

(2020) 08 GUJ CK 0301

In the Gujarat High Court

Case No : R/Special Civil Application No. 7543 Of 2020

Somabhai Manyabhai Bhoys

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 20-08-2020

Acts Referred:

Gujarat Land Revenue Rules, 1972 — Section 106, 106(4), 107, 108, 108(6)
Bombay Land Revenue Code, 1879 — Section 73(A), 73AA, 79A, 135(d), 135D(2)
Gujarat Prevention Of Fragmentation And Consolidation Of Holdings Act, 1947 —
Section 9, 31

Citation : (2020) 08 GUJ CK 0301

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Mayur Rajguru, Vedant J Rajguru, Kanva Antani, PK Shukla

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Rule returnable forthwith. With the consent of learned advocates appearing for the respective parties, taken up for final hearing today.

2. This petition has been filed by the petitioner with a prayer to quash and set aside the order dated 04.03.2020 passed by the Special Secretary (Appeals), Revenue Department and the order dated 31.07.2018 passed by the District Collector-Dang.

3. The facts in brief are as under:

3.1 It is the case of the petitioner that he is a tribal. The petitioner further states that respondents Nos. 4 to 12 also hail from the tribal community and are heirs of Manjubhai Lahanubhai Pawar, who died on 01.12.1996. According to the petitioner, Manjubhai Pawar bequeathed the property, namely, land having restricted tenure bearing old survey No. 145/2 to the petitioner by a registered Will dated 25.07.1995. The Will was registered with the office of the Sub-

Registrar, Dangs-Ahwa. On the basis of the Will, the agricultural land was mutated in the revenue records in the name of the petitioner vide Mutation Entry No. 288 on 16.02.1998. The Circle Officer certified the mutation entry.

3.2 It appears that the respondents Nos. 4 to 12 addressed a letter on 02.04.2018 to the District Collector alleging that the Will by their father was bogus since the thumb impression was by some third person, and therefore, the land be given back to the respondents No. 4 to 16. Based on this letter, the Dy. Collector and the District Collector issued notices on 09.05.2018 and 18.06.2018 asking the petitioner to remain present. On 12.07.2018, the petitioner filed a written statement in detail showing that the land was transferred to the petitioner in a legal and a proper manner by a Will, that permission was given and even in the year 1995, the objection with regard to the transfer was closed.

3.3 By an order dated 31.07.2018, based on those initiation of proceedings, by the letter of 02.04.2018, Suo-Motu powers were exercised by the Collector and the order of certifying the Entry No. 288 of 16.02.1998 was quashed and set aside and the Collector further ordered that the petitioner forfeit the land to the government free from all encumbrances. The revision application was filed by the petitioner before the respondent No.2-SSRD. By the impugned order dated 04.03.2020, the revision application stood rejected. Hence the petition.

4. Mr. Vedant Rajguru, learned advocate for the petitioner, has made the following submissions:

(A) Reading out Section 73-AA of the Bombay Land Revenue Code (for short 'the Code'), Mr. Rajguru, learned advocate, would submit that where a tribal transfers the possession of his occupancy to another tribal in contravention of sub-section 1, the tribal transferor or his successor in interest may within two years of such transfer, apply to the Collector that the possession of such occupancy may be restored to him. He would submit that the respondents Nos. 4 to 12 having failed to take such action within two years, no such proceedings could have been initiated after approximately 20 years after revenue entry was mutated in favour of the petitioner. He would further submit that the orders passed by the District Collector and the SSRD are without jurisdiction.

(B) Mr. Rajguru, learned advocate, would further submit that the orders are bad, inasmuch as, the authorities failed to appreciate that the transactions were between two tribals of the same village. The land was transferred to the petitioner by way of a will in the year 1995. 23 years after the transaction, the mutation entry was sought to be cancelled. There was no reason for unexplained delay. Reliance was placed on a decision of this Court in Budhiben Muljibhai Patel vs. State of Gujarat, reported in 2016 (2) GLR 1786.

(C) Mr. Rajguru, learned advocate, would further submit that the orders are without authority of law and without application of mind. The District Collector and the SSRD failed to appreciate that no such orders of confiscation of property and handing over of possession could have been passed while exercising

jurisdiction in context of revenue entries.

(D) Mr. Rajguru, learned advocate, would submit that the petitioner had at the time of the show cause notice and even earlier in the year 1194 when a show cause notice was issued for alleged breach of section 73(A) of the Code, he had appeared before the Collector and by an order dated 20.02.1995, the proceedings were treated as closed on payment of penalty of Rs.1/-

(E) Mr. Rajguru, learned advocate, would submit that the occupation of the petitioner cannot be said to be in breach of any provisions, and therefore, powers to hand over possession could not have been ordered.

5 Mr. P. K. Shukla, learned advocate who appeared for the respondents Nos. 4 to 7 and 12, drew the attention of the Court to the affidavit-in-reply filed on behalf of such respondents. He would submit as under:

(A) He would submit that, the Collector, Dang, had granted land to Manjubhai Pawar, a tribal person in accordance with the government resolution of 1970 as a new tenure land on a condition that it will be utilized for agricultural purposes. Mutation Entry No. 83 was made in the gram panchayat. The said Shri Manjubhai Pawar had become the owner. It was a restricted land, and therefore, could not have been transferred to any third person.

(B) Mr. Shukla, learned advocate, would further submit that the petitioner belongs to the Kukna caste. The petitioner cannot rely on the Will for his possession of land. The petitioner has given the land for construction of towers on rent for the past thirteen years. Revenue entry made in favour of the petitioner was in violation of the restricted tenure of land and could not have been transferred.

Apparent breach of Section 73-AA of the Code was evident.

(C) Mr. Shukla, learned advocate would submit that there could not have been transfer by a Will. Reliance was placed on a decision of this Court in the case of Chhaganbhai Patel vs. Sitaben Bhanabhai Rathod., reported in 1988 (1) GLR 59.

(D) Mr. Shukla, learned advocate, would further submit that there is no error committed by either the Dy. Collector or the SSRD. Reliance was also placed by Mr. Shukla, learned advocate, on the decision in the case of Rajenbhai Baldevbhai vs. Balgiben Kabhalbhai Patanvadia & Ors., reported in 2009 (2) GLR 1784, wherein, the Court held that the land holder cannot part with the land through execution of a Will by way of testimonial dispensation to defeat the provisions of the Act.

(E) Mr. Shukla, learned advocate, would submit that the living person cannot transfer any land or execute a document in contravention of any law. During the lifetime of a living person, if the person is under restriction to execute a certain document, he has no right to transfer his occupancy or no right to transfer his interest by executing any document including a Will.

(F) Mr. Shukla, learned advocate, would submit that the respondents have filed a Regular Civil Suit No. 2 of 2016 in the Court of the Learned Principal Civil Court at Ahwa for the disputed Will in question. The suit is pending for adjudication, and therefore, the petition is not maintainable.

6. Mr. K.M. Antani, learned AGP also appeared and vehemently supported the orders passed by the revenue authorities below.

7. Having considered the submissions made by the learned advocates for the respective parties, two questions need to be considered which would go to the root of the decision making process in this petition. They are as under:

(A) Whether it was open for the authorities to exercise Suo Motu powers or powers on the basis of the application of the respondents after a period of 23 years.

(B) Whether while exercising powers under Rule 108 of the Rules, can the revenue authorities pass an order of returning possession of the land for breach of provisions of any other enactments.

8. Facts of the case indicate that it is the case of the parties that the petitioner became the owner of the land by virtue of bequeathment through a Will of Manjubhai Pawar which he executed in favour of the petitioner on 25.07.1995. Based on this Will, the agricultural land was recorded in the revenue entries by mutating the name of the petitioner vide Mutation Entry No. 288 dated 16.02.1998. 23 years after the mutation entry continued to hold the field, based on an application in the year 2018, Suo Motu powers were exercised by the District Collector and the impugned order dated 31.07.2018 was passed which was so confirmed by the SSRD by his order dated 04.03.2020.

8.1 It is no longer in dispute by several decisions of this court that exercise of powers of revision after a period of almost two decades cannot be said to be in exercise of powers within a reasonable time. It will be in the fitness of things to refer to a decision of this Court in the case of Rajeshbhai Vitthalbhai Patel vs. State of Gujarat & Ors., rendered in Special Civil Application No. 10171 of 2008 dated 08.07.2016, wherein, this Court held as under:

"4. In the instant case, it appears that it is not disputed that the land in question originally allotted to Bhikhabhai Dhulabhai, was a new tenure land. It is also not disputed that the order passed by the Civil Court granting probate in favour of the petitioner, was not challenged by any of the respondents Nos. 6 to 9, who were the legal heirs of deceased Bhikhabhai. It is also not disputed that on the basis of the said probate, the mutation entry being No. 7177 was made on 20.11.1994 which came to be certified on 30.12.1994 by the Mamlatdar, after issuance of notice to the said respondents under Section 135(d) of the Revenue Act. Now, it appears that the said entry was sought to be reviewed by the Deputy Collector, after almost a period of eight years, by issuing notice on 30.12.2002 calling upon the petitioner and the respondents Nos. 6 to 9 to show

cause as to why the land should not be vested in the Government under Section 79-A of the Revenue Act, there being violation of the condition of the grant on which the land was allotted to the original allottee Bhikhabhai. At this juncture, it is pertinent to mention that as per the settled legal position, when the period of limitation is not prescribed under the statute, the competent authority is required to exercise the powers within reasonable time. The beneficial reference of the decision in the case of State of Punjab versus Bhatinda District Co-operative Mulk Producers Union Ltd., reported in 2007(11) SCC 363 be made in which it has been held in para18 and 19 as under : -

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

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

5. In the instant case, the revisional power was sought to be exercised by the Deputy Collector after a period of 8 years of the entry certified by the Mamlatdar, which could not to be said to be a reasonable period by any stretch of imagination. Though the court finds substance in the submission of learned AGP that assignment made in the Will, would tantamount to transfer, in view of the decision rendered by the Division Bench in the case of Rajenbhai Baldevbhai Shah (supra), the Court is not inclined to deal with the said issue at this juncture. The Court is of the opinion that the respondent -Deputy Collector had exercised the powers of revision after an unreasonable delay of 8 years. The said order of Deputy Collector having confirmed by the Gujarat Revenue Tribunal, both the orders deserve to be set aside."

8.2 Thus in the above decision, relying on the decision in the case of State of Punjab vs. Bhatinda Milk Producers Union, reported in 2007 (11) SCC 363, this Court held that if no period of limitation has been prescribed, the statutory authority must exercise its jurisdiction within a reasonable time. Having not done so within such reasonable period, it was not open for the District Collector after 23 years to wake up the question of legality of a revenue entry mutated in favour of the petitioner in the year 1998.

8.3 This issue has also been discussed by this Court in the case of Indiraben wd/o Ratilal Gajjar vs. Daiben Kanabhai., reported in 2019 JX (GUJ) 772. The judgment also considers whether jurisdiction could have been exercised after a period of three years in the facts of that case. The Court held as under:

"11. Having heard learned advocates appearing for the parties and having gone through the material placed on record, it has emerged that late Ratilal H. Gajjar was the owner of agricultural land bearing revenue survey No.126/1 and 127/1 at Rajkot. Thereafter, he purchased land bearing survey No.386/24 by way of a registered sale deed on 28.07.2011. Entry in question was mutated on the basis of the said registered sale deed on 14.09.2011. However, on 26.05.2014 i.e. approximately after a period of three years, the respondent Collector issued a show cause notice while exercising suo moto powers; thereby, the petitioners were asked to show cause as to why entry in question shall not be cancelled on the ground that there construction is made on the land bearing survey no. 126 paiki 1 and 127 paiki1. The said powers were exercised after a period of three years and therefore decision upon which the reliance is placed by the learned advocate for the petitioner, at this stage, is required to be referred to.

12. In the case of Kanuben daughter of Jaysinh(supra), this Court has observed in para 5 and 6 as under:

"5. So far as the point of delay in taking suo motu action is concerned, undisputed facts are that, the land was purchased by the petitioners on 481990. Mutation Entry No. 4617 was made in the name of the petitioners on 581990. Thereafter, necessary verification was made and the mutation entry was certified on 29121990. On 2281991, the Chief Secretary, Revenue Department instructed the Deputy Collector for initiating suo motu proceedings in revision for cancellation of the entry. Thus, from the date of the mutation entry, namely, from 581990, the instruction given by the Chief Secretary on 2281991 was beyond period of one year. For taking suo motu action in review, no time is prescribed under the Bombay Land Revenue Code but, the order Annexure- 'A' shows that, as a result of suo motu action initiated after expiry of one year of mutation entry, the same was cancelled by order dated 551992. Thus, cancellation was effected after a period of about two years. It was definite case of the petitioners that such action could not be taken after expiry of reasonable period.

6. In the case of MOHAMAD KAVI MOHAMADAMIN v. FATMABAI IBRAHIM reported in(1997) 6 S.C.C. 71, the Supreme Court has held that, 'where suo motu enquiry by Mamlatdar under sec. 84(C) is to be taken, it should be initiated within a reasonable time.' It was further held that, 'suo motu power under sec. 84(C) should be exercised within reasonable time, where no time limit is prescribed for exercise of power under such statute.' The same view has been taken in case of STATE OF GUJARAT v. JETHMAL BHAGWANDAS SHAH Spe.W.A No.2770/1979 decided on 131990. This was also a case under sec. 84(C). Further, in case of State of Gujarat v. Patil Raghav Natha (1969) 2 S.C.C. 187 and in Ram Chandv. Union of India (1994) 1 S.C.C. 44, it was impressed and held that, where no time limit is prescribed for exercise of a power under a Statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. 'Reasonable time' in such cases has to be

held to be not exceeding one year."

13. Even otherwise, now it is well settled that suo moto powers are required to be exercised within reasonable time. In the present case, the show cause notice was issued after a period of approximately three years and therefore only on this ground, the impugned order passed by the respondent Collector is required to be set aside.

14. At this stage, it is also required to be noted that in the aforesaid decision, this Court has observed in para 14 as under:

"...The validity of the sale transaction is to be decided under the Bombay Tenancy Act, whereas correctness of mutation entry is to be determined under RTS proceedings. So far as RTS proceedings are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by competent authorities under special enactments. Independently, the Revenue Authorities, as mentioned in Rule 108 framed under the Bombay Land Revenue Code, can not pass orders for cancelling the entries on an assumption that the transaction recorded in the entry is against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. Provision for summary eviction is to be found under sec. 84 of the Bombay Tenancy Act, whereas sec. 84(A) of the said Act relates to validation of transfer made before the appointed day. sec. 84(C) provides for holding inquiry by Mamlatdar where he has reasons to believe that transfer or acquisition has become invalid under any provision of this Act. Prohibition of transfer of land to nonagriculturist is contained in sec. 63 of the Bombay Tenancy Act and the effect of transfer in contravention of secs. 63 and 64 is dealt with under sec. 84(A) of the Bombay Tenancy Act. This exercise could be done by the authorities empowered to act under the Bombay Tenancy Act but, the revenue authorities can not undertake this exercise while deciding the mutation matter in RTS proceeding or deciding revision under sec. 211 of the Bombay Land Revenue Code and can not determine the validity of sale transaction. To some extent, where the facts were similar in *EVERGREEN APARTMENT v. SPECIAL SECRETARY* 1991(1) GLR 113, it was held that power conferred under one enactment can not be exercised while dealing with a question under another enactment, especially so when Revenue Officers are empowered to act under various enactments."

15. Thus, from the aforesaid observations made by this court, it is clear that the validity of the sale transaction is to be decided under the Bombay Tenancy Act, whereas correctness of mutation entry is to be determined under RTS proceedings. So far as RTS proceedings are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Whether the transaction is valid or not has to be examined by

the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. In the present case, whether late Shri Ratilal was an agriculturist or not could have been examined by initiating proceedings under the Tenancy Act. However, while deciding the entry proceedings, certain observations are made by the respondent Collector and thereby entry in question is cancelled which is not permissible."

9. The second question, namely, the provisions of the Land Revenue Code can be exercised for taking possession of land for breach of provisions of any other enactment, it will be fruitful to refer to decision of this Court in the case of Rudabhai Gagjibhai Bharwad (Bamba) & Ors., vs. Special Secretary (Appeals) & Ors., rendered in Special Civil Application No. 15349 of 2016 on 20.11.2019, wherein the Court held as under:

"9 At this stage, it is pertinent to note that when the petitioners challenged the said order by filing appeal before the Deputy Collector, Deputy Collector has surprisingly given the finding that the transaction between the parties is in violation of Section 31 of the Fragmentation Act. Deputy Collector also observed that the sale deed is not signed by all the co owners and the petitioners are not the agriculturists. At this stage, it is required to be recalled that the Mamlatdar has not cancelled the entry in question on the aforesaid ground.

10. At this stage, decision rendered by this Court in the case of Govindji Chhabaji is required to be kept in view. In the aforesaid decision, this Court has observed in para 8 to 10 as under:

"8. I have heard the learned advocates appearing for the parties. There is substance in the submission on behalf of the petitioners. Firstly, as held by this Court in the aforesaid 2 Judgments, reported in 1991(1) GLR 113 (Para 12) and 1999 (3) G.L.R. Page 2527 (Para 3), the Revenue authorities, while exercising the powers under Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transactions recorded in the Entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. Under the circumstances, the order passed by the Deputy Collector cancelling the Entry No. 1729 on the ground that there is a breach of the provisions of Section 9 of the Act is erroneous and requires to be quashed and set aside, and consequently the judgment and order passed by the Collector, Ahmedabad, as well as of the learned Special Secretary (Appeals) confirming the order passed by the Deputy Collector are also required to be quashed and set aside.

9. There is also substance in the argument on behalf of the petitioners that while exercising the powers under Rule 108 of the Rules, while considering the

question with regard to the mutation entry, the authority has no power and/or jurisdiction to impose the penalty for breach of the provisions of any other enactment and the authority has also no jurisdiction to pass an order with regard to returning the possession. Ordinarily, when a transfer of property takes place by a registered document, an Entry is effected in the Revenue records and such entries are certified subsequently. If there is any dispute, then the suo motu powers can be exercised by the State Government under sub rule (6) of Rule 108 of the Rules and the entire enquiry under revisional power has to proceed under the Bombay Land Revenue Rules and not under any other enactments like The Bombay Tenancy & Agricultural Lands Act, The Bombay Urban Land (Ceiling & Regulation) Act, or Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It is well settled that the Entries made in the Revenue records have primarily a fiscal value and they do not create any title. As held by the aforesaid two Judgments, such mutations have to follow either document of title or order passed by the competent authorities under special enactment. Independently, the Revenue authorities cannot pass orders of cancelling the entries on an assumption that the transactions recorded in the entries are against the provisions of particular enactment. Similarly, the Revenue authorities also while exercising the power under Rule 108 of the Rules cannot pass an order with regard to imposing the penalty and/or returning possession of the land in question for breach of the provisions of any other above said enactments and in the present case Section 9 of the said Act. Under the circumstances, the judgment and order passed by the Deputy Collector, Viramgam Prant, dated 20th August 1988 in cancelling the Entry No. 1729 dated 13th March 1987 certified on 2.5.1987 and confirmed by the Collector, Ahmedabad, by his judgment and order dated 30th December 1988 passed in Appeal No. 68 of 1989, and further confirmed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, by his judgment and order dated 21.9.1993 passed in Revenue Application No. 14 of 1992, requires to be quashed and set aside and are hereby quashed and set aside, restoring the Entry No. 1729 dated 13th March 1987 certified on 2.5.1987 with regard to land bearing Plot No. 431 situate at Village Kujad, Taluka - Dascroi. The petition is accordingly allowed. Rule is made absolute with no order as to costs.

10. It is, however, made clear that this Court has not gone into the validity of the transaction and the authorities are not precluded from proceeding further against the petitioners for breach of any of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act and it will be open for them to take appropriate action in accordance with law."

11. From the aforesaid decision, it is clear that whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed.

12. In the present case, as discussed hereinabove, the Deputy Collector, in the appeal filed by the petitioners challenging the order of the Mamlatdar, has given the finding that there is violation of Section 31 of the Fragmentation Act. It is further reflected from the record that the other co owners have not filed any civil proceedings for cancelling / setting aside of the sale deed executed by the concerned sellers.

13. At this stage, provisions contained under Rules 106 and 107 of the Gujarat Land Revenue Rules are required to be referred to. Rule 106 provides as under:

"106.(1) Every mutation shall be posted in the Diary by the village accountant and examined by the Circle Inspector and shall be read out and explained by the latter to all persons present

.(2)The Circle Inspector shall initial all entries so examined. (3)If any person adversely affected admits an entry to be correct, the Circle Inspector shall note the admission.

(4)If any interested person disputes the correctness of an entry, the Circle Inspector shall not erase but shall correct any errors admitted by all parties either by bracketing the errors and inserting the correct entries by interlineation or side note or by an entirely fresh entry, in either case authenticated by his signatures; if the error is not admitted, he shall enter the dispute in the Register of Disputed Cases(Form Q), and it shall be disposed of under rule 108."

13.1.Rule 107 of the aforesaid Rules provides asunder:

"107.(1) The entries in the Diary of mutations shall be further tested and revised by a revenue officer not lower in rank than a Mamlatdar's First Karkun

.(2)Any entry found by such officer to be correct shall be certified by him

(3) Any entry found to be incorrect, if no dispute is brought to his notice, be corrected as in rule 106(4) and certified by him, such correction shall be a new mutation for the purpose of section 135D(2).

(4) Where such officer finds that there is a dispute regarding any entry examined by him, he shall enter the dispute in the register of disputed cases and the dispute shall be disposed of under rule 108. Such officer shall, wherever possible, himself dispose of the dispute under the said rule forthwith

.(5)An appeal only shall lie against any entry certified under sub rule (2) or corrected under sub rule (3) otherwise by the Collector himself, to the same authority to which an appeal lies in a case decided under rule 108."

14. In the present case, admittedly, nobody has raised any objection pursuant to the pencil entry made in the revenue record. If the Mamlatdar was of the opinion that the said pencil entry is not required to be certified, he was required to register the case as dispute case and enter the dispute in the Register of Disputed Cases (FormQ) and the said dispute case was required to be disposed

of under Rule 108 of the Rules. It is pertinent to note that no procedure has been followed by the respondent Mamlatdar while cancelling the disputed entry."

10. Having considered the decisions of this Court referred to hereinabove and the decision of Mr. Shukla, learned advocate for the respondent, what is evident is that

(i) That the powers to set aside the revenue entry in the year 95/98 was exercised by the Collector approximately after 20-23 years, and therefore, in view of the decisions in the case of Rajeshbhai Patel (supra) and Indiraben (supra), they not having been exercised within a reasonable period of time based on the law laid down by this Court in the case of Evergreen Apartments vs. Special Secretary, reported in 1991 (1) GLH 158, the orders of the District Collector dated 31.07.2018 and that of the SSRD dated 04.03.2020 are required to be quashed and set aside only on the ground that the power was exercised beyond a reasonable period of time.

(ii) What is evident from reading the orders impugned in the petition is that while exercising powers under Rule 108 of the Gujarat Land Revenue Rules, 1972, the authorities considered the breach of the provisions of the Bombay Tenancy and Agricultural Lands Act. What the Collector and the SSRD failed to appreciate was that while considering the question with regard to the mutation entry, they had no power or jurisdiction to impose a penalty for breach of the provisions of any other enactment and to pass an order with regard to vesting of the land in the government. As held by the decision in the case of Rudabhai (supra), therefore, the orders of the District Collector and that of the SSRD also fail on this ground.

11. Accordingly, the orders of the District Collector dated 31.07.2018 and that of the SSRD dated 04.03.2020 are hereby quashed and set aside. Having set aside the orders on the ground of the Suo Motu powers being exercised beyond reasonable time and also on the ground that they had no powers to pass orders on the breach of any other enactments, it is however made clear that this Court has not gone into the validity of the transactions with regard to breach of the provisions of the Bombay Tenancy Act and Agricultural Lands Act and the authorities are, therefore, not precluded from proceeding further for the breach of such provisions. It will be open for them to take appropriate decision in accordance with law. With the aforesaid clarification, therefore, the petition is allowed. Rule is made absolute, accordingly.