IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 22289 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**Yes**
2	To be referred to the Reporter or not ?	**No**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**No**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**No**

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HEIRS AND LRS OF DECD DHORI AKBARKHANJI AHMEDKHANJI & 2 other(s)

Versus

STATE OF GUJARAT & 4 other(s)

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Appearance:
MS URMI RAVAL FOR MR ASHISH H SHAH(2142) for the Petitioner(s) No. 1.1,2.1,2.2,2.3,3
DECEASED LITIGANT(100) for the Respondent(s) No. 5
DS AFF.NOT FILED (R)(71) for the Respondent(s) No. 2
MR VRUNDA SHAH, ASSISTANT GOVERNMENT PLEADER(1) for the Respondent(s) No. 1
RULE SERVED BY DS(65) for the Respondent(s) No. 3,4
RULE SERVED(64) for the Respondent(s) No. 5.1

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CORAM: **HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**

Date : 14/02/2020

ORAL JUDGMENT

1. The present petition has been filed, praying for issuance of writ of certiorari or any other appropriate writ, order or direction, quashing and setting aside the order dated 21.12.1999 passed by the respondent no.4, that is, the Deputy Collector, Rajpipla as well as the order dated 18.5.2005 passed by the respondent no.2, that is, the Principal Secretary (Appeals), Revenue Department in appeal number 1 of 2000

whereby, the Principal Secretary (Appeals) while dismissing the appeal, confirmed the order dated 21.12.1999 passed by the Deputy Collector.

2. The facts giving rise to the filing of the present petition are as under:-

2.1 The controversy revolves around the land bearing survey number 131/1, admeasuring hector 0 Are 26 and 30 square meters situated in the sim of Village Vadia, Taluka Tilakwada (at the relevant point of time in Vadodara district). According to the petitioners, Dhori Akbarkhanji Ahmedkhanji, that is, the father of the petitioners (now deceased) executed a registered document dated 20.6.1984 whereby, the lands bearing survey number 129, admeasuring hector 01 Are 09 and 27 square meters and survey number 131/3, admeasuring hector 0 Are 26 and 30 square meters situated in the sim of Village Vadia, Taluka Tilakwada were purchased by him by paying a consideration of rupees 23,500/- to Afghan Hanifsaheb Yusufkhanji (now deceased) and presently represented through his heir, that is, Afghan Munirsaheb Yusufkhan, the brother, as Afghan Hanifsaheb Yusufkhanji was bachelor (hereinafter referred to as “the original owner”). According to the petitioners, the land bearing survey number 129 as well as land bearing survey number 131/3 are contiguous and adjacent to each other and situated in Village Vadia. It is further the case of the petitioners that the sale deed dated 20.6.1984 was registered with the office of the Sub-Registrar, Naswadi.

2.2 Subsequent to the execution of the aforesaid document of sale dated 20.6.1984, necessary steps were taken for

mutating the entry in the revenue record. Accordingly, entry number 370 came to be mutated in the village form number 6 on 20.5.1989 and the same was thereafter certified by the Mamlatdar, Tilakwada. The said entry number 370, categorically records the sale transaction in favour of the father of the petitioners. Subsequent to the aforesaid transaction, the father of the petitioners – Dhori Akbarkhanji Ahmedkhanji and thereafter, on his death, the petitioners are in possession, occupation and cultivation of the land bearing survey number 131/3 (hereinafter referred to as “the land in question”).

2.3 After a long lapse of 15 years, that is, after the execution of the registered sale-deed, the Deputy Collector, Rajpipla, the respondent no.4 issued a notice dated 8.3.1999 to the original owner, a copy whereof was endorsed to the father of the petitioners. The said notice was issued by the Deputy Collector, Rajpipla under the provisions of the Gujarat Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as “the Act”). By said notice, the Deputy Collector required the father of the petitioners to show cause as to why the sale transaction executed in his favour should not be declared as illegal and void inasmuch as, the said transaction was executed in breach of the provisions of the Act.

2.4 In response to the notice dated 8.3.1999, the father of the petitioners filed a reply, *inter alia,* pointing out that the land in question has been purchased by way of a registered sale deed against the valuable consideration of rupees 23,500/-. It was also pointed out that the possession of the land in question is with him, that is, the father of the

petitioners. The said stand was also supported by the original owner in favour of the father of the petitioners. The Deputy Collector, Rajpipla after considering the replies filed by the father of the petitioners as well as original owner so also Talati-cum-Mantri, passed an order dated 21.12.1999 whereby, the Deputy Collector, Rajpipla ordered eviction of the father of the petitioners coupled with the direction to restore the possession of the land in question in favour of the original owner. It also directed the original owner to pay rupees 250/- by way of penalty and if he fails to make the payment, the same will be recovered by way of the arrears of the land revenue.

2.5 Being aggrieved and dissatisfied, the petitioners as heirs and legal representatives preferred an appeal number 1 of 2000 before the Principal Secretary (Appeals), Revenue Department. One of the grounds raised in the memorandum of appeal was to the effect that the land in question was purchased in the year 1984 by way of a registered sale deed after making a suitable payment and since then, they are in possession and occupation of the land in question. It was also submitted that after the execution of the sale deed in the year 1984, they have invested a huge amount in the development of the land in question, namely, they have carried out construction of water blockages (Palabandh) etcetera. That the proceeding initiated, is without any jurisdiction and is illegal. In the memorandum of appeal, it was also contended that the factum of the execution of the registered sale deed dated 20.6.1984 has been mutated in the revenue record vide entry number 370 dated 20.5.1989 which was certified by the Mamlatdar and was within the knowledge of the revenue officer. It has been further submitted that the revenue authorities if at all were desirous of initiating any proceeding, it

ought to have been initiated within a reasonable time from the date of the knowledge, that is, in the year 1984 or in the year 1989 when the revenue entry number 370 came to be mutated in the revenue record. It is further submitted that the action has not been initiated by the revenue authorities within the reasonable time.

3. The Principal Secretary (Appeals) passed an order dated 18.5.2005 whereby, the appeal filed by the petitioners came to be rejected and thereby, the order dated 21.12.1999 passed by the Deputy Collector, Rajpipla, stood confirmed. Hence, the present petition with the aforementioned prayers.

4. Ms. Urmi Raval, learned advocate on behalf of Mr. Ashish Shah, learned advocate for the petitioners at the outset, submitted that the order dated 21.12.1999 as well as the order dated 18.5.2005 passed by the Deputy Collector, Rajpipla and the Principal Secretary (Appeals) respectively are bad in law inasmuch as, it ought to have been appreciated that the sale transaction between the parties, was executed in the year 1984 vide sale deed dated 20.6.1984. Not only that, the said sale deed was registered with the office of the Sub-Registrar, Naswadi and thereafter, necessary entry number 370, dated 20.5.1989 came to be mutated in the revenue record, that is, village form number 6 recording the factum of transaction.

4.1 It is submitted that after a long lapse of an unexplained delay of 15 years, after the sale and almost after 10 years of the entry having been made in the revenue record, the Deputy Collector, Rajpipla – respondent no.4 issued a notice dated 8.3.1999, *inter alia,* calling upon the petitioners to show cause as to why the sale transaction should not be declared as illegal

and void. It is next submitted that the said entry was subsequently certified by the Mamlatdar. Thus, the aspect of the transaction was very much within the knowledge of the authorities. Having not initiated any action immediately, it was impermissible in law for the Deputy Collector, Rajpipla to have initiated the proceeding and declaring the execution of the transaction in breach of the provisions of section 9 of the Act.

4.2 It is submitted that the transaction of the land in question was by way of a registered sale-deed with the original owner and thus, after a lapse of about 15 years, no such proceeding could have been initiated followed by passing of the order declaring the sale to be invalid or void and further directing eviction of the petitioners. It is further submitted that evidently, the mutation entry was mutated on 20.5.1989 on the basis of the registered document and certified on 24.7.1989 and atleast from the date of certification of the entry, the revenue authorities are deemed to have the knowledge of the transaction in question and the consequent action was required to be taken within a reasonable time as is settled by catena of decisions.

4.3 It is next submitted that the show cause notice dated 8.3.1999, was only issued with respect to survey number 131/3 and the proceeding is initiated after a lapse of about 9 years and 8 months which is also beyond the reasonable time. It is further submitted that the said aspect, was specifically urged and argued before the authorities; however, the aspect has, not at all, been dealt with either by the Deputy Collector, Rajpipla or the Principal Secretary (Appeals), Revenue Department. It is thus submitted that there is a clear non-application of mind and that the orders under challenge suffer

from arbitrariness and bereft of any proper reasonings and thus, deserves to be quashed and set aside.

4.4 It is submitted that a bare perusal of the orders passed by the authorities below so also the contents of the show cause notice, clearly suggest that the proceeding is initiated only with respect to the land in question on the ground that the land was fragment of which notice was given under sub-section (2) of section 6 of the Act. However, no such document or evidence in support of such findings were ever produced before the authorities or were ever supplied or furnished to the petitioners and thus, any findings in that respect is in breach of the principles of natural justice. It is further submitted that assuming that the notice was given under the provision of sub-section (2) of section 6 of the Act with respect to the land in question and that the land was notified as a fragment, then also, there is no question of applicability of the provisions of the Act considering the fact that vide the said document, the father of the petitioners had also purchased the land bearing survey number 129 which is contiguous and adjacent to the land in question. It is submitted that therefore, no proceeding under the provisions of the Act was maintainable or the authorities were entitled to take out any proceeding under the provisions of the Act with respect to the land in question. It is also submitted that the authorities below committed an error in not appreciating the fact that the original owner had transferred the entire holding of the entire Khata (account number) and thus, it cannot be said that there was any breach of any of the provisions of the Act committed either by the original owner or by the father of the petitioners.

4.5 While reiterating, it has been submitted that the orders

under challenge deserve to be quashed and set aside as the proceeding which has been culminated into passing of the order is beyond reasonable period of time and that there is no whisper much less any discussion or the grounds stated in the show cause notice that as to why, after an unexplained delay of 15 years from the date of the execution of the sale deed dated 20.6.1984 and 10 years from the date of the certification of the entry number 370 the proceeding has been initiated. In absence of any justification in the orders passed by the authorities below, the exercise of powers after such an unreasonable long delay is illegal, void and deserve to be quashed and set aside. It is submitted that the authorities below ought to have appreciated that it was impermissible for the authorities to initiate any action after a long lapse of period. However, while initiating such action, the authorities below did not consider the aspect urged by the petitioners that the petitioners have spent considerable huge amount for betterment and improvement of the land in question being agriculturists and were dependent upon the agricultural operations for their livelihood. It is submitted that the impugned orders are non-speaking orders as the same do not deal with the arguments specifically raised and advanced and therefore, deserve to be quashed and set aside on this ground, as well.

4.6 In support of the aforesaid submission, Ms. Raval, learned advocate for the petitioners has placed reliance on the judgment in the case of *State of Gujarat vs. Raghav Natha & Ors.,* reported in *1969 (10) GLR 990 : AIR 1969 SC 1297.* It is submitted that the Apex Court, in the said judgment, has categorically held that if the statute does not provide for any limitation for taking any action; in such an eventuality, the

authorities are obliged to take action within a reasonable time, that is, one year and not more than one year.

4.7 Reliance has also been placed on the judgment of this court in the case of *Valjibhai Jagjivanbhai vs. State of Gujarat,* reported in *2005(2) GLH 34* to contend that this court while dealing with the provisions of section 9 of the Act, has held that in view of there being a sufficient scope for the revenue authorities to know about an illegal transaction which can be termed as void under Section 9 of the Act, in spite of that, if such void transaction is allowed to exist for years together, it is difficult to hold that the competent authority, even then would be within its bounds to initiate proceedings to declare such transaction void and annul it. Inviting the attention of this court to paragraph 17.1 of the said judgment, it is submitted that it has been held that to lay down proposition of law in relation to section 9 of the Act that the Collector can exercise power thereunder even after inordinate delay, irrespective of the fact that there is scope for him to know about illegality committed cannot only be dangerous because it can give an ample opportunity to some crafty seller to exploit the situation to his advantage, but it can also be against the principle that one cannot sleep over his right for unreasonable period. It is thus submitted that this court, held the action initiated by the Collector under section 9 after delay of 7 years, as illegal and bad. This court ultimately held that even powers conferred upon the Collector under sub-sections (2) and (3) of Section 9 are required to be exercised within a reasonable time.

4.8 Further reliance has been placed on the judgment in the case of *Paliben, Wd/o Kikubhai Kuvariyabhai Koli Patel vs. Deputy Collector, Valsad & Ors.* reported in 2012 (0) GHLEL-

HC-227336. Attention of the court is invited to paragraphs 6 and 7 to contend that this court while dealing with the provisions of the Act, has observed that by now it has been well settled proposition of law that any authority either under the provisions of the Fragmentation Act or under the provisions of the Saurashtra Gharkhed Ordinance or under the Bombay Tenancy Act wants to initiate proceedings for deciding the validity or otherwise of any transaction, such proceedings are required to be initiated within a reasonable period. It is submitted that in the said case, the action was initiated after a period of 8 years which, has been declared as illegal by this court by observing that the period of 8 years by any stretch of imagination would not fall within the arena of reasonable period. It is then submitted that in the present case, the action was initiated after a period of 15 years from the date of the execution of the registered sale deed in the year 1984 and 10 years from the date of the mutation of entry number 370 dated 20.5.1989 and thus, is impermissible.

4.9 Further reliance has been placed on the judgment in the case of *Shanabhai Kidiyabhai vs. State of Gujarat,* reported in 2009 (0) GLHEL-HC-221094. It is submitted that the petitioners therein, from the beginning were cultivating the land as one family and have incurred a huge expenditure in the land in question. Under the circumstances, this court held that it is difficult to believe that the mutation of the entry was not within the knowledge of the authorities and while not accepting the arguments of the respondent authorities, allowed the writ petition on the said ground.

4.10 While concluding, it is submitted that the action, having been initiated after a lapse of more than 15 years from the

date of the execution of the sale deed and 10 years from the date of mutation of the entry in the revenue record, is beyond the reasonable time and thus, in view of the well settled proposition of law, the present petition deserves to be allowed and the orders dated 21.12.1999 as well as 18.5.2005 passed by the Deputy Collector, Rajpipla and the Principal Secretary (Appeals) respectively, deserve to be quashed and set aside.

5. Per contra, Ms. Vrunda Shah, learned Assistant Government Pleader while supporting the order dated 21.12.1999 passed by the Deputy Collector, Rajpipla and the order dated 18.5.2005 passed by the Principal Secretary (Appeals) submitted that the orders passed by the authorities are well reasoned orders and do not warrant any interference. It is submitted that the Deputy Collector while considering the record produced by the Talati – cum – Mantri, has observed that the notice was issued under the provisions of sub-section (2) of section 6 of the Act notifying the fragment and that the possession of the land in question was of the father of the petitioners. It also reveals from the record produced by the Talati – cum – Mantri that the father of the petitioners was not possessing any contiguous or adjacent land to the land in question and thus, it is the case of the Talati – cum – Mantri that there is a breach of the provisions of the Act. It is further submitted that once having been observed that there is a breach of the provisions of the Act, the order dated 21.12.1999 passed by the Deputy Collector, Rajpipla is in the right earnest. It is further submitted that since it was found that the transaction was executed in breach of the provisions of the Act, the penalty which has been imposed is in tune with the provisions of section 9 of the Act and the same does not deserve any interference on this ground as well. While

referring to the order dated 18.5.2005 passed by the Principal Secretary (Appeals), it has been submitted that the Principal Secretary (Appeals), was of the firm opinion that the father of the petitioners though was not having any contiguous or adjacent land, the sale transaction has been executed which, is against the spirit of the Act. It is further submitted that the Principal Secretary (Appeals), has categorically observed and it is also not disputed that no prior permission was taken before executing the transaction of sale dated 20.6.1984. Thus, clearly, the transaction executed between the parties was in breach of the provisions of the Act and that the order passed by the Principal Secretary (Appeals) is a valid order.

5.1 Thus, it is submitted that both the authorities having found that the transaction was in breach of the provisions of the Act, has rightly declared the transaction as void and that there is nothing wrong in issuing the direction to the petitioners to handover the possession of the land in question to the original owner, coupled with imposition of penalty of rupees 250/- upon the private respondent. It is thus, urged that the authorities below have not committed any error in passing the orders and thus, the petition does not require interference and deserves to be dismissed.

6. Heard Ms. Urmi Raval, learned advocate for the petitioners and Ms. Vrunda Shah, learned Assistant Government Pleader for the respondents. Though served, the respondent no.5.1 has not entered appearance.

7. The judgments cited by the learned advocate for the petitioners, squarely cover the issue of the exercise of power within reasonable time which, goes to the root of the matter. In

the celebrated judgment in the case of State of Gujarat vs. Raghav Natha & Ors. (supra), the Apex Court while dealing with the provision of Section 211 of the Bombay Land Revenue Code, where no period of limitation has been prescribed for exercise of the powers, held that reading the provisions of section 211 with section 65, it suggests that the Commissioner must exercise his revisional powers within few months of the order of the Collector. In the said case, the Commissioner while exercising the power of revision under Section 211 of the Revenue Code, quashed and set aside the order of the Collector after a period of more than one year. The Apex Court, was of the opinion that the order passed by the Commissioner was too late.

8. The next judgment cited by learned advocate for the petitioners is the case of Valjibhai Jagjivanbhai vs. State of Gujarat (supra) where, the Division Bench while dealing with the very provision of Section 9 of the Act, quashed and set aside the order passed by the City Deputy Collector and held that there is sufficient scope for the revenue authorities of the State to know about illegal transactions which can be termed as void under sub-section (1) of section 9 of the Act, in spite of that if such void transaction is allowed to exist for years together, it is difficult to hold that the competent authority, even then would be within its bounds to initiate proceedings to declare such transaction void and annul it. This court, has further observed that to lay down proposition of law, in relation to section 9 of the Act, that the Collector can exercise power thereunder even after inordinate delay, irrespective of the fact that there is scope for him to know about illegality committed cannot only be dangerous because it can give ample opportunity to some crafty seller to exploit the situation to his

advantage, but it can also be against the principle that one cannot sleep over his right for unreasonable period. The Division Bench, thus, concluded that there is no doubt that even the void transaction under sub-section (1) of section 9 if allowed to remain effective for considerably long period, the authority named therein will be precluded from initiating proceedings to annul it. The relevant paragraphs 17.1, 21 and 23 read thus:-

> *"17.1. The aforesaid discussion shows that there is sufficient scope for the revenue authorities of the State to know about illegal transaction which can be termed void under Section 9(1) of the Act, inspite of that, if such void transaction is allowed to exist for years together, it is difficult to hold that the competent authority, even then would be within its bounds to initiate proceedings to declare such transaction void and annul it. It is also difficult to envisage that when two routes are available for reaching the ultimate destination under Section 9(2) and (3) of the Act, on the route prescribed under Section 35, the authority named therein will not be permitted to travel and the shutters will be drawn at the point where reasonableness ends. Whereas the other route i.e. under Section 9 of the Act will remain open for all time to come. To lay down proposition of law, in relation to Section 9 of the Act, that the Collector can exercise power thereunder even after inordinate delay, irrespective of the fact that there is scope for him to know about illegality committed cannot only be dangerous because it can give ample opportunity to some crafty seller to exploit the situation to his advantage, as we will presently discuss, but it can also be against the principle that one cannot sleep over his right for unreasonable period. It has to be pursued vigilantly.*
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> *21. It may also be kept in view that the Collector not taking any action under Section 9 for years together after illegal transfer may lead to change of circumstances. There is every possibility that the purchaser may invest sizeable amount for the development of the land or the said land at some point of time may get converted into non-agricultural land and its price may shoot up considerably on account of it being available for raising construction thereon or in fact the land is converted into non-agricultural and the construction has come upon it with the passage of time. Despite such events having taken place and even after the authorities had the opportunity to notice the illegality of the transaction, the Collector would be in a position to exercise power under Section 9 sub-section (3) of the Act. It is difficult to swallow such proposition of law. It is also difficult to accept that the Collector would be in a position to extinguish*

the rights and title of several persons, who had no role to play in the original transaction nor even in getting such land converted into non-agricultural one. It will be too much to expect an ordinary bonafide purchaser to follow the principle of 'buyer beware' to such an extent that he would be able to know that the plot of the land, which once was an agricultural land and was sold to its first purchaser as a fragment about 20 years ago. Though one has to stretch the imagination to a certain extent, the aforesaid possibility cannot be totally ruled out.

23. Looking to the aforesaid different situations, there is no-doubt in our mind that even the void transaction under Section 9(1) if allowed to remain effective for considerably long period, the authority named therein will be precluded from initiating proceedings to annul it. The ratio laid down by the Apex Court in the decisions cited by Mr. Patel clearly states that even the void transaction cannot be said to be nonexistent in all cases and in all situations. It can remain effective and in existence till it is invalidated and set aside. If its existence is allowed to remain for a considerable period and with the passage of time it brings about several changes, creating valuable rights in favour of considerable section of people, it is difficult to accept the proposition that despite the change the Collector would be entitled to exercise power under sub-section (3) of Section 9 of the Act. Similar observations can also be made with regard to the land wherein no change is brought about, but number of years have passed after the transfer against the provisions of the Act has taken place. In our opinion when the things have been allowed to remain as such for years together, the purchaser cannot be deprived of his possession so as to render indirect benefit to the seller who was equally responsible for entering into such illegal transaction. Thus, in our view, when the authority had considerable opportunities to know about the transaction and despite that, has not taken any action thereon for years together, such authority cannot be allowed to exercise powers conferred upon it at a belated stage. The concept of reasonableness of time will equally apply in such cases. We, therefore, hold that even powers conferred upon the Collector under sub-sections (2) and (3) of Section 9 are required to be exercised within a reasonable time." (emphasis supplied)

9. The aforesaid view has been reiterated by this court in subsequent judgments in the case of Shanabhai Kidiyabhai (supra) as well as in the case of Paliben, Wd/o Kikubhai Kuvariyabhai Koli Patel (supra). It has been held by this court that initiation of the proceedings at a belated stage would not be permitted under the provision of section 9 of the Act inasmuch as, initiation of proceedings are required to be

initiated within reasonable period.

10. At this juncture, few judgments of the Apex Court also deserve a reference. The Apex Court in the case of *Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahim,*reported in (1997) 6 SCC 71 while dealing with the provisions of the section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, has observed that though section 84C of the Tenancy Act does not prescribe any time for initiation of the proceedings, but in view of the settled position, 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 said case, the facts were to the effect that the transfer took place in the year 1972 and suo motu enquiry was started by the Mamlatdar in September 1973. The Apex Court under the said circumstances, held that if the sale deeds are declared to be invalid, the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. The Apex Court, while setting aside the exercise of the suo motu powers under the provision of Section 84C by the Mamlatdar, allowed the appeal.

11. The Apex Court in the case of *Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors.,* reported in *(2015) 3 SCC 695*, while reiterating the aforesaid well settled position of law held in paragraph 16 that if no time limit is prescribed, the exercise of suo motu power has to be within a reasonable time. In the concurring judgment, the Apex Court in paragraph 31 has observed thus:-

> *"31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law.*

Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority."

12. The Apex Court, has clearly held that even when there is no period of limitation prescribed for exercise of such power, the intervening delay may have led to creation of third party rights that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. The Apex Court has also observed that rule of law, it is said must run closely with the rule of life.

13. In the backdrop of the aforementioned principle, the facts of the present case require to be determined. Undisputedly, the sale deed was executed on 20.6.1984 between the father of the petitioners on the one hand and the original owner on the other, with regard to two parcels of land viz. survey number 129, admeasuring hector 1 Are 09 and 27 square meters and survey number 131/3, admeasuring hector 0 Are 26 and 30 square meters. It is also undisputed that the sale deed dated 20.6.1984 was registered with the office of the Sub-Registrar, Naswadi. In furtherance of the execution of the registered sale deed dated 20.6.1984, entry number 370 dated 20.5.1989 came to be mutated in the revenue record recording the transaction. Pertinently, entry categorically reflects the name of the seller as well as the name of the purchaser along with the consideration paid and received between the parties.

Subsequently, the said entry number 370 dated 20.5.1989 was certified by the Mamlatdar, Tilakwada. Since then, initially, the father of the petitioners and thereafter, the petitioners are in occupation and in possession of the land in question.

14. The record further reveals that all throughout, no action was initiated by the authorities and it is only in the year 1999, that is, almost after a period of 15 years, the notice dated 8.3.1999 came to be issued by the Deputy Collector, Rajpipla to the original owner, copy whereof was endorsed to the father of the petitioners requiring the recipient of the notice to show cause as to why the transaction shall not be cancelled and further penalty of rupees 250/- should not be imposed. The Deputy Collector, Rajpipla thereafter, vide order dated 21.12.1999, directed the eviction of the petitioners from the land in question and further directed the possession of the land in question to be handed over to the original owner, that is, brother of the respondent no.5.1. In the said order, it has also been ordered to pay a penalty of rupees 250/-, failing which the same would be recovered through the arrears of the land revenue.

15. It is clear from the order passed by the Deputy Collector, Rajpipla that the Deputy Collector has initiated the proceedings under section 9 of the Act only on the basis of some proposal mooted by the record of rights team. In view of the aforesaid well settled principle of law, the Deputy Collector, Rajpipla could not have initiated the proceedings merely on the basis of the report submitted by the record of rights team and it ought to have been appreciated that if the provisions of the Act does not prescribe the limitation, it should have been initiated within the reasonable time. As held by the Apex Court

as well as by this court, that the reasonable period has to be a period of one year. In the present case, as discussed hereinabove, the proceeding has been initiated almost after a period of more than 15 years from the date of the execution of the registered sale-deed in the year 1984 and 10 years from the date of the mutation of entry in the revenue record in the year 1989.

16. Since the Deputy Collector had ordered eviction of the petitioners, an appeal came to be filed being appeal number 1 of 2000 before the Principal Secretary (Appeals), Revenue Department wherein, various grounds were raised by the petitioners. One of the grounds was with respect to the limitation. It has been categorically contended that it was not permissible for the authorities below, to have initiated the proceedings after a period of 15 years from the date of execution of the sale deed and almost close to 10 years from the date of the mutation of the entry in the revenue record in the year 1989. Hence, the initiation of the action by the Deputy Collector was hopelessly time barred and beyond reasonable time. It was also contended before the Principal Secretary (Appeals), Revenue Department that after the transaction in the year 1984, the petitioners have been in possession and have invested huge amount towards the agricultural operations and that the Deputy Collector, failed to appreciate the said aspect. Since the Deputy Collector, having not appreciated the said aspect, has committed an error in passing the order dated 21.12.1999 and the same deserves to be quashed and set aside.

17. The Principal Secretary (Appeals), Revenue Department passed an order dated 18.5.2005 rejecting the appeal filed by

the petitioners and thereby, the order of the Deputy Collector, stood confirmed. Though various grounds were raised, the Principal Secretary (Appeals) has only reiterated the observations made by the Deputy Collector in his order dated 21.12.1999. However, the Principal Secretary (Appeals) ought to have dealt with the grounds raised by the petitioners; however, the Principal Secretary (Appeals), did not deal with any of the grounds raised by the petitioners including the ground of initiation of the action by the authority beyond the reasonable time. Further, as is discernible from the contents of the order of the Principal Secretary (Appeals), there is no discussion either with regard to the initiation of the action beyond reasonable time or with regard to the petitioners having altered their position after the execution of the transaction in their favour. Resultantly, the order dated 18.5.2005 of the Principal Secretary is arbitrary and suffers from the vice of non-application of mind.

18. Pertinently, in the present case, as discussed hereinabove, the Deputy Collector, Rajpipla has passed an order after a span of almost 15 years from the date of the execution of the sale deed and 10 years from the date of mutation of the entry in the revenue record, which is impermissible inasmuch as, the authorities below have not been able to point out anything from the record that the execution of the sale deed in the year 1984 and the mutation of the entry in the year 1989, were not within their knowledge. Apparently, the transaction was by virtue of the registered sale deed between the parties which was registered with the office of the Sub-Registrar, Naswadi, followed by the mutation of the entry number 370 dated 20.5.1989 in the village form number 6, further followed by certification by the Mamlatdar. The

Deputy Collector, Rajpipla, simply disregarding the aforesaid facts, proceeded to initiate the proceedings by issuing a notice dated 8.3.1999 merely on the basis of the proposal of the team of the record of rights which is clearly impermissible in view of the settled proposition of law, more particularly when there is nothing on the record to suggest that the entry was mutated in the revenue record by adopting fraudulent means. In the absence of anything to the contrary, the order dated 21.12.1999 passed by the Deputy Collector, Rajpipla, deserves to be quashed and set aside. Similarly, the order dated 18.5.2005 passed by the Principal Secretary (Appeals) warrants interference inasmuch as, the Principal Secretary (Appeals), has not only overlooked the settled proposition of law, but over and above passed a cryptic order without assigning any reason worth the name.

19. Besides the fact that the orders passed by the authorities below suffer from vice of arbitrariness, non-application of mind and in violation of principles of natural justice, the orders also suffer from the element of having been passed beyond reasonable period. Hence, without going into the aspects of arbitrariness, non-application of mind and principles of natural justice, at this distance of time, the present petition deserves to be allowed only on the ground of the orders having been passed beyond the reasonable period.

20. Under the circumstances, and in view of the aforesaid discussion coupled with the well settled proposition of law, both the orders, namely, the order dated 21.12.1999 of the Deputy Collector, Rajpipla and 18.5.2005 passed by the Principal Secretary (Appeals), Revenue Department, deserve to be quashed and set aside and are hereby quashed and set

aside.

21. In view of the above, the petition succeeds and is accordingly allowed. Rule is made absolute. No order as to costs.

Sd/-

(SANGEETA K. VISHEN,J)

BINOY B PILLAI