difference in stamp duty within one month from the date of receipt of the notice. If the difference in stamp duty is not paid he should immediately refer the case to the concerned Deputy Collector (Stamp Duty - Valuation Department). The learned Advocate General further stated that the Deputy Secretary, Revenue Department, has informed that in Rules 3(2), 4(2) and (3) appropriate time-limit ranging from one month to three months would be prescribed. Considering the aforesaid statement made by the learned Advocate General and the amended provisions of the Act, in our view, even prior to issuance of Circular dt. 7th December, 1991 by the Superintendent of Stamps and Inspector General of Registration, Gujarat State, three months period can be considered to be the reasonable period for issuance of notice by the registering officer u/s 32A(1) read with Rule 3, Clause (2) of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984. If the power is exercised beyond that period, then the order can be set aside unless the facts justifying delay are pointed out.

(emphasis supplied)

26. Then came the decision dt. December 23, 1992 of a Division Bench of M.B. Shah J. (as he then was) and D.G. Karia J. in Spl. C.A. No. 7144 of 1992 and cognate matters. Following Gorva (supra) and quoting with approval the observations in para 36 from that judgment extracted hereinabove, the Bench through M.B. Shah, J. (as the then was) observed:

The observation made in the aforesaid judgment that "if the power is exercised beyond that period then the order can be set aside unless facts justifying the delay are pointed out" pertains only to the cases where the registering officer has exercised his powers of issuing a notice after the period of three months and within the period of two years. But there is no question of justifying the delay beyond the period of two years because the maximum period which is prescribed under the Act for suo motu exercise of powers by the Collector u/s 32A(4) is two years. Therefore, in these petitions there is no question of explaining the delay.

Such type of delay in exercise of jurisdiction u/s 32A of the Act is on the face of it unreasonable and initiation of the proceedings on the basis of the said show-cause notice is illegal. Hence, the proceedings initiated on the basis of such notices deserve to be quashed and set aside.

(emphasis supplied)

27. Thus, according to the Division Bench, the observations of the Full Bench in Gorva (supra) must be read to mean that the power must be exercised by Registering Officer between three months and two years. There was, however, no question justifying delay beyond a period of two years inasmuch as the maximum period prescribed for suo motu exercise of power by Collector was two years. Exercise of power beyond two years would ipso facto be unreasonable and ex-facie bad. Explanation of delay would be wholly immaterial and the action must be quashed.

28. Special Civil Application No. 6982 of 1992 and cognate matters came up for hearing before another Division Bench to which one of us was a party (R.A. Mehta, J.). In those cases also notices were issued u/s 32A(1) by Registering Officer after two years. By an order dt. January 25, 1993, the Division Bench quashed all the notices relying upon observations in para 36 in Gorva (supra).

29. In Special Civil Application Nos. 2525 of 1993 and 3058 of 1993, a Division Bench to which R.A. Mehta, J. was a party, was called upon to consider correctness or otherwise of the decision of Division Bench of M.B. Shah, J. (as he then was) and D.G. Karia, J. in Spl. C.A. No. 7144 of 1992. It was argued on behalf of the petitioners that the observations in para 36 in Gorva (supra) were interpreted by the Division Bench to mean that the power to issue notices must be exercised between a period of three months and two years. No justifying reason can be shown if the power is sought to be exercised beyond two years. Considering the scope and applicability of Sub-section (1) of Section 32-A in juxtaposition of suo motu power under Sub-section (4) of Section 32A, the latter Division Bench observed:

The officer registering under the Registration Act, 1908, can refer the instrument only after registration process under that Act is over, and when he has the requisite reason to believe. The authority impounding the instrument u/s 33 is required to refer the instrument u/s 32A(1) when it has the requisite reason to believe only after the functions in respect of such instrument are performed by such authority. If for example, the presiding officer of a Court has such reason to believe in respect of the instrument produced in the proceedings, his function may involve interpretation of the instrument which may be required to be kept with him until the decision is given in the case. It is in the context of such situation that the question of there being reasonable cause of delay arises and the decision of the Full Bench has taken care of these possibilities while observing in paragraph 36 of the judgment that reasonable period varies in the facts and circumstances of each case and various provisions of the Act and further observing that if the power is exercised beyond that period then the order can be set aside unless the facts justifying delay are pointed out.

Therefore, when an authority is required to discharge his functions within reasonable period the attendant facts and circumstances have to be taken into account which may explain the delay. For example, during the period of 1984 to 1991 when the question of validity of the provision was under challenge, lacs of documents had accumulated and the Government had reduced the number of stamp officers because of stay of the operation of the valuation tables (Jantri) and the stamp officers and Government could not effectively work. It is only after the Full Bench judgment that the question of valuation, reason to believe, about under-valuation with the help of valuation tables, could be dealt with. The Full Bench did not examine the causes for delay in those lacs of matters and lay down any absolute proposition of fixed and maximum period of 2 years irrespective of facts. The Full Bench has not laid down that the statutory limit prescribed by Sub-section (4) has to be read as upper time-limit when the functions are exercised u/s 32A(1) or 32A(2) of the Act by concerned authorities.

30. About the decision of the Division Bench in Special Civil Application No. 7144 of 1992, the Court stated:

We are, therefore, with utmost respect, unable to agree with the decision of the Division Bench of this Court rendered on 23-12-1992 in Special Civil Application No. 7144 of 1992 and other cognate matter to the extent that it interprets the observations made in paragraph 36 of the Judgment of the Full Bench holding that they pertain only to the cases where the registering authority has exercised the powers of issuing a notice after the period of 2 years and that there is no question of justifying the delay beyond the period of 2 years because the maximum period which is prescribed under the Act for suo motu exercise of powers by the Collector u/s 32A(4) is 2 years.

31. The Division Bench also noted the circumstances which necessitated reference to a Full Bench, which is clear from the following observations:

We must also mention that this Division Bench of both of us, has also followed the earlier Division Bench and allowed petitions when there was no contest. But when a serious contest is made by the State and we find there is merit in the contention of the State, the matters have to be referred to a larger Bench. In this view of the matter, we would refer these Special Civil Application to a Full Bench for considering the matter in light of the view expressed by us in this order. The parties are directed to file further affidavits, if they so choose to do, within a fortnight from today.

32. In view of the above order, Special Civil Application Nos. 2525 of 1993 and 3058 of 1993 were placed before a Full Bench consisting of R.A. Mehta J., R.K. Abichandani and M.S. Parikh, JJ. (hereinafter referred to as "the Second Full Bench"). The Second Full Bench decided the petition on July 25, 1994. The judgment is reported in Harshadrai P. Dave Vs. Sub-Registrar and Others, ,

(hereinafter referred to as H.P. Dave, for the sake of brevity). It overruled the decision of the Division Bench in Spl. C.A. No. 7144 of 1992 (supra) in which it was observed that in no case, power u/s 32A(1) could be exercised beyond two years. The Second Full Bench observed that the said view was contrary to and in conflict with the view taken by the First Full Bench in Gorva (supra). Speaking for the Bench, R.A. Mehta J. stated:

With great respect, the earlier Division Bench view that there is no question of explaining any delay beyond the period of two years, is not consistent with the reasoning and the ratio of the Full Bench.

33. In view of the aforesaid decision of the Second Full Bench in H.P. Dave (supra), the matters were placed for disposal before the learned single Judge, but as observed by us earlier, the learned single Judge was of the opinion that the orders passed by two Full Bench could not be reconciled and hence, he has referred them to a Larger Bench.

Re: Reasonable time

34. Extensive arguments have been advanced by both the sides in connection with exercise of power by Registering Officer under Sub-section (1) of Section 32-A of the Act. No time-limit is fixed by the legislature as to within what period power under Sub-section (1) of Section 32-A can be exercised. Thus, the statute is silent on the point. Sub-section (4) of Section 32-A, which invests Collector with revisional power, however, prescribes period of two years (now six years) for exercise of suo motu power by him. Contention of the petitioners is that if the Collector who has been invested with revisional power can exercise it within a period of two years, it is inconceivable and absurd that such a power can be exercised by an officer lower in rank than the Collector at his sweet will without there being any outer limit. Such interpretation will make the provision arbitrary, unreasonable and ultra vires. Various decisions were cited by the learned Counsels of both the sides. Some of them are indeed relevant. Let us consider them.

35. The first leading decision on the point is The State of Gujarat Vs. Patil Raghav Natha and Others, . In that case, the Court was concerned with revisional powers of the Commissioner u/s 211 of the Bombay Land Revenue Code, 1879. The petitioner applied to the Collector for grant of permission to convert agricultural land to non-agricultural use u/s 65. Initially, the application was rejected but after remand the Collector granted permission on July 2, 1960. Pursuant to the order, Sanad was issued on July 27, 1960. The Municipal Committee of Rajkot objected to such grant but the objection was overruled. The Municipality approached the Commissioner by filing a revision application u/s 211 which was allowed and the order of the Collector was set aside on October 12, 1961, i.e., after a period of more than one year. The petitioner approached this Court by filing a petition which was accepted and the order passed by the Commissioner was set aside. The State approached the Supreme Court.

36. The question before the Supreme Court was within how much time revisional power u/s 211 could be exercised by revisional authority. The Supreme Court considered the provisions of Section 65 of the Code, material part thereof reads as under:

65. An occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid. But if any occupant wishes to use his holding or any part thereof for any other purpose the Collector''s permission shall in the first place be applied for by the occupant.

The Collector on receipt of such application -

(a) shall send to the applicant a written acknowledgment of its receipt, and

(b) may, after due inquiry, either grant or refuse the permission applied for: Provided that, where the Collector fails to 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; such period shall, if the Collector sends a written acknowledgment within seven days from the date of receipt of the application be reckoned from the date of the acknowledgment but in any other case it shall be reckoned from the date of receipt of the application.

(emphasis supplied)

37. Taking into account the object underlying Section 65 and phraseology used therein, the Court observed:

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.

(emphasis supplied)

38. Thus, in the light of the statutory provisions contained in Section 65 of the Code and the circumstances which were likely to ensue in not passing any order within stipulated time, the Supreme Court observed that revisional power must be exercised within few months. Reading Sections 211 and 65 conjointly, the

Court observed that the period of few months must be treated as reasonable because "after the grant of 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." Thus, in the facts and circumstances of the case, and considering the nature of order sought to be revised, the Apex Court held that such reasonable period must be a period of few months. In no uncertain terms, however, the Supreme Court proceeded to observe that "the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

(emphasis supplied)

39. In Bhagwanji Bavanji Patel v. State of Gujarat and Anr. 1971 GLR 156, a Division Bench of this Court considered the observation of the Supreme Court in Patel Raghav Natha (supra) as laying down a rule that the power u/s 211 of the Code must be exercised within three months. In that case, the revisional power was exercised after seven years. The Court, therefore, held that it was not exercised within reasonable period. The Court, however, made following observations:

Maximum period, it may be able to claim, cannot be more than a year from the date of the Commissioner''s order, and to say that it can do so after any length of time as is sought to be done in this case, viz., after period of seven years or so cannot be called at all reasonable.

(emphasis supplied)

40. In Minish K. Sheth and Others Vs. State of Gujarat and Others, , a single Judge of this Court held that revisional power u/s 34 of the Urban Lands (Ceiling and Regulation) Act, 1976 can be exercised regardless of lapse of time. In Minish Sheth (supra) revisional power was exercised by the State Government after two years. Relying on Patel Raghav Natha (supra), it was contended that the power could not have been exercised beyond few months. Repelling the contention, the Court observed:

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

1. The facts of the case, and

2. The nature of the order sought to be revised.

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

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

41. The Court concluded that simply because the power is sought to be exercised after a period of two years, it does not become unreasonable. Minish Sheth (supra) came to be considered by a Division Bench in Haresh Kantilal Vora v. Competent Authority and Additional Collector, Rajkot and Anr. 1992(2) GLH 424. The Court referred to following observations from a decision of the Division Bench in L.P.A. No. 378 of 1983 decided on December 21, 1993:

What is important is that the power bestowed upon an authority should be exercised in a reasonable manner and within reasonable consideration only from the limited point of view to see as to whether it is a genuine exercise of power. The exercise of power must be reasonable and the reasonableness would in its sweep include the time element also.

42. The Division Bench in Haresh Kantilal (supra) ruled that simply because the power is exercised after a particular period, the exercise of power does not become ipso facto bad in law. Mere lapse of time without anything more would not make exercise of power arbitrary or unreasonable.

43. Our attention was invited to a decision of a single Judge of this Court in M/s. Jailaxmi Estate and Anr. v. State of Gujarat and Ors. (Special Civil Application

Nos. 2353 to 2374 of 1983, decided on September 8, 1993) wherein notices issued by revisional authority were quashed on the ground that they were issued after about 2 years. It was held that initiation of proceedings were bad as they were started after lapse of reasonable time. Mr. Shelat, however, placed on record a xerox copy of the decision of the Supreme Court in State of Gujarat and Ors. v. Jailaxmi Estate and Anr. in Civil Appeal No. 4522-4543 of 1995 decided on November 30, 1995 by which the above decision of this Court was reversed. Obviously, therefore, the decision of this Court has lost its efficacy.

44. In S.B. Gurbaksh Singh Vs. Union of India (UOI) and Others, , the Supreme Court was called upon to consider the ambit and scope of revisional power of Government u/s 20 of the Bengal Finance (Sales Tax) Act, 1941. An argument was advanced that it would be unjust, unreasonable and impracticable if there is no bar of limitation inasmuch as in that case, proceedings can be initiated at any time notwithstanding unreasonable long period. Negativing the contention, their Lordships observed:

Apropos the fourth and the last submission of the appellant, suffice it to say that even assuming that the revisional power cannot be exercised suo motu after an unduly long delay, on the facts of this case it is plain that it was not so done. Within a few months of the passing of the appellate order by the Assistant Commissioner, the Commissioner proceeded to revise and revised the said order. There was no undue or unreasonable delay made by the Commissioner. It may be stated here that an appeal has to be filed by an assessee within the prescribed time and so also a time-limit has been prescribed for the assessee to move in revision. The appellate or the revision filed by an assessee can be exercised in due course. No time-limit has been prescribed for it. It may well be that for an exercise of the suo motu power of revision also, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable rime, however, will depend upon the facts of each case.

(emphasis supplied)

45. Finally, we may refer to a recent decision of the Hon''ble Supreme Court in State of Orissa v. Brindaban Sharma . In Vrundaban Sharma (supra), tenancy rights were conferred by a Tehsildar without obtaining prior confirmation of Board of Revenue which was a condition precedent. When the Board came to know about the action of by Tehsildar, it quashed the order but by that time a period of twenty-seven years was over. It was contended that though no period of limitation was prescribed, the power could have been exercised within reasonable period and by no means, period of twenty-seven years could be said to be reasonable. Considering the provisions of the Act and referring various decisions including Patel Raghav Natha (supra), their Lordships observed:

It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression.Length of time depends on the factual scenario in a given case. Take a case that Patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right? The answers would be no.

(emphasis supplied)

46. From the aforesaid decisions, there is no doubt in our minds that the power under Sub-section (1) of Section 32-A of the Act can be exercised within reasonable period and no outer limit can be fixed for exercise of such power. The decision in Patel Raghav Natha (supra), in our considered opinion, cannot be read as laying down universal rule applicable to all statutes, at all times and under all circumstances without reference to the scheme of the Act, underlying object to grant revisional power and consequences which may ensue therefrom that revisional powers must be exercised within a particular period. Their Lordships also, were conscious and mindful of all such situations which is reflected from the observations to the effect that "the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

47. Now, let us apply the above test to the case on hand. As observed by the Second Full Bench in H.P. Dave (supra), the Registering Officers were deprived of the most important and scientific tool in the nature of Jantri (Valuation Tables) for fixing market value of property because of the interim order passed by this Court. Virtually, therefore, ''their hands and wings were cut off. They were totally handicapped and disabled. It is on record that lacs of documents had accumulated. When the cases were in very large number, they could not be disposed of in view of interim orders. In these circumstances, could it be said that delay in making reference is not explained or is not justified and references are bad on account of so-called delay? In our considered opinion, the reply must be in the negative.

48. In this connection, let us see what the Second Full Bench has to say. States the Full Bench:

The Registering Officers are revenue officers charged with the duty of registration of documents. They are not valuation experts. The valuation tables are the necessary guides to enable the Registering Officer to form a reasonable belief about the prima facie valuation or under-valuation of the property. It is the Statewide valuation organisation which has been set up for making continuous valuation which works out minimum values of properties of different kinds in different localities in all the cities and towns. These minimum values are conservatively estimated market values and are the guiding norms for Registering Officers. The Valuation Organisation Department was established in 1982 at State level and Divisional level and the valuation of properties in different cities, different zones and localities was worked out by different methods and on consideration of all that, the Full Bench, with emphasis, came to the clear conclusion that these minimum values would in effect be conservatively estimated market values and would become the norms that would be given to the Registering Officers and upheld the validity of such valuation method.

However, till that was done by the Full Bench judgment dated May 5, 1992, these valuation tables could not be acted and relied upon and no guidance could be drawn therefrom by the Registering Officers by virtue of the interim injunction of the High Court. The Registering Officers were, thus, deprived of the most important and crucial clue and guide to enable them to form their belief in the matter of thousands of properties and the documents went on accumulating and at the hearing before the earlier Full Bench in 1992, it was mentioned that about 4 lacs documents had accumulated. After the Full Bench judgment, clearing the way of the Registering Officers to avail of the tool and guide of the valuation tables prepared by the State Valuation Organisation, a drive was undertaken to clear lacs of documents which had remained pending and accumulated before the Registering Officers.

49. Dealing with statutes providing time-limit for exercise of power by statutory authorities and referring to a decision of the Supreme Court in Supdt. of Taxes, Dhubri and Others Vs. Onkarmal Nathmal Trust and Others, , the Second Full Bench went on to observe:

In the present case, there is no such statutory provision. It is only the concept of ''reasonable period'' and this reasonable period would naturally vary in the facts and circumstances of each case and it cannot be fixed or rigid. This is not the case of a statutorily fixed period of limitation. Here, it is neither statutory nor fixed and when the reasonable period depends on facts, the Courts cannot be oblivious of facts and the most crucial fact is that the Registering Officers were denied the most important tool and guide and virtually their hands and wings were cut off. Each Registering Officer would be receiving large number of documents everyday and if he is not allowed to take guidance from the valuation tables which are prepared after years of exercise and continuously revised by the experts and Statewide Valuation Organisation, they would naturally be totally handicapped and disabled. One has to look at these valuation tables to really understand and appreciate as to what amount of effort is required for making such valuation tables. We have been shown such samples of Ahmedabad and Baroda. One book of such valuation table would run into hundreds of pages. It would deal with each zone, ward, street and indicate minimum values. These values are arrived at by following scientific methods. If the Registering Officer is to be restrained from looking at it and acting on it, he will have no material to form his reasonable belief in respect of hundreds of documents which are presented to him for registration everyday from different areas and localities. These valuation tables are a kind of reckoner. If the Valuation Officer finds that valuation indicated in the conveyance approximates the valuation shown in the valuation table or if the different is less than 10% or 15% he may have no reason to believe that there is undervaluation and the matter might come to an end. If the difference is large, the Registering Officer will have to look into the particulars submitted by the parties and taking into consideration the relevant considerations mentioned in Rule 8 referred to in para 33 of the Full Bench judgment, he has to form his belief, therefore, the Full Bench held that the principles for determining the maket value can be said to be most reasonable and scientific by any standard.

When the Registering Officers are deprived of the assistance of this scientific and rational guide, they would not be in a position to exercise their power and to form a reasonable belief. It is also to be noted that this exercise of preparing valuation tables and having Statewide Valuation Organisation was undertaken long before this Amendment Act, and introduction of the concept of "market value" for the purpose of stamp duty. The Legislature was fully aware that without this kind of Valuation Organisation and the valuation tables, the Registering Officers would not be in a position to function. Therefore, even before enacting the Amendment Act of 1984, this extensive exercise was undertaken by establishing a State Valuation Organisation and getting from them voluminous valuation tables prepared. It was with this background that Legislature had enacted the provision of Section 32A. In fact, this provision of valuation table was in the interest of citizens to get his document registered expeditiously. It is only in a case where the Registering Officer prima facie finds that the document is under-valued, he only forms a reasonable belief and does not adjudicate or finally decide anything. He has only to refer an instrument to the Collector who will decide the same according to law and the principles laid down in Rule 8 and the Full Bench judgment in Gorva case (supra), but when these valuation tables and circulars could not be acted upon, there was virtually freezing of the department and in these circumstances, when such injunction was in operation for about eight years from 1984 to 1992, it cannot be said that when the Full Bench referred to the provision of Section 32A(4) regarding two years limitation of the power of Collector, it had rendered lacs of documents pending with the Registering Officers immune from any consideration by the Registering Officers or by any authority. The Full Bench has carefully and cautiously not prescribed two years as the period of limitation or as fixed and rigid period as reasonable period.

50. The Second Full Bench also considered the contention raised before us that if no time-limit is prescribed for exercise of power, it would be open to the authority to exercise the said power at its sweet will after ten, twenty or thirty years. The Bench negatived the contention by stating:

The learned Counsel for the petitioners submitted that if no time-limit is prescribed, the authority may exercise power after lapse of several years and it can be exercised after 10, 20 or 30 years and there will be a hanging sword over the head of every citizen executing a document. There is no basis for this argument. The earlier Full Bench has clearly laid down that the power has to be exercised within a reasonable period and, therefore, if the power is exercised beyond reasonable period, the orders can be set aside. What is "reasonable period" would depend upon the facts and circumstances of each case. If a delay of few months cannot be explained, it would be beyond reasonable period. If a delay of years can be explained and justified, it would be "within reasonable period". When the power is exercised "within reasonable period", it cannot be successfully attacked When this power of reasonableness is read into the provision, the provision does not become unreasonable or arbitrary.

(emphasis supplied)

51. With respect, we are in whole-hearted agreement with the above observations and approve them. To us, the Second Full Bench in H.P. Dave (supra), correctly interpreted and applied the First Full Bench decision in Gorva (supra) and there is no conflict between two Full Bench decisions. We are also of the view that even if there was any doubt due to a decision of the Division Bench subsequent to the First Full Bench in Gorva (supra), it was rightly cleared by the Second Full Bench in H.P. Dave (supra), and the decision of the Division Bench was rightly overruled.

52. We emphasise and re-emphasise that if the power is exercised within reasonable period, it cannot be attacked. In our opinion, when the power is exercised within reasonable time, exercise of power cannot be held to be arbitrary or unreasonable.

53. We unhesitatingly hold that in the facts and circumstances of the case, delay caused in making references has been fully explained and references cannot be rejected on the ground that the power is not exercised within reasonable period. The first contention, therefore, fails and is hereby rejected.

Re: Interpretation of First Full Bench decision by a Division Bench in subsequent cases

54. In our opinion, the first Full Bench in Gorva (supra) correctly decided that the power under Sub-section (1) of Section 32A should be exercised within reasonable time. In our view, the Full Bench was also right in holding that ordinarily, such power must be exercised between three months and two years. But the facts and circumstances justifying delay can be shown or exhibited to satisfy the Court that the power could not be exercised within the said period. According to us, the Second Full Bench in H.P. Dave (supra) rightly held that the length of reasonable period cannot be fixed as it would depend upon the facts and circumstances of each case. The Second Full Bench, therefore, in our considered view, rightly over-ruled the Division Bench judgment in Special Civil

Application No. 7144 of 1992 and cognate matters wherein it was held that outer limit of exercise of revisional power would be two years and if the power is exercised beyond that period, exercise of power per se will be bad and it will not be open to show the circumstances as to why revisional power could not be exercised within that period.

55. According to us, the First Full Bench has not laid down such a rule of universal application in Gorva (supra) and it was not open to a Division Bench to read or interprete the decision of the Full Bench as laying down a rigid rule applicable to all cases in all situations. We must frankly admit that we are not at all impressed by the argument and could not persuade ourselves that since a subsequent Division Bench judgment was also delivered by the author of the First Full Bench decision, the Division Bench judgment could be said to be of the same efficacy and could not have been overruled by a Bench of three Judges. In our opinion, a decision of a Division Bench remains to be a decision of a Division Bench for all purposes. To us, the view of the Division Bench was contrary to and inconsistent with the view of the First Full Bench and, therefore, it could be overruled by the Second Full Bench. This contention, therefore, also has no merit and is, therefore, rejected.

Re: Effect of High Court''s earlier stay order

56. Both the Full Benches observed that because of interim relief granted by this Court earlier, the officers were deprived of vital, scientific and most material document in the form of Jantri (Valuation Tables) for the purpose of prima facie deciding market value of the property. In these circumstances, the orders of Reference could not be made. It cannot, therefore, be said that there was either inaction or negligence or carelessness on their part or that they were responsible for delay. It is also proved that due to extraordinary situation arisen because of the interim orders, lacs of documents had accumulated over years and delay in making Reference can be said to be sufficiently explained and justified. Most eloquent testimony of the great utility of the Valuation Tables (Jantri) is proved from the fact that with the help of the Tables nearly 3,75,000 of the 4,00,000 pending documents could be released within few months after the stay was vacated. Second Full Bench was, therefore, right in holding that References cannot be held to be bad on account of so-called delay.

Re: Government Circulars

57. Circulars issued by the Government are in the nature of inter-departmental communications. Moreover, they do not lay down any rule in absolute term that no proceeding can be initiated against any person after a particular period of time. In our opinion, submission of Mr. Shelat, is well founded that when statute does not prescribe any limitation no such limitation can be fixed even by framing a rule much less by issuing a circular to that effect.

58. In Purshottam Lal Dhawan Vs. Dewan Chaman Lal and Another, , dealing with powers of the Custodian-General to call for record of any proceeding in

which the Custodian has passed order for satisfying himself as to the legality and propriety of such order u/s 27 of the Administration of the Evaquee Property Act, 1950, the Supreme Court held that such power could be exercised at any time uncontrolled by any outer limit. Rule 31(5) of the Administration of Evacuee Property (Central) Rules, 1950, however, provided a period of sixty days for exercise of revisional power. The Supreme Court held that in absence of specific provision in the Act, the Central Government could not make a rule and impose time fetter on the power of the Custodian-General. The revisional power should not be exercised arbitrarily but it is essential for the Custodian-General to consider whethei in the facts and circumstances of a particular case, he should entertain a revision beyond the period of sixty days.

59. The Court stated:

Section 27 of the Act confers a plenary power of revision on the Custodian-General and it empowers him to exercise his revisional powers either suo motu or on application made in that behalf at any time. The phrase "at any time" indicates that the power of the Custodian-General is uncontrolled by any time factor, but only by the scope of the Act within which he functions. The Central Government cannot obviously make a rule unless Section 56 of the Act confers on it an express power to impose a time fetter on the Custodian-General''s power. We do not find any such power conferred on the Central Government u/s 56 of the Act. So the rule can only be read consistent with the power conferred on the Custodian-General u/s 27 of the Act.

(emphasis supplied)

60. A converse case came up before the Apex Court very recently. In Major Radha Krishan Vs. Union of India and Others, the appellant was a permanent Commissioned Officer of the Indian Army holding the rank of Major. He was served with a notice calling upon him to show cause why his services should not be terminated u/s 19 of the Army Act, 1950 read with Rule 14 of the Army Rules, 1954 for misconduct said to have been committed by him during his tenure as Officer Incharge of the Military Farm, Jaipur. In para 4 of the notice, it was stated -

And whereas the Chief of the Army Staff is further satisfied that your trial for the above misconduct is impracticable having become time-barred by the time the Court of inquiry was finalised and he is of the opinion that your further retention in service is undersirable.

61. Section 19 of the Act enabled the Central Government to dismiss or remove any person from service subject to the provisions of the Act, Rules and Regulations. Section 122 prescribed the period of limitation. It read as under:

122. (1) Except as provided by Sub-section (2), no trial by Court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years from the date of such offence.

(2) The provisions of Sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in Section 89.

(3) In the computation of the period of time mentioned in Sub-section (1), any time spent by such person as a Prisoner of War, or in enemy territory, or in evading arrest after the commission of the offence shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.

62. Rule 14 read thus:

14. Terminal of service by the Central Government on account of misconduct: (1) When it is proposed to terminate the service of an officer u/s 19 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in Sub-rule (2) against such action:

Provided that this Sub-rule shall not apply -

(a) when the service is terminated on the ground of conduct which has led to his conviction by a criminal Court; or

(b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer''s misconduct the Central Government, or the Chief of the Army Staff is satisfied that the trial of the officer by a Court-martial is inexpedient or impracticable, but is of the opinion that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, the explanation.

63. It was uged by the appellant that Section 122 envisaged that the proceedings could not be commenced after the expiry of three years from the date of the alleged offence. Since notice was issued after a period of 7 years, the proceedings were time-barred. The authorities, on the other hand, relied upon Rule 14 of the Rules contending that Rule 14 can be pressed into service even after the period of limitation if the authority is satisfied that the trial of the officer by the Court-martial was inexpedient or impracticable. The proceedings, therefore, could validly be initiated.

64. A single Judge of the High Court held that the proceedings were barred by limitation and they could not be saved under Rule 14(2). The Division Bench, however, reversed the decision of the single Judge. The appellant approached the Supreme Court.

65. Allowing the appeal and setting aside the order passed by the Division Bench and restoring that of the learned single Judge, the Supreme Court held that the authorities could not have resorted to Rule 14. Provisions of Rule 14(2) could be invoked only within the period of limitation. The Court observed:

So far as period of limitation of trials by Court-marital is concerned Section 122 of the Act is a complete Code in itself for not only it provides in its Sub-section (1) the period of limitation for such trials but specifies in Sub-section (2) thereof the offences in respect of which the limitation clause would not apply. Since the terms of the above section is absolute and no provision has been made under the Act for extension of time - like Section 473, Criminal Procedure Code - it is obvious that any trial commenced after the period of limitation will be patently illegal. Such a provision of limitation prescribed under the Act cannot be overridden or circumvented by an administrative act, done in exercise of powers conferred under a Rule. Mr. Ramachandran was, therefore, fully justified in urging that power under Rule 14 of the Army Rules could not be exercised in a manner which would get over the bar of limitation laid down in the Act and that if Rule 14 was to be interpreted to give such power it would clearly be ultra vires.

(emphasis supplied)

66. Hence, even if it is assumed for the sake of argument that Government Circulars prescribed time-limit and that they are absolute, then also, they must be held to be inconsistent with the provisions of Section 32A(1) of the Act and cannot curtail the power of Registering Officer invested by the Legislature. Likewise, the petitioners cannot contend that as per the statement of the learned Advocate General in Gorva (supra), power could not be exercised beyond a particular period. A statement or concession cannot affect legal position. By this argument, in substance and in reality, the petitioners want to read an enactment of a competent legislature in conformity with Government Circulars and statement of Advocate General. With respect, this cannot be done. As per settled law, resolution and circulars must be in conformity with a statute and not vice versa.

67. We are equally not prepared to uphold the contention of the petitioners that but for Circulars and or statement of the learned Advocate General in Gorva (supra), the provision would have held ultra vires. Similar provisions have been held intra vires and Constitutional by the Apex Court by introducing an element of reasonableness of period therein. It is ruled that when no period of limitation is prescribed, the power must be exercised within reasonable period and length of reasonable period would depend upon the facts and circumstances of each case.

68. Again, when no period of limitation is prescribed, a Court of law would be loathe to read an element of limitation the effect of which would be to prevent a statutory authority to recover tax, fee or other dues from a person who is otherwise liable to pay thereby depriving a public Exchequer of its legitimate

claims.

69. In Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others, , the subject-matter of challenge was Rule 12 of the Medicinal Toilet Preparation (Excise Duty) Rules, 1956 which did not provide any period of limitation for recovery of duty. The Court held that the Rule was not unreasonable. The parent Act created liability to pay duty and the Rules empowered the authorised officer to recover such duty. It was contended that since Rule 12 did not provide any period of limitation for the recovery of duty it was ultra vires.

70. Negativing the contention the Court stated:

We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice of demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case.

(emphasis supplied)

Re: Provisions of Rules 3 and 4: Whether mandatory

Submission:

71. It was strenuously argued on behalf of the petitioners that provisions of Sub-section (2) of Section 32-A of the Act and Rules 3 and 4 of the Rules must be held to be mandatory. It was submitted that since Rule 3 contemplates making of reference by Registering Officer only in those cases where person concerned does not offer the amount required to make up proper duty on the instrument, it is incumbent on the part of Registering Officer to issue notice and to afford opportunity to such person by calling upon him to make deficit payment. Such provision which is in consonance with the principles of natural justice and provides opportunity to the person to make payment must be held to be obligatory and non-compliance thereof must vitiate the action. Likewise, provisions of Rule 4 which enjoin the Collector to issue notice and to give opportunity of hearing before adjudicating the lis and before passing an order against the person concerned must be held to be mandatory. Such reading would be in consonance with the provisions of Sub-section (3) of Section 32-A which mandates that upon determination regarding proper payment of stamp duty, the

Collector shall require the party to pay not only the deficit stamp duty but also penalty which shall not be less than a particular amount. True it is that the amount of penalty is not substantially high. But penalty is after all penalty. It is a punitive act. It casts stigma on a person. It can be imposed only when a person is held guilty of committing breach of law. A note to that effect will remain on record. As per settled law, such action cannot be taken against any person unless he has been given a notice to show cause against the proposed action, his explanation is sought and he is afforded opportunity of hearing. Hence, even in absence of a provision regarding observance of natural justice, the Court would read such a requirement as part of natural justice.

72. The question, therefore, is whether the provisions of Sub-sections (2) and (3) of Section 32A of the Act and Rules 3 and 4 of the Rules are directory or mandatory. Legal position:

73. A number of decisions have been cited at the Bar by both the sides. We do not intend to burden our order by referring to all those decisions. We may, however, observe that the following principles appear to be well settled:

The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially. (Maxwell on Interpretation of Statutes, Eleventh Edition, at p. 364).

74. In Craies'' Statute Law, (Seventh edition at p. 250) it is stated:

The question whether the provisions in a statute are directory or imperative has frequently arisen in this country, but it has been said that no general rule can be laid down and that in every case the object of the statute must be looked at.... When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in respect of this duty would work serious general inconvenience of injustice to persons who have no control over the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable not affecting the validity of acts done.

75. In Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, , the Supreme Court stated:

Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.

76. In the leading decision in Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur, speaking for the majority, Vanchoo, J. (as he then was) observed:

The question whether a particular provision of a statute which on the face of it appears mandatory - inasmuch as it uses the word "shall" as in the present case - or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

77. In The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya, , Subba Rao J. (as he then was) referred to relevant Rules of interpretation thus:

The relevant Rules of interpretation may be briefly stated thus: When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.

78. In Dalchand Vs. Municipal Corporation, Bhopal and Another, holding the provisions of Rule 9(j) of the Prevention of Food Adulteration Rules as directory, the Supreme Court observed:

There are no ready tests or invariable formula to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute. It is as well to realise that every prescription of a period within which an act must be done, is not the prescription of a period of limitation with painful consequences if the act is not done within that period.

79. In this connection, it may be profitable to refer to a recent decision of the Hon''ble Supreme Court in State Bank of Patiala and others Vs. S.K. Sharma, . In that case, the respondent was working as a Branch Manager of the appellant Bank. Departmental inquiry was instituted in connection with irregularities said to have been committed by him. He was found guilty and punished. That action was challenged inter alia, on the ground of violation of natural justice. It was contended that preliminary inquiry was instituted against the respondent before holding regular departmental inquiry. Statements of some officers were recorded at preliminary inquiry but the copies thereof were not supplied to the delinquent. Similarly, copies of some of the documents were not given. At the time of regular inquiry, however, delinquent was permitted to peruse the statements recorded at the preliminary inquiry as also the documents. The question before the Hon''ble Supreme Court was as to whether non-supply of statements and documents vitiated the order as violative of the principles of natural justice. Relying on several decisions, the Court observed that a provision may be substantive or procedural. If the provision is of a substantive nature, normally, it has to be complied with strictly. But if it is a procedural one, strict compliance need not be insisted upon and substantial compliance may be held sufficient. In case of mandatory provision, if it is procedural, non-compliance thereof will not ipso facto vitiate the action. The rest in such cases is to see whether prejudice has been caused to the person who makes complaint of non-compliance. It was indicated that whenever penalty is imposed on an employee consequent upon an inquiry in violation of rules, regulations or statutory provisions governing such inquiry it may not be set aside automatically. Before setting aside the order, the Court should inquire and ascertain whether the provision said to have been violated is substantive or merely procedural. Violation of any and every procedural provision does not automatically vitiate the action and the complaint of violation thereof has to be examined from the point of view of prejudice.

80. The Court then laid down the following principles:

(1) Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available.

(2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available.

(3) In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available. In such cases, complaint/

objection in this score have to be judged on the touchstone of prejudice, as explained later in this judgment. In other words, the test is: All things taken together whether the delinquent officer/employee had or did not have a fair hearing.

We may clarify that which provision falls in which of the aforesaid categories is a matter to be decided in each case having regard to the nature and character of the relevant provision,

(emphasis supplied)

Application of law

81. Applying the above well settled principles to instant cases, we are of the opinion that what the Act and the Rules contemplate is to afford opportunity of hearing to person concerned before a final decision is taken by the Collector that he has not paid sufficient stamp duty. It is not disputed, and in our opinion, cannot be disputed that a decision that a person has or has not paid sufficient stamp duty involves lis, and it cannot be arrived at before notice is issued, explanation is sought and hearing is afforded to the party concerned. Apart from Rule 4, the parent Act itself provides for observance of natural justice by the Collector. Sub-section (2) of Section 32A in no uncertain terms provides that on receipt of instrument under Sub-section (3) of Section 31 or Sub-section (1) of Section 32A, the Collector shall afford reasonable opportunity of being heard to the party concerned in accordance with the Rules framed by the State Government and only then, he can determine the true market value of the property and proper duty payable on the instrument. In our opinion, therefore, Sub-section (2) of Section 32A as well as Rule 4(2) of the Rules in so far as they provide for the fundamental requirement of affording an opportunity of hearing and observance of natural justice must be held to be mandatory and we hold accordingly. When such opportunity is given, it necessarily includes an opportunity to ask for further and better particulars on the basis of the notice. However, every word and every part of Rule 4 cannot be said to be mandatory and non-compliance thereof does not ipso facto vitiate the decision.

82. When no notice under Rule 4 is issued or served, the order will fall, leaving the Collector free to proceed afresh in accordance with law, to answer and decide the Reference made to him. If the notice is defective, the matter can proceed from that stage by curing the defect, provided the defect was objected to and not waived. If the objection is not taken before the authority, it cannot be taken for the first time in a writ petition.

83. Rule 3 of the Rules, however, deals with a totally different situation. It merely prescribes procedure to be followed by the Registering Officer for making the Reference to the Collector, if he has reason to believe that the consideration set forth in an instrument does not approximate value of the property which is the subject-matter of the instrument. As already observed by us, in making a Reference, the function performed by the Registering Officer is administrative,

pure and simple. He is not exercising judicial or quasi-judicial power. In fact, he has no power to adjudicate a lis or decide whether proper stamp duty is paid.

84. The matter can be looked at from a different angle also. The parent Act (Sub-section (1) of Section 32A) does not provide for issuance of notice and opportunity of hearing by the Registering Officer before a Reference is made to the Collector. Hence, even if Rule 3 provides for notice or opportunity of hearing this Court will not read the provision as mandatory or obligatory. Ultimately, Rule 3 is in the nature of delegated, subordinate or child legislation. A Court of law will interpret and read subordinate legislation in conformity with the primary legislation. Reading of Rule 3 in its proper perspective leaves no room of doubt that it is directory and not mandatory particularly when the function of the Registering Officer is held to be administrative and executive. In our view, therefore, failure to give intimation to a person under Rule 3 cannot vitiate the action taken by the Registering Officer. Re: Nature of function

85. The Second Full Bench in H.P. Dave (supra), held that the Registering Officer is not exercising quasi-judicial function while exercising power under Sub-section (1) of Section 32A and in making Reference to Collector. It is the Collecor who adjudicates lis and thus exercises quasi-judicial power. It is the Collector who adjudicates the dispute and resolves lis between the parties. The Collector, therefore, exercises quasi-judicial powers and, hence, he has to follow the principles of natural justice and fair play.

86. Our attention was, however, drawn to a recent decision of the Hon''ble Supreme Court in State of Punjab and Others Vs. Mohabir Singh etc. etc., . In that case, certain guidelines were issued by the State of Punjab under the Stamp Act, 1899 as amended by the Punjab Stamp Act, 1982. They provided Sub-Registrar to act quasi-judicially while exercising power u/s 47-A of the Punjab Act, which laid down manner of valuation of instrument. Dealing with the guidelines the Hon''ble Supreme Court observed:

The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alert him regarding the value. It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be predetermined. It would depend on prevailing prices in the locality in which the land covered by the instrument is situated. It will be only on objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under Sub-section (4) of Section 47-A. It would thus be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise his quasi-judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself, before registering the document, whether the true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making Reference under Sub-section (1) of Section 47-A, he registers the document. Thereafter, he should make a Reference to the Collector for action under Sub-sections (2) and (3) of Section 47-A. Accordingly, we hold that the offending instructions are not consistent with Sub-section (1) of Section 47-A. It would, therefore, be open to the State Government to revise its guidelines and issue proper directions consistent with the law.

87. Instead of supporting the contention of the petitioners, in our opinion, the decision supports the argument of the respondents that the Registering Officer while making Reference u/s 32A(1) cannot be said to be acting quasi-judicially. His limited jurisdiction is to make Reference. There is no lis at that stage. Before making a Reference, therefore, Registering Officer is not bound to issue notice, call for any explanation from the party or afford opportunity of hearing. Under other statutes also, such power of making Reference is held to be administrative or executive, e.g., Power to make Reference under the Industrial Disputes Act, 1947. Vide State of Madras Vs. C.P. Sarathy and Another, ; Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, and Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, .

Re: Observance of natural justice

88. It was strenuously argued that before making Reference to the Collector, the Registering Officer must comply with the principles of natural justice and fair play. As observed by us earlier, in making Reference, the Registering Officer is not performing any quasi-judicial function. The act of Registering Officer under Sub-section (1) of Section 32A read with Rule 3 is administrative and executive. He has no power to adjudicate or decide any controversy. In fact, there is no lis between the parties. These provisions cannot be put on par with Sub-section (4) of Section 32A read with Rule 4. The question of observance of the principles of natural justice, therefore, at the stage of making Reference does not arise.

89. In this connection, it would be profitable to compare the phraseology used by the rule making authority in Rules 3 and 4. The difference is eloquent and significant. Whereas Rule 4 provides for issuance of notice, Rule 3 merely speaks of giving of intimation. It neither envisages issuance of notice nor calling for explanation nor affording opportunity of hearing. "Giving of intimation " in our considered opinion, cannot be equated with "issuing notice", "calling for explanation " or "affording opportunity of hearing. " Even with regard to intimation, Sub-rule (2) merely enables the Registering Officer to intimate the person before making a Reference to the Collector about his ''reason to believe that the consideration set forth in the instrument does not approximate the market value of the property''. The rule making authority has advisedly used the

expression "may" and not "shall" for this enabling provision. To us, power of making Reference flows from the parent Act (Sub-section (1) of Section 32A) and not from the subordinate legislation (Sub-rule (2) of Rule 3). Likewise, the condition precedent or jurisdictional fact for exercise of power is not ''giving of intimation'', but ''reason to believe''. If the competent legislature has invested the Registering Officer with power to make Reference when he has "reason to believe that the consideration set forth in the instrument does not approximate to the market value of the property which is the subject-matter of such instrument", he cannot be deprived of that power by rule making authority on the ground that he has not intimated the person concerned about his reason to believe. We, therefore, fail to appreciate how Reference made by the Registering Officer in exercise of power u/s 32A(1) can be held to be illegal or unlawful or proceedings taken pursuant to such Reference as without jurisdiction merely on the ground that intimation of such reference as provided in Rule 3(2) has not been given to the person concerned. The contention, therefore, has no merit and is rejected.

90. There is still another facet of the matter, which cannot be lost sight of. It is the contention of the respondents which is not controverted by the petitioners that after the Reference was made by the Registering Officer to Collector, the Collector has issued notices to the petitioners. It is asserted by the authorities that in spite of such notices, none of the petitioners appeared before the Collector and shown readiness or willingness to pay the requisite amount of stamp duty. In this situation, Mr. Shelat is right in submitting that when notices were issued by the Collector before adjudication was made and in spite of notices being issued, none of the petitioners appeared, it does not lie in their mouth that they were not intimated by the Registering Officer as required by Rule 3 and the proceedings were, therefore, vitiated. In our view, the authorities are right in submitting that no prejudice can be said to have been caused to any of the petitioners by the Registering Officer and the orders passed by the Collector after notices were issued and opportunity of hearing was afforded by the Collector, cannot be set aside.

91. Moreover, the petitioners have invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution. It is well settled that this power can be exercised ex debito justitie, i.e., in the larger interest of justice. In all these cases, even after notices were issued by Collector, neither the petitioners have appeared before him nor they have made payment. According to us, therefore, these are not fit cases to exercise our prerogative powers in their favour. Re: Penally provision

92. Sub-section (3) of Section 32-A, no doubt, contains penalty. We are not unmindful that the provision is penal and punitive and casts stigma on the person concerned. At the same time, however, this Court cannot be oblivious of the fact that such order can be made after issuance of notice, calling upon the defaulting party to make payment of requisite stamp duty and after complying

with the principles of natural justice. If, after following the provisions of Sub-section (2) of Section 32-A read with Rule 4 of the Rules, penalty is imposed, by no stretch of imagination, it can be contended that no penalty could be imposed on the defaulter. When notice is issued, he can pay the deficit duty immediately at the first opportunity so as to avoid penalty. It is also open to the party sought to be affected thereby to satisfy the Collector that the stamp requires to be affixed on the instrument has already been affixed by him and notice was, therefore, required to be revoked and/or withdrawn. If the Collector is satisfied, he may withdraw and/or revoke the notice and the matter will come to an end. There is no question thereafter to invoke Sub-section (3) of Section 32-A. It is only on failure on the part of the person to appear and/ or to satisfy the Collector that the latter will pass an appropriate order determining the amount of deficit stamp duty and it is upon such determination that the Collector will require such party to pay requisite stamp duty and also penalty. Thus, the said action can be said to be strictly in confirmity with law after complying with the statutory provisions and after observing natural justice and no grievance can be made by the defaulter. In our considered opinion, it cannot be successfully argued that the provisions of Sub-section (3) of Section 32A confer blanket, arbitrary or unreasonable power on Collector and that the provisions should be regarded as directory. The submission of the petitioners, therefore, requires to be rejected.

Re: Retrospective Operation of the Amendment Act of 1994

93. It is not disputed by and between the parties that in none of the cases before us, notices have been issued or orders passed after the Bombay Stamp Act, 1958 was amended by the Amendment Act of 1994. In view of this admitted position, we do not intend to express opinion whether the Amendment Act of 1994 is having retrospective operation. We also do not propose to decide the question as to whether the amendment relates to the field of substantive law or is merely procedural.

94. For the reasons aforesaid, our answers to the questions referred to us by the learned single Judge are as under:

Question No. 1:

First part of Question No. 1 is replied in the affirmative, namely, the Registering Officer under Sub-section (1) of Section 32A can exercise powers beyond two years on facts justifying delay.

We express no opinion on the second part of Question No. 1, namely, whether the Collector can suo motu exercise power under Sub-section (4) of Section 32A beyond two years (or six years).

Question No. 2:

Rule 3(2) is directory and non-compliance thereof will not vitiate the proceedings.

Rule 4(2) insofar as it requires giving reasonable opportunity of hearing before deciding the question of payment of proper stamp duty on an instrument is mandatory and non-compliance thereof will vitiate the order but the Collector can proceed afresh in accordance with law to decide and answer the Reference made to him.

Question No. 3:

We express no opinion whether Sub-section (4) of Section 32A as amended by the Bombay Stamp (Gujarat Amendment) Act, 1994 has retrospective operation.

We also express no opinion whether the said provision is substantive in nature or merely procedural. No such question arises in present cases.

Reference is accordingly disposed of. The office is now directed to place all these matters before the learned single Judge for disposal in accordance with law.

