

(2021) 11 GUJ CK 0030

In the Gujarat High Court

Case No : R/Special Civil Application No. 10602 Of 2021

Yogesh Navinchandra Ravani

APPELLANT

Vs

Rajiben Jenaji

RESPONDENT

Date of Decision : 22-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 226
Gujarat Land Revenue Rules, 1972 — Rule 106, 107(1), 107(2), 107(3), 107(4), 107(5), 108
Gujarat Land Revenue Code, 1879 — Section 65, 204, 205, 206
Gujarat Town Planning And Urban Development Act, 1976 — Section 2, 50, 54, 67, 75
Bombay Tenancy And Agricultural Lands Act, 1948 — Section 63, 65

Citation : (2021) 11 GUJ CK 0030

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : MC Bhatt, Vivek V Bhamare, Nikunj Kanara, Ankit Shah

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. By filing this petition under Articles 14, 19 and 226 of the Constitution of India, the petitioner has mainly sought for the following relief:-

"12.

B) Your Lordships may be pleased to issue a writ of Certiorari and a Writ of Prohibition or any other writ, order or direction against respondent no.15 herein namely, City Deputy Collector, Ahmedabad (West) prohibiting him from proceeding with RTS/Appeal/Case No.1/2021 (Annexure-A & B) and be further pleased to issue a Writ of Certiorari quashing and setting aside the proceeding (Annexure-A & B)."

2. Heard learned Senior Counsel Mr.Bhatt appearing with Mr.Vivek Bhamre, learned advocate for the petitioner and learned AGP, Mr.Nikunj Kanara for

respondent no.14 and 15 and learned advocate Mr.Ankit Shah appearing for respondent nos.7, 8 and 9. Though other respondents are served, they have not appeared.

3. Brief facts of the case are that the petitioner has challenged initiation of proceedings being RTS/Appeal/Case No.1/2021, relating to revenue entry no.2270 dated 16.3.1943, after a period of 78 years, as initiation of proceedings itself is without jurisdiction as per the provisions of the Gujarat Land Revenue Code. According to the petitioner, one Mohanji Bavaji was the owner of the land bearing Revenue Survey No.473/1 and 473/2 of Village-Makarba, who has passed away on 10.12.1942. After the death of Mohanji Bavaji, name of Punaji Mohanji was mutated in the revenue record by entry no.2270 in the year 1943.

3.1 It is contended that on 20.9.1990, land was sold by Punaji Mohanji Thakore and his family members to Amrutlal Bholidas Patel and Shantaben Patel for a consideration of Rs.1,15,000/-and revenue entry thereof was mutated being revenue entry no.7167 dated 21.7.1992. It is further the case of the petitioner that the petitioner and his family members have purchased the land in question for a consideration of Rs.8,50,000/- from Amrutlal Bholidas Patel and Shantaben Amrutlal Patel by a registered Sale Deed in the year 2001 and revenue entry no.9080 was mutated in this regard on 27.9.2001.

3.2 The petitioner intended to use the land for non-agricultural purpose and, therefore, he applied to Collector, Ahmedabad, for converting the land into Non-Agricultural land on 19.12.2019 and the Collector converted the land into NA land under Section 65 of the Gujarat Land Revenue Code. Entry in this regard was mutated in the revenue record vide entry no.16592 dated 3.2.2020. It is contended that, on 6.7.2021, the petitioner received summons of a case challenging heir-ship entry No.2270 dated 16.3.1943 after a period of 78 years.

4. Mr.M.C.Bhatt, learned Senior Counsel appearing for the petitioner has vehemently submitted that by way of alleged proceedings, the revenue authorities are trying to set aside entry of the year 1943, after passage of 78 years. While referring to Sections 204, 205, 206 of the Gujarat Land Revenue Code, which pertains to filing of appeal, he has submitted that according to these provisions without any order condoning delay, straightaway proceeding has been initiated. He has submitted that there is no explanation of delay of 78 years in initiation of such proceedings. He has also submitted that during this interregnum period, nature of the land has also changed. He has also submitted that the land in question fall under the Town Planning and Urban Development Act and by virtue of Section 67 of the Gujarat Town Planning and Urban Development Act, all rights in the original plot extinguished and only rights stated by the Town Planning Officer can be claimed and, in that view of the matter, there is no existence of rights relating to revenue survey number and revenue authority has no jurisdiction to initiate proceedings under the Gujarat Land Revenue Code.

4.1 Mr.Bhatt, learned Senior Counsel for the petitioner has also submitted that prior to coming into operation of Hindu Succession Act, 1956, there was no right of Hindu daughter in the property left by her father, whether it is self-acquired or HUF property. He has also submitted that since deceased Mohanji passed away on 10.12.1942, there was no reason to inherit such property in the name of daughter on that day and, therefore, there was no question of entering name of deceased Bhikhiben at the relevant time in the record of rights.

4.2 Mr.Bhatt further submitted that even under the Limitation Act, 1963, time period prescribed for claiming any right or title in the immovable property is 12 years. He has also submitted that earlier NA permission was also granted to the petitioner, after verifying all the aspects, in the year 2019. He has further submitted that due to coming into existence of the Town Planning Scheme, allotment of Final Plot also came into existence and, therefore, no jurisdiction is vested in the revenue authority to initiate any proceedings. According to him, entire proceeding is gross abuse of process of law and issuance of notice thereof by the authority is absolutely arbitrary act and without jurisdiction and, therefore, he has submitted that considering all these facts since initiation of the proceedings is ab initio illegal and without jurisdiction, this Court under Article 226 of the Constitution of India can entertain this petition and grant appropriate relief to the petitioner. Therefore, he has prayed to allow present petition.

4.3 In support of his submissions, he has relied upon following decisions:-

(1) Bharatbhai Naranbhai Vegda and Others v. State of Gujarat and Others reported in 2016 GLR 1021.

(2) Amitbhai Kantilal Jayswal and Others v. State of Gujarat and Others reported in 2020 (2) GLR 981.

(3) Chandulal H. Ghodasara v. State of Gujarat and Others reported in 1997 (1) GLH 757.

(4) Sneh Gupta v. Devi Sarup and Others reported in 2009 (6) SCC 194.

(5) Darabsha Sorabji v. State of Gujarat reported in 2005 (2) GLR 1409.

(6) Vadiliben Wd/o. Bhurabhai Narsanhji Purohit v. State of Gujarat and Others reported in 2017 (3) GLR 2050.

(7) Ravichand Manekchand Sheth and Others v. State of Gujarat and Others reported in 2006 (2) GLR 1567.

(8) Prahladbhai Shivram Patel and Others v. Director of Agriculture Marketing and Rural Finance and Others reported in 1998 (1) GLH 95.

(9) N.R.Chaudhari v. Principal, Government Industrial Training Institute, Ahmedabad and Others 1993

(0) GLHEL-HC 2081151 in Letters Patent Appeal No.271 of 1989 dated 5.7.1993.

(10) Bhavabhai Bhadabhai Maru v. Dhandhuka Nagar Panchayat reported in 1991 (2) GLR 1339.

(11) Shambhu Prasad Agarwal and Others v. Bhola Ram Agarwal reported in 2000 (9) SCC 714.

(12) M/s.Filterco and Other v. Commissioner of Sales Tax, Madhya Pradesh and Others reported in 1986 (2) SCC 102.

(13) Dhampur Sugar Mills Limited v. State of U.P. and Others reported in 2007 (8) SCC 338.

5. Per contra, learned AGP, Mr.Nikunj Kanara has vehemently submitted that no order has been passed by the revenue authority against the petitioner and only notice is issued and, therefore, there is no cause of action arisen in favour of the petitioner to file present petition. He has also submitted that in the present matter there is no finding of fact and, therefore, such exercise cannot be undertaken by this Court in a petition under Article 226 of the Constitution of India. According to him, proceeding is not yet initiated and only notice is issued. He has submitted that petition may be dismissed and the petitioner may be relegated to appear before the concerned authority and agitate all the points before concerned authority.

6. Learned advocate Mr.Ankit Shah appearing for respondent nos.7, 8 and 9 has adopted the arguments of learned AGP and further submitted that they are the co-purchasers and initiation of proceedings at a later stage is not proper and legal on behalf of the revenue authorities.

7. In rejoinder, learned Senior Counsel Mr.Bhatt has submitted that since notice itself is without jurisdiction as it has been issued after a long time of 78 years, cause of action has arisen in favour of the petitioner and he cannot be relegated to appear before concerned authority and it will be exercise in futility.

8. Heard learned advocates for the parties and considered the material placed on record, as well as various provisions of law and the decisions cited at bar.

8.1 Definition of "appropriate authority" and "Town Planning Officer" as provided in Section 2 of the Gujarat Town Planning and Urban Development Act, 1976 reads as under:-

"2. Definitions.-

.....

(iii) "appropriate authority" in relation to a development area, means an area development authority or an urban development authority, as the case may be;

.....

(xxvii) "Town Planning Officer" means Town Planning Officer appointed under Section 50;

8.2 Section 67 of the Gujarat Town Planning and Urban Development Act provides as under:-

"67. Effect of preliminary scheme. - On the day on which the preliminary scheme comes into force-

(a) all lands required by the appropriate authority shall, unless it is otherwise determined in such scheme, vest absolutely in the appropriate authority free from all encumbrances;

(b) all rights in the original plots which have been re-constituted into final plots shall determine and the final plots shall become subject to the rights settled by the Town Planning Officer.

[67A. Manner of resolution of grievances after sanctioning scheme.- (1) In case where the final plot is allotted in joint ownership in the sanctioned preliminary or final scheme, then on application being made to the Committee by any of the joint owners, the Committee constituted under sub-section (2) shall give a notice to all the concerned and after giving them an opportunity of being heard, shall with respect to such final plot define the share of the joint holders and demarcate the area that may be allotted to each of them.

(2) The committee shall consist of the following members, namely:-

(i) the Secretary, Urban Development and Urban Housing Department, shall be the Chairman;

(ii) the Chief Town Planner, - Member Secretary, ex-officio; and

(iii) any other member, appointed by the Chairman.

(3) The decision of the Committee in this regard shall be deemed to be the part of the scheme sanctioned under Sec. 65.]"

8.3 Sections 205 and 206 of the Land Revenue Code read as under:-

"205. Periods within which appeals must be brought.-No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Survey in their respective departments; nor after the expiration of ninety days in any other case.

In computing the above periods, the time required to prepare a copy of the decision or order appealed against shall be excluded.

206. Admission of appeal after period of limitation.-Any appeal under this Chapter may be admitted after the period of imitation prescribed therefor, when the appellant satisfies the office or the[[State] Government] [to whom or to which] he appeals that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against order passed under this section admitting an appeal."

8.4 In view of aforesaid provisions, time limit prescribed for filing an appeal is 60 days in case of an order passed by an officer inferior in rank to a Collector or a Superintendent of Survey, whereas in any other case, it is 90 days. Of course, any appeal filed after the period of limitation can be admitted under Section 206 on the satisfaction of the concerned officer regarding delay occurred in filing appeal.

8.5 Rule 108 of the Gujarat Land Revenue Rules provides as under:-

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

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

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

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

(5) An appeal against an order under this rule shall, if the order has been made by the Mamlatdar, the District Inspector or Revenue officer of lower rank than that of a Deputy Collector, lie to the Sub-Divisional officer, or to an officer appointed by the State Government in this behalf, and if the order has been made by the Sub-Divisional officer, the Superintendent of Land Record officer of a rank not lower than that of a Deputy Collector, to the Collector, such appeal shall be presented within sixty days from the date on which the copy of the order was served on the appellant or was otherwise initiated to him;

Provided that the appellate authority may after recording its reasons in writing admit an appeal after the aforesaid period of sixty days if it is satisfied that the appellant had sufficient cause for not presenting the appeal within such period.

Subject to the provision of sub-rule (6) the decision of the appellate authority shall be final. There shall be no appeal against the order of the Collector. No second appeal shall lie in any case.

(6) The Commissioner may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under Rules 106 and 107 and sub-Rules (1) to (5) of this rule for purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings.

If, in any case, it shall appear to the Commissioner that any proceedings so called for or any decision or order made in such proceedings should be modified,

annulled or reversed, he may pass such order thereon as he deems fit.

[(6A) The State Government may call for and examine the record of proceedings in respect of any order passed by the Collector under sub-rule (5) or sub-rule (6) for the purpose of satisfying itself as to the regularity and of such proceedings as to the legality and propriety of any decision or order passed in such proceedings. If, in any case, it appears to the State Government that any proceedings so called for or any decision or order made in such proceedings should be modified, annulled or reversed, it may pass, such order thereon as it deems fit.]

(7) If the appellate order or the order passed in a revision confirms the previous decision it shall be noted in the remarks columns against the entry which is confirmed. If it alters it, the change shall be entered as a fresh, but not disputable, mutation. "

8.6 Aforesaid provision is *pari materia* with Sections 205 and 206 of the Gujarat Land Revenue Code.

9. Now, this Court may refer to the decisions relied upon by learned advocate for the petitioner.

(i) In the case of *Bharatbhai Naranbhai Vegda and Others (supra)*, this Court has observed as under:-

"10. In our view, the above referred well considered two decisions of this Court makes the position abundantly clear that if the action is to be initiated for setting aside of a transaction under the Ordinance by invoking section 54 read with section 75 of the Ordinance, it has to be within reasonable period. The above referred two decisions are in respect of the cases wherein the powers were exercised and proceedings were initiated after 5 years and 17 years respectively, whereas in the present case, it is after more than 35 years. Hence, we find that the initiation of the action itself can be said as beyond reasonable period and the bar of delay and laches could operate against the authority in initiation of the action. The aforesaid aspect is coupled with two additional circumstances, one is that the land has changed hands further during the period of delay and the ownership is transferred by the purchaser to the another person and the second is that the revenue entries were mutated. Thereafter, they were also certified by the competent authority and in spite of that, no action was taken for cancellation of such entry or otherwise or even for declaration of the transaction as invalid within reasonable period. If during the period of delay, the rights of the parties in the properties are altered, the delay would operate as a bar with more gravity and when the ownership is changed during the period of delay, the bar for not taking action within reasonable period would also operate with more gravity against the authority in initiation of the action."

(ii) In the case of *Amitbhai Kantilal Jayswal (supra)*, this Court has observed as under:-

"11. The conspectus of the aforesaid observations made by the Division Bench as

well as the Coordinate Bench would reveal that a show cause notice which has been issued after a lapse of long delay can be said to be without jurisdiction, hence the petitioners cannot be relegated to avail the alternative remedy."

(iii) In the case of Chandulal H. Ghodasara (*supra*), this Court has observed as under:-

"12. As per the Scheme of the Act, on transfer of land to the authority referred to above, the Collector is no more an authority under the Act, and thus is not empowered to initiate any proceedings or decide the same. Qua the scheme Collector is also one of the owners of the lands included in the scheme. The authority under the Act is either the Appropriate Authority or the Town Planning Officer, who are empowered to decide any matter or dispute or objection raised by any of the owners of property or rights which are adversely affected by the Scheme. Therefore, in my view, the impugned notice issued by the Collector would be without jurisdiction."

(iv) In the case of Vadliben Wd/o. Bhurabhai Narsanhji Purohit (*supra*) this Court has observed as under:-

"6. In the instant case, it appears that though the Entry being No.778 was made in favour of the petitioner on the basis of the registered sale deed dated 6.10.1976 executed by the deceased Shantaben and others in respect of the part of land bearing Survey No.117, the Mamlatdar made Entry No.891 mutating the name of respondent No.7 in respect of the entire Survey No.117 on 27.6.1989, without affording any opportunity of hearing to the petitioner. The said order of the Mamlatdar was set aside by the Deputy Collector by partly allowing the appeal of the petitioner in respect of the part of Survey No.117 sold out to the petitioner as per the sale deed dated 6.10.1976. The said order of the Deputy Collector was set aside by the Collector by passing the impugned order, holding that the said sale in favour of the petitioner was in violation of the provisions contained in the Hindu Minority Guardianship Act, as also the Fragmentation Act. It is not disputed that the respondent No.7 had not filed any suit seeking cancellation of the sale deed executed in favour of the petitioner, nor any authority had initiated any proceedings under the Fragmentation Act or other Act alleging that the sale in favour of the petitioner was in violation of any of such statutes. Under the circumstances, the respondent Collector could not have assumed the jurisdiction of the Civil Court for the purpose of holding that such sale was in violation of the Hindu Minority Guardianship Act or in violation of the Fragmentation Act or the Tenancy Act. It is needless to state that the scope of RTS proceedings is very limited and is confined to the maintenance of revenue record for fiscal purpose only. The authorities conducting RTS proceedings have no jurisdiction to decide the validity of the transaction entered into between the parties. In the opinion of the Court the ratio of decision in case of Jayantilal Jethalal Soni Vs. State of Gujarat & Ors., reported in 2005(4) GLR 3354 clinches the issue. The relevant paragraphs 7 and 8 thereof are reproduced as under:-

"7. It appears that if a registered sale deed is executed by the holder of the land, it confers the right pertaining to the land in question in favour of the purchaser of the land and, therefore, the rights pertaining to the land in question in normal circumstances can be said to have been acquired over the land in question for which recording is required to be made in the revenue record. It is also well settled that the revenue entries are having value only for fiscal purpose and more particularly for the purpose of recovery of revenue and it neither confers any right or title over the property, nor does it take away the right or title in the property which otherwise cannot be available under the law. However, the question which arises for the consideration is if a sale deed is executed by the holder of the land which runs prima facie counter to the other statutory provisions of other enactment or is barred under the other enactment or it alters or disturbs the rights of the persons under the other enactment then, can the revenue authority shut its eyes by ignoring such flagrant violation of such law or if it is considered, what will be the proper course to be followed ? In case of "Evergreen Apartment Coop.

Housing Society" (supra), this Court has expressed the view that it is not open to the revenue authority exercising power under the Code to exercise power under the other enactment and to decide in respect to the breaches which are committed under the other enactment and thereby to uncertify the entry or to cancel the entry made in the revenue record. In case of "Janardan D. Patel v. State of Gujarat" (supra) at para 11, it has been observed as under:

"11. If any such question arises, the matter should be referred to the authority empowered to deal with under the said other enactment. For example, the validity of a transaction on the basis of Sec. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for brief) is sought to be challenged. That question cannot be decided by revenue authorities in RTS proceedings. In such situation, the correct procedure to be followed would be to refer the matter to the authority empowered under the Tenancy Act for his decision. The necessary mutation entry may be made only after the decision of that authority under the Tenancy Act is received. It would, however, not be open to revenue authorities in RTS proceedings to decide that question."

8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgement, it appears that it would not be proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into

adversely affecting the rights under the other enactment and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is prima facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to the final decision which may be taken by the competent authority under the other concerned enactment. This Court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with law. If the entry, on the basis of the sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it cannot be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising power under the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not."

(v) In the case of Ravichand Manikchand Sheth (supra), it was observed that once NA permission is granted, the land seizes to be agricultural land for all purposes and no law applicable on agricultural land would apply on such land and authorities cannot allege breach of NA provisions relating to agricultural land after its conversion into non-agricultural use. It was further observed that a valid NA Permission creates an estoppel for the authority to issue notice under any law applicable to agricultural land.

(vi) In the case of Prahladbhai Shivram Patel (supra) it was observed that if an order, which is challenged is without jurisdiction or in violation of the statutory provisions, alternative remedy is no bar for entertaining petition under Article 226 of the Constitution of India.

9.1 Rest of the decisions relied upon by learned advocate for the petitioner are on similar line, therefore, they are not discussed in detail.

10. It appears that there is no dispute regarding factual aspect so far as it relates to ownership of the land and suo motu initiation of the proceedings by the revenue authority relating to entry no.2270 of the year 1943, after about 78 years. There is also no dispute that after death of Mohanji Bavaji in 1942, land was mutated in the name of his heirs Punaji Mohanji way back in 1943 and, thereafter, it was sold by Punaji Mohanji to Amrutlal Bholidas Patel and Shantaben Amrutlal Patel in 1990. It also transpires from record that said two persons Amrutlal Patel and Shantaben Patel have sold the land to the petitioner and his family in the year 2001. It also reveals from record that present petitioners have applied for NA permission, which came to be granted by the Collector in 2019 under Section 65 of the Gujarat Land Revenue code and necessary revenue entry was mutated therein. It also reveals from the documentary evidence that Town Planning Scheme came into existence and land in question was also subject matter of Town Planning and Final Plot was allotted.

11. It appears that revenue authority has issued notice on the basis of the one RTS appeal alleged to be filed by respondent nos.1 to 6 herein alleging their rights in the property and for entering their names as heirs in said property. Copy of same has been placed on record at page 24 onwards. On perusal of it, it appears that they have challenged entry no.2270 dated 25.1.1943 in the year 2021. There is no iota or any averment regarding delay. It appears that there is no delay application filed by respondent nos.1 to 6 before the authority concerned. It appears that even without condoning delay, revenue authority has straightaway registered the appeal as RTS/Appeal/Case No.1/2021 on 10.6.2021. Thus, apparently entry of the year 1943 is being challenged after almost 78 years. There is no explanation worth the name on record. It is pertinent to note that on perusal of the material placed on record, it transpires that after 1943, many hands have changed so far as land in question is concerned. It is also an admitted fact that the Collector has also granted NA permission to the petitioner. It is also well settled that once NA permission is granted, the land seizes to be agricultural land for all purposes and no law applicable on agricultural land would apply on such land and authorities cannot allege breach of NA provisions relating to agricultural land after its conversion into non-agricultural use. It was further observed that a valid NA Permission creates an estoppel for the authority to issue notice under any law applicable to agricultural land.

12. When Town Planning Scheme has been implemented in respect of the suit land under Town Planning and Development Act, the competent authority would be Town Planning Officer and Collector is no more authority under Gujarat Town Planning and Urban Development Act and thus, there is no power vested in the Collector to initiate any proceedings under Rule 108 of the Gujarat Land Revenue Rules, 1972. On that count also, impugned notice issued by the revenue authority would be without jurisdiction.

13. It is pertinent to note that since notice has been issued after 78 years, it is completely beyond the period of limitation and, therefore, the notice itself would

be a nullity and without any jurisdiction. When the notice itself is without jurisdiction, issue of alternative remedy falls into insignificance and the petitioner cannot be relegated to avail alternative remedy.

14. At this juncture, it needs to be observed that if respondent nos.1 to 6 claim any right on the basis of their allegations of heir-ship then proper course would be to agitate this point before the Civil Court by establishing all their legal rights, if any in existence. Of course, it is doubtful whether such action at a belated stage i.e. after 78 years would be maintainable or not. So far as present matter is concerned, entire exercise initiated by the revenue authority on the basis of the RTS appeal filed by respondent nos.1 to 6 is without jurisdiction and hence it needs to be quashed and set aside.

15. Accordingly, present petition is allowed. Proceedings of RTS/Appeal/Case No.1/2021 (Annexure-A & B to this petition) pending before City Deputy Collector, Ahmedabad (West) are hereby quashed and set aside. No order as to costs. Direct service is permitted.