IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7535 of 2020

==========

SUMITRABEN WD/O BABUBHAI GIMJIBHAI CHAUDHARY

Versus

STATE OF GUJARAT

==========

Appearance:
MR RUTVIJ S OZA(5594) for the Petitioner(s) No. 1,2,3,4,5
MS. KITTY S MEHTA(7025) for the Petitioner(s) No. 1,2,3,4,5
MR KM ANTANI, ASST GOVERNMENT PLEADER(1) for the Respondent(s) No. 1
RULE NOT RECD BACK(63) for the Respondent(s) No. 2

==========

CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 07/09/2020

ORAL ORDER

1. Under challenge, in this petition under Article 226 of the Constitution of India, are the order dated 19.02.2020 passed by respondent no. 1 and the order of the Collector dated 14.08.2018 confirming the order dated 19.02.2020 passed against the petitioner.

2. The short facts are as under:

2.1 As is evident from reading the order of the Collector dated 14.08.2018, Block No. 1414 was the land situated at Uncha Mala, Ta. Vyara. The land was in the name of one Khevjibhai Ramsibhai. During his life, the land was transferred in the name of the elders of the petitioner namely Babubhai Gimjibhai Chaudhary. The land was transferred to Babubhai Gimjibhai by virtue of a will.

2.2 The revenue entries were therefore mutated in the name of Babubhai Gamit by entry no. 5662 on 28.10.1998. On examination by the team,

it was found that the petitioners were not the heirs by direct descendence and therefore on 13.07.2017, the Collector took the entry on suo motu revision. Hearings were held and by the order dated 14.08.2018 the entry in favour of the petitioners was rejected.

2.3 That order was challenged by the petitioners before the Special Secretary who confirmed the order in Suo Motu Case No. 74 of 2016. The case of the petitioners is that by way of a registered sale deed of 18.01.1973, the land was purchased by Khevjibhai Ramsibhai and the transactions were mutated in the revenue records in the year 1973. Since Khevjibhai Ramsibhai was not having any legal heirs, the land was transferred to Babubhai Gimjibhai Chaudhary by executing a will on 12.07.1990. Since Khevjibhai Ramsibhai Chaudhary expired intestate, the name of Babubhai Gimjibhai was mutated on 28.10.1998. It appears that though there was no illegality in transferring the land by virtue of a will and there was no violation of the Bombay Tenancy and Agricultural Lands Act, 1948, as submitted by Mr. Rutvij Oza, learned advocate for the petitioners, the Collector after approximately 15 years exercised suo motu powers of revision and took the entry in revision. These orders have been conferred by the Special Secretary.

3. Mr. K.M. Antani, learned AGP would contend that it was only on the basis of an inquiry that the suo motu powers were exercised.

4. Be that as it may. It is well settled by several decisions of this court that powers of suo motu revision have to be exercised within a reasonable period of time. In the case of **Evergreen Apartment Co-op Housing Society Ltd. vs. Special Secretary (Appeals), Revenue Department,** reported in **1991 (1) GLR 113,** it has been held that suo motu

powers of revision must be exercised within a reasonable period. Similarly in the case of **State of Gujarat vs. Patel Raghav Natha reported in 1969 (2) SCC 187,** the Apex Court while adverting to Sections 65 and 211 of the Bombay Land Revenue Code, 1979 held that, " though there is no period of limitation prescribed under Section 211 to revise an order made under Section 65 of the Act, the said power must be exercised in reasonable time and on the facts of the case in which the decision arose, the power came to be exercised more than one year after the order and that was held to be too late.

4.1 In the case of **Somabhai Manyabhai Bhoye vs. State of Gujarat rendered in Special Civil Application No. 7543 of 2020**, this court has held as under vide order dated 20.08.2020:

> "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 to9, 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 on20.11.1994 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 30.12.2002calling upon the petitioner and the respondents Nos. 6to 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 relevantfactors.*
> *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 on14.09.2011. 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 hasheld 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 apower 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.*

xxx xxx xxx

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 Appartments 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."

5. In view of the settled position of law as enunciated hereinabove, it cannot be said that the power was exercised by the authorities within a reasonable period of time and therefore the orders impugned in the present petition are required to be quashed and set aside.

6. The petition is therefore allowed. The orders dated 19.02.2020 and 14.08.2018 are hereby quashed and set aside. Rule is made absolute accordingly. No costs.

(BIREN VAISHNAV, J)

Divya