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2006:GUJHC:6058

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1994 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAVICHAND MANEKCHAND SHETH & 2 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR JITENDRA M PATEL WITH MR TRILOK J. PATEL WITH MR JAYRAJ CHAUHAN for Petitioner(s) : 1 - 3.
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 09/03/2006

ORAL JUDGMENT

This petition has been preferred against the order

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dated 10th July,1993 passed by the Assistant Collector, Morbi in Revision Case No.23 of 1992 as well as against the order dated 29th April,1994/13th May,1994 passed by the Collector,Rajkot in Land Appeal No.19 of 1993, whereby the order passed by the Assistant Collector, Morbi was confirmed and the order passed in Revision Application No.SRD/HKP/RJT/11 of 1994 by the Secretary, Revenue Department, State of Gujarat on 25th October/November,1994 whereby the orders passed by Assistant Collector and that of Collector were upheld and it was held that mutation entry no.2605 is removed as the sale transaction was violative of section 54 of the Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance,1949 (hereinafter referred to as “the Ordinance,1949”) as there was transfer of agricultural land to the non-agriculturist.

2. Learned advocate for the petitioners submitted that the order passed by the authorities below are dehors the facts and law. True facts have not been appreciated by the authorities below. It is vehementally submitted by the learned advocate for the petitioners that the petitioners are agriculturists. The mutation entry no.1702 dated 2nd May,1977 (Annexure “A” to the memo of

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the petition) reveals the fact that the present petitioner no.1 was the brother of Chimanlal Manekchand and, therefore, the name of the petitioner was added. This mutation entry no.1702 was certified by competent officer after holding necessary inquiry. Thereafter, vide mutation entry no.1800, the name of the petitioner no.1 has been shown as owner as other two persons have relinquished their rights from survey no.1137, the release deed is dated 8th September,1978 (Annexure “B” to the memo of the petition). Thereafter, the petitioner no.1 purchased the land bearing Survey No.1005 paiki from the petitioner Nos.2 & 3 and entry to that effect has been recorded in the records of right vide mutation entry no.2605. (Annexure “D” to the memo of the petition). This entry was certified upon proper inquiry held by the competent authority on 31st August,1989. Thus, the entry No.2605, which is due to, purchase of Survey No.1005 paiki by the petitioner No.1 from the petitioner Nos.2 & 3 has been approved by the concerned Government Authority in the year 1989. Thereafter, the application for non-agricultural purpose was given on 22nd October,1992 (Annexure “E” to the memo of the petition). Thus, the land in question i.e. Survey No.1005 paiki has now been ceased to be an agricultural land. Now, agricultural land

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has been divided into 20 sub-plots and they have been transferred to the further purchasers by registered sale deeds. Never, ever before, any objection has been raised by any authority, right from the year 1989 onwards against entry no.2605. For the first time, after the sale of 20 sub-plots of non-agricultural land and after certification of the mutation entry no.2605, a Show Cause Notice was issued on 12th November,1992.

3. It is vehemently submitted by the learned advocate for the petitioners that the notice dated 12th November,1992 is dehors the provisions of the Gujarat Land Revenue Rules,1972 and dehors the provisions of the Bombay Land Revenue Code,1879 as the same has been issued at much belated stage, after lapse of several years and after grant of N.A. Use Permission and after sale by registered sale deeds, of 20 sub-plots to the further purchasers. As on the date of the notice in the year 1992, the land was not an agricultural land at all and, therefore, the Notice itself is bad in the eye of law and, therefore, the order dated 10th July,1993 passed in pursuance of the said notice by the Assistant Collector, Morbi (Annexure “H” to the memo of the petition) deserves to be quashed and set aside.

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4. It is vehementally submitted by the learned counsel for the petitioners that the petitioner no.1 is an agriculturist. This fact has been recorded by the competent authority under the existing laws by mutation entry no.2605 read with mutation entry no.1800 read with mutation entry no.1702 read with partition deed dated 4th September,1978. The Assistant Collector,Morbi while passing the impugned order has not appreciated this aspect of the matter, while mutation entry no.1800 (Annexure “C” to the memo of the petition) reveals the name of the petitioner no.1 as owner of the agricultural land bearing Survey No.1137. This entry has also been certified on 23rd March,1991. Thus, the petitioner no.1 was agriculturist on the basis of the records of rights. No notice, upsetting mutation entry no.1800 has been given by any authority. Thus, in face of mutation entry no.1800, which was certified on 23rd March,1991 (Annexure “C” to the memo of the petition), the conclusion arrived at by the Assistant Collector,Morbi in the impugned order (Annexure “H” to the memo of the petition) is an error apparent on the face of the records. Factually incorrect statement has been made to the effect that the petitioner no.1 was not agriculturist and, therefore, the Notice

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given under section 108(6) of the Gujarat Land Revenue Rules, but, this conclusion of the respondent authority, is factually incorrect in view of Annexure “C” to the memo of the petition. Thus, the impugned order passed by the Assistant Collector, Morbi deserves to be quashed and set aside. Similarly, the subsequent order passed in the Land Appeal before the Collector,Rajkot has also not appreciated this fact of the matter and, therefore, the order dated 29th April,1994 passed by the Collector, Rajkot (Annexure “I” to the memo of the petition) also deserves to be quashed and set aside. Similarly, the order dated 25th October/November,1994 passed by the State Government (Annexure “J” to the memo of the petition) deserves to be quashed and set aside. Neither of the authorities below, have appreciated that mutation entry no.1800, which has been certified on 23rd March,1991 and is valid even on today. This entry reveals the fact that the petitioner no.1 was an agriculturist and the owner of survey no.1137 and was entitled to purchase another agricultural land bearing survey no.1005 paiki vide mutation entry no.2605 and there is no illegality committed by the petitioner no.1 much less breach of section 54 of the Ordinance,1949 and, hence, the orders passed by the authorities below deserve to be quashed and

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set aside. Similarly, it has not been appreciated by all the authorities below that the N.A. Permission has been granted on 22nd October,1992 and, therefore, the provisions of the Act, which are applicable to the agricultural land cease to apply. In the facts of the case, the Ordinance,1949 is not applicable, once the N.A. Permission has been granted. Non-Agricultural Use Permission given, is valid even today.

5. It is submitted by the learned advocate for the petitioners that on the basis of the N.A. Permission granted by the concerned authority, which stand valid even as on today, the petitioner no.1 has altered his position so irreversebly, that the impugned orders deserve to be quashed, as altered position of the land cannot be put in its original conditions. A huge expenditure has been incurred by the petitioner no.1 after getting N.A. Permission and land has been divided into 20 sub-plots and, thereafter, there is sale of all these 20 sub-plots to the concerned purchasers, by the registered sale deeds. This creates estoppel on the part of the respondent authority to issue any notice for alleged breach of the Ordinance,1949. It is also submitted by the learned advocate for the petitioners

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that the revisional powers cannot be exercised by the Assistant Collector,Morbi in view of the provision of the Rule 108(6) of the Gujarat Land Revenue Rules,1972. In the facts of the present case, the impugned order dated 10th July,1993 (Annexure “H” to the memo of the petition) has been passed in Revision Case No.23 of 1992 by the Assistant Collector, Morbi and, therefore, it deserves to be quashed and set aside.

6. Learned advocate for the petitioners submitted that apart from the purchase of land bearing Survey No.1137 vide Mutation Entry No.1800, still there are four other lands of Village : Vajepar, Taluka: Morbi, District: Rajkot, of which, the petitioner no.1 is the owner of. Thus, there are agricultural lands of different survey numbers in favour of the petitioner no.1.

7. Learned advocate for the petitioners has also relied upon several authorities, as under:-

(i) AIR 1969 SC 1297 = 10 GLR 992 (para-12)

(ii) (1997)6 SCC 71 (para-2)

(iii) 1991(1) GLR 113 (para-5)

(iv) 1987(2) GLH 127

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(v) 1995(1) GLR 407 (para-20)

(vi) 1994(1) GLH 20

(vii) AIR 1994 Gujarat 38

(viii) 1998(1) GLR 56 (para-5)

(ix) 2005(2) GLH 33 (D.B.)

From the aforesaid judgments, it is pointed out that the Assistant Collector has no power to take the entry in revision. On the contrary, as per Rule 108(6-A) of the Gujarat Land Revenue Rules,1972, Government has power to take the said entry in the revision and has also pointed out that once the N.A. Permission is given and once the land has become non-agricultural, the Ordinance,1949 is not applicable and, hence, the order passed by the authorities below may be quashed and set aside.

8. I have heard the learned Assistant Government Pleader Mr.Siraj Gori, who has submitted that the orders passed by the Assistant Collector,Morbi; the Collector, Rajkot and the State Government are true, correct and consistent to the fact that the petitioner is not an agriculturist and, therefore, he is not entitled to purchase the land bearing Survey No.1005 paiki and, therefore, the notice was given by the respondent

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authority on 12th November,1992 and adequate opportunity of being heard was given to the petitioner no.1 and there is consistent finding of facts by all three authorities below and, therefore, this Court may not interfere with the orders passed by the authorities below by exercise of extra ordinary powers conferred under Article 227 of the Constitution of India.

9. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, the provisions of law, the impugned orders and several judgements, which are referred hereinbelow, in my view, the order dated 10th July,1993 passed by the Assistant Collector, Morbi in Revision Case No.23 of 1992 (Annexure “H” to the memo of the petition) as well as the order dated 29th April,1994 passed by the Collector,Rajkot delivered in Land Appeal No.19 of 1993 (Annexure “I” to the memo of the petition) and the order dated 15th October/November,1994 passed by the State Government (Annexure “J” to the memo of the petition) deserves to be quashed and set aside, mainly for the following facts and reasons :-

(i) All the authorities below have not properly

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appreciated the facts that the mutation entry No.1800 is already in existence, which reveals the fact that the petitioner no.1 is an agriculturist and was the owner of the land bearing Survey No.1137. This entry was also certified by the concerned authority on 23rd March,1991 under section 135(D) of the Bombay Land Revenue Code,1879 (Annexure “C” to the memo of the petition). In face of this mutation entry and without shifting and affecting validity of this mutation entry, the notice issued by the respondent authority dated 12th November,1992 under Rule 108(6) of the Gujarat Land Revenue Rules,1972 was bad in the eye of law. So long as the said entry is not challenged by any of the respondent authorities, it cannot be said that the petitioner no.1 was not an agriculturist. Keeping the said entry as it is, the conclusion has been arrived at by all the authorities below, that the land bearing Survey No.1005 paiki was purchased by an non-agriculturist and, therefore, this is an error apparent on the fact, in all the orders passed by all the authorities below.

(ii) Looking to the facts of the present case, it seems that after certification of the mutation entry no.2605 on 31st August,1989, the petitioner no.1 had

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applied for Non-Agricultural Use of the land (popularly known as N.A.Use Permission) under section 65 of the Bombay Land Revenue Code,1879. The N.A.permission was also granted by the concerned authority on 22nd October,1992 (Annexure “E” to the memo of the petition). By virtue of this N.A. Permission granted by the concerned authority under section 65 of the Bombay Land Revenue Code,1879, the petitioner no.1 incurred huge expenditure and converted the land of Survey No.1137 into 20 sub-plots. These sub-plots have been transferred to the different purchasers by registered sale deeds. This alteration of possession, after grant of N.A. Use Permission and after, the expenditure incurred by the petitioner no.1, creates an estoppel on the part of the respondent authority to issue a notice under any law, applicable to the agricultural land. N.A.Use Permission granted under section 65 of the Code,1879 is such a non-transparent wall that through which the respondent authority cannot see the green colour of an agricultural land. Now there will be bricks, cement and strength of steel. The only window, open for the respondent authority to see the agricultural land, is the violation of the conditions attached to the N.A. Use Permission. Violation of the conditions of the N.A. Use Permission are the

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windows of that non-transparent wall. Unless and until the breach of conditions of the N.A.Use Permission is established, the respondent authority, cannot issue any notice, pertaining to the agricultural land. In the present case, N.A. Permission granted on 22nd October,1992. Never the respondent authority have ever alleged the breach of any conditions of N.A. Permission and, therefore, issuance of the notice dated 12th November,1992 itself, under Rule 108(6) of the Gujarat Land Revenue Rules,1972 is not permissible, is illegal and is invalid, looking to the facts of the present case. Once the N.A. Permission is given for any land, it ceased to be an agricultural land and, therefore, notice issued for alleged breach of section 54 of the Ordinance,1949 is not valid and hence all the subsequent orders passed by all the authorities below deserve to be quashed and set aside.

(iii) It has been decided by this Court in the case of **M/s.Jailaxmi Estate and another V/s. State of Gujarat and others** reported in **A.I.R. 1994 Gujarat 38** (para-6 thereof), reads as under :-

> *"6. .... In the present case, in view of the N.A. Order dated May 27,1981, the land*

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in question cannot be characterised as an agricultural land. Under S.63, an agricultural land cannot be sold to any one except an agriculturist. The sale-deed at Annexure "C" came to be executed on June 11,1981, i.e. after the land was converted into non-agricultural one. In the facts of the case, the provisions of S.63, therefore, cannot be said to be attracted, as the land in question was no longer an agricultural land. The question, therefore, to sell it to the person other than agriculturist does not arise. With the grant of N.A. Permission on May 27,1981, the land in question did not retain its agricultural character. The second respondent has, therefore, no authority or jurisdiction to issue show cause notice under S.84C of the Bombay Tenancy Act, in as much as it cannot be said that the land which has been disposed of was an agricultural land. In my view, a land in respect of which N.A. Permission has been granted and which has, therefore, lost its official character of agricultural land is not "land" within the meaning of S.2(8) of the Bombay Tenancy Act. Therefore, the provisions of S.63 of the Bombay Tenancy Act were not applicable to it and the show cause notice issued on that basis cannot be sustained."

(Emphasis supplied)

Thus, in the facts of the present case also, N.A. Use Permission was given. Therefore, once the land ceases to be, the agricultural land, it is not covered by definition of the word "land" given in section 2(k) of the Ordinance,1949. Thus, once the land is not covered by Section 2(k), the respondent authority has no power, jurisdiction and authority to issue any notice under

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section 54 of the Ordinance,1949. The amount necessary to be paid to the respondent authority, had also been paid by the petitioner no.1 for grant of N.A. Permission and, therefore, it loses the character of an agricultural land.

(iv) Similarly, it has been decided by this Court in the case of **Mali Amrutlal Becharbhai and others V/s. The Dist.Collector of Banaskantha and others** reported in **AIR 1994 Gujarat 36** (para-4 there of), it has been held as under:-

> *"4. Mr.Dhaval Dave, the learned Asstt.Government Pleader, also invited my attention (to) S.32R of the Bombay Tenancy Act contending that on the petitioners' failure to cultivate the said land personally, he is liable to be evicted from the said land. The petitioners, after having the occupancy rights under the provisions of the Bombay Tenancy Act, including S.32R of the Act, becomes an occupant of the land in question for all legal purposes. He is, therefore, entitled to convert the land for non-agricultural use. The Collector, on passing necessary orders, for converting the land into non-agricultural one, the land does not remain agricultural land any longer. S.32R of the Bombay Tenancy Act cannot therefore have any application in the facts of the case. S.32R and S.43 of the Bombay Tenancy Act contemplate the restriction on transfer of the agricultural land and that the tenant, on failure to cultivate the agricultural land personally would be liable to be evicted from the said*

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land. In my opinion, the said provisions are not attracted in the facts of the present case. It is not in dispute that the petitioners were permanent tenants in respect of the land in question."
(Emphasis supplied)

In the facts of the present case also, after grant of N.A. Use Permission, the land looses its agriculture character, therefore Section 54 of the Ordinance,1949 is not applicable to such land.

(v) Looking to the facts of the present case, the land bearing Survey No.1005 paiki was purchased by the petitioner no.1 in the year 1989. Mutation entry was also entered into the records of right. Mutation entry no.2605 was made and the said entry was also certified on 31st August,1989 and at much belated stage, after lapse of more than three years period, a notice dated 12th November,1992 was issued under Rule 108(6) of the Gujarat Land Revenue Rules,1972 alleging that the petitioner no.1 was not entitled to purchase the land of Survey No.1005 paiki as the petitioner no.1 was not an agriculturist. The respondent authority ought to have initiated appropriate action within reasonable time. Reasonable time has been defined in the case of **State of Gujarat V/s. Patel Raghav Natha and others** reported in 10 GLR

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992, especially para-12 thereof, as under:-

> *"12. The question arises whether the Commissioner can revise an order made under section 65 at any time. It is true that there is no period of limitation prescribed under sec.211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."*

The reasonable time has also been discussed and decided by the Hon'ble Apex Court in the case of **Mohamad Kavi Mohamad Amin V/s. Fatmabai Ibrahim** reported in **(1997)6 SCC 71**, especially para-2 thereof, as under:-

> *"2. Although Mr.Bhasme, learned counsel appearing for the appellant took a stand that under section 63 of the Act aforesaid, there should not be any discrimination amongst the agriculturists with reference to the State to which such agriculturist belongs. But according to him even without going into that question the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Section 84-C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgements of this Court that wherever a power is vested in a statutory authority without prescribing any time-limit, such power should be exercised within a reasonable time. In the present case the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September 1976. if sale*

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deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant reliance was placed on a judgement of Justice S.B. Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat V. Jethmal Bhagwandas Shah disposed of on 1-3-1990, where in connection with Section 84-C itself it was said that the power under the aforesaid section should be exercised within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat V/s. Patil Raghav Natha and in the case of Ram Chand V/s. Union of India has impressed that where no time-limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under section 84-C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed. The impugned orders are set aside. No costs."

(emphasis supplied)

Thus, in the aforesaid case, there was delay of three years in issuing the Notice under section 84-C of the Bombay Tenancy and Agricultural Lands Act,1948 which notice was quashed and set aside and it was held that the powers were not exercised within reasonable period of time by the concerned Mamlatdar. Several other judgments has been cited by the learned advocate for the petitioners pointing out reasonable period of time. This Court is not adding the number of judgments except

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aforesaid two important judgments.

(vi) It is vehementally submitted by the learned advocate for the petitioner that the order passed by the Assistant Collector,Morbi (Annexure "H" to the memo of the petition) is patently dehors the provisions of Rule 108(6) of the Gujarat Land Revenue Rules,1972. For the ready reference, the said rule, reads as under :-

> *"108(6) The Collector may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 and sub-rules 1 to 5 of this rule for the purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings.*
>
> *If, in any case, it shall appear to the Collector that any proceeding 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."*
>
> *(Emphasis supplied)*

In view of sub-rule (6) of Rule 108, only Collector can call for and examine the records of any inquiry of any Sub-ordinate Revenue Officer and not Assistant Collector, as has taken place in the present case. Thus, the impugned order passed by the Assistant Collector,

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Morbi is dehors the provisions of the Acts and the Rules. There is also a power vested in the State of Gujarat under Rule 108(6-A) of the Gujarat Land Revenue Rules,1972. The said sub-rule (6-A) of the Rule 108 of the Gujarat Land Revenue Rules,1972, reads as under:-

> *108(6-A) 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) of sub-rule (6) for the purpose of satisfying itself 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 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;"*
>
> *(Emphasis supplied)*

Thus, in view of the aforesaid provision of sub-rule (6-A) of Rule 108 of Gujarat Land Revenue

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Rules,1972, the order dated 10th July,1993 passed by the Assistant Collector, Morbi (Annexure "H" to the memo of the petition) deserves to be quashed and set aside. It has been decided by this Court in the case of **Evergreen Apartment Co-Op.Housing Society V/s. Special Secretary, Revenue Department, Gujarat State** reported in **1991(1) GLR 113** especially in para-12, as under:-

> *"12. There is much substance in the second submission of Mr.Hawa also. Ordinarily when a transfer of property takes place by a registered document, an entry is effected in the revenue record and it is certified by the Mamlatdar after making necessary inquiries. If there is any dispute regarding mutation, the dispute has to be entered in the register of the disputed cases and then such disputes are to be disposed of by the Mamlatdar. Under sub-rule (5) of Rule 108 of the Rules, the aggrieved party can prefer an appeal within 60 days from the date of the service of the order. The State Government has power to call for and examine the record of any enquiry or the proceedings of any subordinate Revenue Officer and to review the same under sub-rule (6) of the Rules. It is to be noted in the present case that no appeal had been presented within 60 days from the date of Mamlatdar's order certifying the initial entry. The Assistant Collector, Surat took the said entry in suo motu revision, even though he had no such power under the provisions of Rule 108. It, therefore, appears that the Additional Chief Secretary, Revenue Department remanded the proceeding to the Collector for treating the same as an appeal. This was done after a period of 4 years after the certification of the entry. It was only*

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the State Government which had the power to call for a record of inquiry or proceeding under sub-rule (6) of Rule 108. Even the State Government was empowered to satisfy itself "as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings". So the entire inquiry and revisional power has to proceed under the Bombay Land Revenue Rules and not under any enactments like the Bombay Tenancy and Agricultural Lands Act, Urban Land (Ceiling and Regulation) Act or Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It is quite possible that an officer of the Revenue Department may be occupying different capacities under different enactments. That, however, would not empower him to exercise any powers under one enactment while proceeding under another enactment. So far as the proceedings under Rule 108 of the Rules, popularly known as RTS proceedings, are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by competent authorities under special enactments. Independently the Revenue Authorities, as mentioned in Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. Thus on this second ground also the orders of the Collector and the Additional Chief Secretary appear to be beyond their jurisdiction. The Additional Chief Secretary has held that the sale by auction was not consistent with the provisions of

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Sec.27 of the Urban Land (Ceiling and Regulation) Act. Section 27 of the Urban Land (Ceiling and Regulation) Act. Section 27 relates to prohibition of transfer of any Urban land with a building thereon. Apart from legal position that Sec.27 has been struck down as ultra vires, it is quite obvious that no such question of transferring urban land with a building thereon has ever arisen in the present case. Thus, the order of the revisional authority has proceeded on a misconception of relevant legal provisions also.

(emphasis supplied)

In view of the aforesaid judgment, powers exercised by the Assistant Collector, Morbi i.e. revisional power is violative of principle of Bombay Land Revenue Code,1879 read with Gujarat Land Revenue Rules,1972. This aspect of the matter has not been appreciated by the Collector, Rajkot as well as the State Government.

(vii) There is also an error committed by the authorities below while passing the impugned order. After granting the N.A. Permission under section 65 of the Code,1879, the petitioner no.1 has altered his position, expenditure has been incurred in the land bearing revenue Survey No.1005 paiki and the land has been divided into 20 sub-plots, after sale of all these 20 sub-plots to several persons by registered sale deeds. Once the petitioner no.1 has altered his position and has sold

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away the sub-plots especially when N.A.Permission is granted (which is valid till today), it was not warranted for the respondent authority to issue Notice dated 12th November,1992 under the Ordinance,1949, read with, Rule 108(6) of the Rules,1972. The execution of the registered sale deeds, upon receipt of the consideration makes the position of the petitioner no.1 so much altered, that now, it cannot be put back, if, at all, the impugned orders held valid and legal. Neither the mutation entry no.1800, which was certified on 23rd March,1991, neither the N.A Use permission dated 22nd October,1992 has been upset by the respondent authority. The division of the plot in 20 sub-plots, thereafter sale by registered sale deed to 20 persons etc. is due to investment in the land for its development. This aspect of the matter has not been appreciated by any of the authorities below as stated hereinabove. N.A. Use Permission is such Non-transparent wall that once the N.A. Use Permission is given, the agricultural land cannot be seen by the respondent authority, except, through window of breach of any conditions of N.A. Use Permission. Once valid N.A. Use Permission granted for any land under section 65 of the Bombay Land Revenue Code,1879, it ceases to be agricultural land and, therefore, provisions of any Act,

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which are applicable to agricultural land are not applicable to such land, whether it is the Ordinance,1949 or the Bombay Tenancy and Agricultural Lands Act,1948 or the like. It has been held by this Court in the case of **Bipinchandra G. Dalal & Another V/s. State of Gujarat and Another** reported in **1987(2) GLH 127** especially in para-9 thereof, as under :-

> *"9. The Secretary (Appeals) has relied on two decisions of this Court, both rendered by S.H. Sheth, J. In the case of Kamalkhan Ajitkhan (supra), the Mamlatdar granted land to the petitioner on 3rd January 1973 and the Assistant Collector issued notice under section 211 of the Code on 21st January, 1975, that is, after a lapse of two years. Relying on the decision of the Supreme Court that the power must be exercised within a reasonable time, it was observed that reasonable time must depend on the facts and circumstances of each case. Taking note of the fact that the petitioner had not done anything on the Wada land and the land had remained as it was during the said period of two years, this Court held that it was permissible to exercise revisional power as the same was not likely to cause any prejudice to the pertitioners. In the case of Gulam Yasinmiva (supra), the order made by the Assistant Collector on 7th August,1967 was sought to be revised after a lapse of almost three years by notice dated 27th October 1970. Taking note of the decision of the Supreme Court as well as this Court in Habib Nasir's Case (supra), the learned Judge observed that since the period of reasonable time must depend on the facts and circumstances of each case, it would have been necessarily to seriously view the proposed action if the evidence had*

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disclosed that after the land was granted to the petitioner, the petitioner had invested moneys in the land, developed it or had done something to develop it. In the absence of such evidence, this Court held that notwithstanding the lapse of time, since the proposed action was not likely to cause prejudice to the petitioner, the same must be upheld. Both these decisions do not pertain to exercise of revisional powers relating to permission granted under section 65 of the Code. As pointed out earlier, cases governed by Section 65 read with Section 211 stand on a different footing and in view of the observations made by the Supreme Court extracted earlier, the power must be exercised within a few months from the date of permission. Besides, in the present case the petitioners have averred that after the grant of permission, they have sold or entered into an agreement to sell the plot for the purpose of development and if the permission granted is belatedly cancelled, it would have a direct impact on the transaction entered into by the petitioners. Miss Shah was, therefore, right in contending that so far as the present two petitions are concerned, since the first respondent has not given any satisfactory explanation for the delay, this Court must hold that the power was not exercised within reasonable time. She submitted that in the present case it is not the contention of the first respondent that any preliminary inquiry was made to determine whether these were fit cases for exercise of revisional powers as in the batch of petitions, Special Civil Application No.4530 of 1983 and allied matters disposed of today and, therefore, there is no explanation whatsoever why the power was not exercised promptly within a few months from 6th November 1982. This is all the more so because in similar circumstances the Secretary (Appeals) had while dealing with land in Block No.18 admeasuring 2723 sq.yards, withdrawn the show cause notice on the ground that the proposed action was delayed. I am inclined

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to agree with the submissions made by Miss Shah in this behalf."

(emphasis supplied)

In the facts of the case decided in the aforesaid judgment, after grant of N.A. Use Permission, the land was sold away and thereafter, a notice was issued under the Bombay Land Revenue Code. This was not approved by this Court and the petition was allowed. In the present case, after grant of N.A. Use Permission, the land was sub-divided into 20 plots by investing amount upon land for its development thereafter, the land was sold away by registered sale deeds and possession has also been parted with, and after lapse of three years, notice under section 108(6) has been issued. There is no explanation for causing delay in issuance of the notice. Therefore such belated action initiated by respondent is bad in law.

(viii) It is also pointed out by the learned Assistant Government Pleader that whenever there is a breach of Ordinance, the whole transaction is invalid and, therefore, purchase of Survey No.1005 paiki by the petitioner no.1 is an invalid transactions. This contention is not accepted by this Court mainly for the reasons that mutation entry no.1800 reveals the fact that

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the petitioner was the owner of an agricultural land bearing Revenue Survey No.1137. This entry was also certified on 23rd March,1991. Till today, no notice has been issued to upset or alter this mutation entry no.1800, and, therefore, it cannot be said that the petitioner no.1 was not an agriculturist. Looking to the impugned order passed by the Assistant Collector, Morbi (Annexure “H” to the memo of the petition) it is observed therein that the mutation entry no.1800 has been “cleverly” obtained by the petitioner no.1. This observation was not warranted on the part of the Assistant Collector, Morbi, especially when there is no notice to upset mutation entry no.1800 and especially when the said entry was certified, upon necessary inquiry on 23rd March,1991. This aspect of the matter has not been appreciated by the authorities below, which affects the very root of the case. Thus, this is an error apparent on the face of the records.

(ix) It is also not appreciated by the authorities below that over and above Survey No.1137, mutation entry no.1800 still there are other lands, which are agricultural in nature, purchased and owned by the petitioner no.1 at Village : Vajepar, Taluka: Morbi,

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District: Rajkot. This aspect of the matter has not been appreciated by all the authorities below.

10. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the impugned order dated 10th July,1993 passed by the Assistant Collector, Morbi (Annexure “H” to the memo of the petition); the order dated 29th April,1994 passed by the Collector, Rajkot as well as the order dated 25th October/November,1994 passed by the State Government are hereby quashed and set aside. Rule made absolute with no order as to costs.

(D.N.PATEL, J)

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