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Court : Gujarat

Decided On : May-10-2011

Judge : S.J. Mukhopadhaya, ; K.M.Thaker, Jj.

Acts : Bombay Prohibition of Fragmentation and Consolidation of Holdings Act, 1947 - Section 2692, ; Urban Land (Ceiling And Regulation) Repeal Act, 1999, - Section 54,

Appeal No. : LETTERS PATENT APPEAL No. 2339 of 2009 ; SPECIAL CIVIL APPLICATION No. 11825 of 2009 ; CIVIL APPLICATION No. 12779 of 2009 ; LETTERS PATENT APPEAL No. 2339 of 2009

Appellant : Bhanji Devshibhai Luhar

Respondent : State of Gujarat and 3

Judgement :

1. Present Appeal under Clause-15 of the Letters Patent is directed against the order dated 17.11.2009 passed by the learned Single Judge dismissing the writ petition filed by present appellant against the order dated 27.3.2009 passed by the Revisional Authority in Revision Application No. 42 of 2005. By the said order dated 27.3.2009 the Revisional Authority confirmed the order dated 6.8.2001 passed by the Collector, Surendranagar in Appeal No. 68 of 1999, by which the Collector had confirmed the order dated 2.2.2000 passed by the Deputy Collector. By the impugned orders the sale and consequent transfer of land in question in favour of the appellant is held to be in breach of Section 54 of Saurashtra

Gharkhed Tenancy Settlement and Agricultural Land Ordinance, 1949 ("Ordinance" for short) and the authority has directed in exercise of power under Section 75 of the Ordinance, to evict the appellant from the land in question. The petition against the said orders is also dismissed by the learned Single Judge.

2. The facts involved in and relevant for the purpose of present appeal are as follows:-

2.1 One Shrimati Monghiben Motibhai Koli owned a parcel of land bearing survey No.76, admeasuring 7 Acres and 40 Gunthas (hereinafter referred to as the "said land") situate in village Ishwariya. The said land was sold and transferred by her in favour of the appellant-petitioner by sale deed dated 29.6.1979. In pursuance of the said transaction the name of the appellant was entered in the revenue record vide entry No. 215 which was mutated on 30.5.1980 and certified on 5.9.1980.

2.2 It appears from the record that subsequently the Deputy Collector, pursuant to the proposal and report made by the Mamlatdar, somewhere in 1997, Limbdi issued Notice under Sections 54 read with Section 75 of the Ordinance on the ground that the said transaction dated 29.6.1979 violated the provision of the Ordinance.

2.3 In response to the Notice the petitioner attended the hearing before the competent authority and contended that he was agricultural labourer and an artisan and belonged to Baxi-panch category. Having considered the said explanation, the Deputy Collector, Limbdi passed order dated 2.2.2000 declaring that the purchaser was not agriculturist hence, the said transaction was in breach of Section 54 of the Ordinance and that despite being non-agriculturist the petitioner had, by purchasing agricultural land, successfully maneuvered to secure status of agriculturist and directed that the petitioner be removed from the said land and the entry No.215 be deleted.

2.4 Upon being aggrieved by the said order dated 2.2.2000 the petitioner preferred Appeal being Appeal No.68/99 before the Collector, Surendranagar which came to be rejected by the Collector, Surendranagar vide order dated 6.8.2001. Upon being aggrieved by the said order dated 6.8.2001 present appellant filed Revision Application No. 42 of 2005 before the Secretary (Appeals) Revenue Department who rejected the said Revision Application vide his order dated 27.3.2009 and confirmed the Collector's order. Against the said orders, the appellant herein preferred petition being SCA No. 11825 of 2009 which also came to be rejected by impugned order dated 17.11.2009. Upon feeling aggrieved the appellant has preferred present

Appeal relying on the judgment in the case of Valjibhai Jagjivanbhai vs. State of Gujarat [2005(3) GLR 1852].

3. Mr. Nehal R Joshi learned advocate has appeared for the appellant-petitioner. Ms. Krina Calla, learned AGP has appeared for the respondent Nos. 1 to 3. For respondent No.4 no one has entered appearance, though served. We have heard the learned Counsel for the respective parties and perused the record. Rule. At the request of the appellant and with consent of AGP, the appeal is heard for final decision.

4. Mr. Joshi, learned Counsel for the appellant has before us also, as he did even before the learned Single Judge, assailed the impugned order by emphasizing, and concentrating on, the solitary ground viz. initiation of the proceedings almost 17 years after the date of transaction and the orders which are passed after such inordinate delay, are unsustainable. He has submitted that the authority should act within the limitation prescribed by the Act or within reasonable time, where limitation is not prescribed and since in present case the proceedings were initiated after 17 years impugned orders are vitiated. He submitted that the learned Single Judge erred not accepting and allowing the submission on the ground that in the case where the transaction is void, period of limitation will not be applicable.

4.1 So as to assail the said decision and to support his contention, the learned advocate for the petitioner has heavily relied on the decision by the Division Bench in the case between Valjibhai Jagjivanbhai (supra) and the decision of the Apex Court in the case between Smt. Sulochana Chandrakant Gulande Vs Pune Municipal Transport and others (AIR 2010 SC 2692). The former decision is in respect of the matter which arose under the provisions of the Bombay Prohibition of Fragmentation and Consolidation of Holdings Act, 1947 to which we shall advert little later. The decision of the Hon'ble Apex Court is in respect of the issue related to the Urban Land (Ceiling and Regulation) Act, 1976 wherein there is no provision akin to Section 54 of the Ordinance. The Apex Court has, in para-23 of the decision, observed that the revisional powers cannot be used arbitrarily at belated stage and that the holder/allottee cannot be left in perpetual uncertainties and what should be the reasonable time, would depend upon the facts of the case. In the said decision, the Apex Court was not examining the transaction which is

statutorily void such as in present case. In view of different facts on hand, the aforesaid decision would not rescue petitioner's case. 4.2 Per contra Ms. Calla, learned AGP for the respondent Nos. 1 to 3 has submitted that the disputed transaction is, undisputedly, contrary to the provision of the Ordinance which prohibits sale, transfer etc. of agricultural land in favour of non-agriculturists. She also submitted that it is an undisputed position that either before or even at the time of transaction the appellant was not agriculturist and any permission was not requested for and was not granted and that therefore, in view of statutory prohibition, the transaction in favour of non-agriculturist was void the authorities have rightly set aside the transaction. Carrying said submission further Ms. Calla submitted that in case of void transaction period of limitation and/or concept of reasonable time would not be applicable.

5. The said rival contentions are raised in view of the provisions under Sections 54 and 75 of the Ordinance. Hence, it would be appropriate, to take into account the said provisions the said provision read thus:- "Section 54 : Transfer to non-agriculturists bared- (1) Save as provided in this Ordinance,- (a) no sale (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land (where lease is by law allowed) or interest therein, or (b) no mortgage of any land or interest therein in which the possession of the mortgaged property is delivered to the mortgagee shall be valid in favour of a person who is not an agriculturist: or (c) No agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein. (Provided that the Collector or an officer authorized by the Government may grant permission for such sale, gift, exchange, lease, where lease is by law allowed, or mortgage or for such agreement, on such conditions as may be prescribed) (Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousand rupees) (2) Nothing in this section shall be deemed to prohibit the sale, gift, exchange or lease of a dwelling house or the site thereof or any land appurtenant to it in favour of an agricultural labourer or any artisan". "75. Summary eviction:- Any person unauthorisedly occupying or wrongfully in possession of any land.- (a) the transfer

of which either by the act of parties or by the operation of law is invalid under the provisions of this Ordinance. (b) the management of which has been assumed under the said provisions or (c) to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons. may be summarily evicted by the Collector." 5.1 A glance at the provisions shows that by virtue of Section 54, the Ordinance prohibits, except as provided therein, transfer by way of sale (including sale in execution of decree of Civil Court) gift, exchange or lease, of any land (covered under Section 2(k) of the Ordinance) to a non-agriculturist. The first proviso provides exception in case of transfer by sale etc. to non-agriculturist provided the Collector (or other Authorized Officer) grants permission on prescribed condition, and the proviso requires that the income of the transferee should not be more than Rs.5,000/- from other sources. Any transfer of land made to a non-agriculturist (except as provided) is, by the statute, declared invalid. Further, sub-section (2) provides an exception in respect of dwelling house and apartment site. 5.2 By virtue of Section 75, the ordinance provides that any person unauthorizedly occupying the land may be summarily evicted by Collector. The said Section 75 does not prescribe any period of limitation within which the proceedings-action for summary eviction should be initiated. The learned Single Judge has held that in case where the transaction is void limitation would not be applicable.

6. The rival contention can be conceptualized thus:- (i) the "concept of reasonable time" i.e. the concept which postulates that the action should be initiated within the limitation prescribed by the statute or within reasonable time in the cases where time limit for initiating action in exercise of statutory power is not prescribed; and the concept that (ii) void action cannot be validated on ground of belated action i.e. though ordinarily the power should be exercised within reasonable time where by law period of limitation is not prescribed, however inherently void transaction cannot be validated and allowed to survive on ground of length of time in taking action. Both the aforesaid contentions have been "issues for consideration", in more than one cases, by this Court.

6. 1The former concept was considered in the case between Ranchhodbhai L Patel vs. State of Gujarat (1984 (2) GLR 1255) wherein the action taken by the

State against the transaction was set aside in view of the fact that the competent authority had initiated the proceedings after 7 years by which time the purchaser had even constructed the house on the land in question. Similar view has been taken in several other cases e.g. 1994 (1) GLR page-822, AIR 1991 Gujarat page-84, 1998 (3) GLR page-687. The observations in the case of Mohamad Amin (1997(6) SCC 71), Ram Chand (1994(1) SCC 44), Patel Raghav Natha (1969(2) SCC 187) are relied on to support the said view.

6.2 Thereafter, in the case between Sarvagna Navinchandra Godiawala (2003 (1) GLH 426) the learned single judge, after considering various previous decisions, observed in para 18 of the judgment that:- "18. Considering the aforesaid aspects, in my view, initiation of proceedings, after such a long time, cannot be permitted and the Collector has committed an error of law in setting aside the transaction on the basis of the application made by respondent No.3, who, after having received the full consideration, thought it fit to challenge the said transaction after 17 years ." It however needs to be noted that in the said case the proceedings for annulment of the transaction were initiated, after receiving full consideration. At the instance of the heirs of the vendor. With regard to "void order" it has been observed that "In my view, a void order is also required to be challenged....."

6.3 On the other hand in the case between Koli Nagjibhai Varjan vs. State of Gujarat (1992 (1) GLR 14), in light of the said other concept, the Court considered the issue of the applicability of the "concept of reasonable time" in the cases where period of limitation is not prescribed but the transaction, being statutorily prohibited, is void, and observed, that:- "9. There can be no quarrel against the proposition that when no period of limitation is statutorily provided for, the revisional power prescribed under the statutes should be exercised within a reasonable time. This is necessary with a view to give finality to the orders passed by various authorities which may be subject to revisions and no revisional power is exercised for a considerable time giving rise to equities and promoting the parties to proceed on the footing that the orders passed by the authorities will not be disturbed in exercise of revisional jurisdiction after a lapse of reasonable time. However, same position may not obtain when an authority exercises his powers consequent upon a transaction which is statutorily void". Then, having regard to

the fact that the transfer had taken place in July 1964 and the transaction was held void in January 1979, the Court further observed that:- " A transaction which is void is non est and cannot get life merely because the powers of summary eviction were not exercised immediately. The delay in exercise of powers by the officers cannot validate a transaction which is void ab initio and the courts ought not to recognize a void transaction even in an indirect way by preventing the authority to exercise its powers consequent upon a void transaction on the ground that the power should have been exercised within reasonable time from the date of transaction. In fact no question of delay in exercise of power can ever arise from the date of transaction which is void because such transaction is non est and cannot be recognized for any purpose. Moreover, as held above, the question of exercise of powers within reasonable time will not arise in case where power is sought to be exercised in respect of transaction which are void ab initio."

6.4 Subsequently, in 1996 the issue of absence of provision prescribing limitation vis-a-vis the provision which renders the transaction void was considered in the case between Patel Jividas Trikamdas (1996 (2) GLR 688) and it has been observed that:- "6. It is a settled proposition of law that any action, transaction, decision or order which is illegal and void ab initio is to be treated as non est. The validity of such an illegal non est order could be questioned in any proceedings at any stage by anybody. The very nature of the non est order in its effect does not create any right, title or interest. It being a void, it confers no any status or any right. With the result, such non est or illegal order, decision, transaction or action would be for all purposes ineffective and of no consequence in the eyes of law." The Court further observed that:- "it is true that the proceedings questioning the validity of the sale transaction in violation of the provisions of section 8 have been initiated after 20 years after the transaction took place. However, that by itself would not be sufficient to justify the illegal transaction" (emphasis supplied)

6.5 Thereafter, the concept was considered in the decision dated 16.1.2002 in SCA No.1735 of 1987 in the case between Manilal M Patel vs. Gelaji Kanaji, and the Court observed that:- " As regards the time factor, this Court has time and again held that no limitation has been prescribed for taking such transfer in revision. The principle of initiating action within the reasonable time can not be invoked in case

of transfers which are statutorily void. The reference can be had to the judgments of this Court in the matters of KOLI NAGJIBHAI VARJAN V. STATE (1992(1) GLR 14) and PATEL JIVIDA TRIKAMDAS & ORS. V. DISTRICT COLLECTOR, MEHSANA & ORS (1996 (2) GLR 688). In view of the above referred judgments, the action initiated in the year 1984 with respect to the transfer made in the year 1975 in contravention of the provisions of the Act can not be invalidated merely on the ground of lapse of a considerably long time."

6.6 Subsequently, in light of such divergent views the said issue was referred to Division Bench in the case of Valjibhai (supra) and in 2004, while examining the said issue on reference, the Division Bench observed that "In these decisions the learned Single Judges of this Court did not have opportunity to consider the decision of Apex Court in the case of State of Punjab v/s. Gurdev Singh". We shall advert to the view taken by the Division Bench, at later stage.

7. The nature and effect of void order and relevance applicability of limitation has been considered and explained by the Apex Court in the case of State of Punjab vs. Gurdev Singh (AIR 1992 SC 111) and in the case between State of Kerala vs. M.K. Kunhikannan Nambiar, [1996 (1) SCC 435]. In the case of State of Punjab (supra), the Apex Court observed that: 6. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In Smith v. East. Elloe Rural District Council, [1956] AC 736 at 769 Lord Redcliffe observed: "An order even if not made in good faith, is still an acceptable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders." Subsequently, in the case of State of Kerala (supra), the Apex Court, observed: "7.....In our opinion, even a void order or decision rendered between parties cannot be said to be nonexistent in all cases and in all situations. Ordinarily, such an order will, in fact be effective inter parties until it is successfully avoided or challenged in higher forum. Mere use of the word "void" is not determinative of its legal impact. The word "void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There

are degrees of invalidity, depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise and in this case, the only complaint about the initiation of the suo moto proceedings by Board was, that it was not initiated on intimation by the State Land Board about the non-filing of the statement as required by Section 85(7) of the Kerala Land Reforms Act. In our opinion, this is not a case where the infirmity is fundamental. It is unnecessary to consider the matter further." Then, in 2001 the meaning and scope of the term void was considered in the case between Dhurandhar Prasad Singh vs. Jai Prakash University (AIR 2001 SC 2552) the Apex Court observed that"- ".....The expression void has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend.....Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated.....There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable." (emphasis supplied)

8. Now, in light of the above quoted observations, it is necessary to recall that Section 75, which is the empowering section, does not prescribe any time limit for initiating action. In that context reference of the case between State of Gujarat vs. Patel Raghav Natha [AIR 1969 SC 1297] needs to be made wherein the Apex Court observed that besides the facts of the case the nature of the order is also relevant and observed that:- "11. 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 Section 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."

8.1 At this stage we may refer to the decision by the larger bench in the case between Shailesh Jadavji Varia vs. Sub-Registrar, Narmada Bhavan and ors (1996 (2) GLH 848) wherein the Court considered the power of the statutory authority under the provisions of Bombay Stamp Act 1958 of referring documents to the Collector when any time limit for exercise of such power is not prescribed under the Act. In the said decision, the larger bench, speaking through Hon'ble Mr. Justice C.K. Thakker (as his lordship then was) observed that:- "46. From the aforesaid decisions, there is no doubt in our minds that the power under sub-section (1) of Section 32-A of the Act can be exercised within reasonable period and no outer limit can be fixed for exercise of such power. The decision in Patel Raghav Natha, in our considered opinion, cannot be read as laying down universal rule applicable to all statutes, at all times and under all circumstances without reference to the scheme of the Act, underlying object to grant revisional power and consequence which may be ensue therefrom that revisional powers must be exercised within particular period. Their Lordships also, were conscious and mindful of all such situations which is reflected from the observations to the effect that "the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised" The larger bench, speaking through Hon'ble Mr. Justice C.K. Thakker, (as his lordship then was) having made aforesaid observations, proceeded to further observe in the said judgment as follows:- "50. The second Full Bench also considered the contention raised before us that if no time limit is prescribed for exercise of power, it would be open to the authority to exercise the said power at its sweet will after ten, twenty or thirty years. The Bench negatived the contention by stating: "The learned Counsel for the petitioners submitted that if no time limit is prescribed, the authority may exercise power after lapse of several years and it can be exercised after 10, 20 or 30 years and there will be a hanging sword over the head of every citizen executing a document. There is no basis for this argument. The earlier Full Bench has clearly laid down that the power has to be exercised within a reasonable period and, therefore, if the power is exercised beyond reasonable period, the orders can be set aside. What is "reasonable period" would depend upon the facts and circumstances of each case. If a delay of few months cannot be explained, it would be beyond reasonable period. If a delay of years can be explained and

justified, it would be "within reasonable period". When the power is exercised "within reasonable period", it cannot be successfully attacked. When this power of reasonableness is read into the provision, the provision does not become unreasonable or arbitrary" (emphasis supplied) 51. With respect, we are in whole-hearted agreement with the above observations and approve them. To us, the second Full Bench in H.P. Dave correctly interpreted and applied the first Full Bench decision in Gorva and there is no conflict between two full Bench decisions. We are also of the view that even if there was any doubt due to a decision of the Division Bench subsequent to the first Full Bench in Gorva, it was rightly cleared by the second Full Bench in H.P. Dave and the decision of the Division Bench, was rightly overruled. (emphasis supplied)

9. The question whether it is necessary, in the cases where the action or the order is void or ultravires, to seek the declaration and if yes; whether period of limitation would be applicable, was, as noted above considered by the Apex Court in case of State of Punjab vs. Gurdev Singh (supra) wherein the issue was about the order of dismissal of an employee from service who claimed that the order was void and inoperative. So as to eliminate any doubt about the order, the Apex Court specifically clarified that the Court would be dealing with the order as "void" or "ultra-vires" and not merely "voidable", and then the Apex Court observed that: "...For the purpose of these cases, we may assume that the order of dismissal was void inoperative and ultra vires, and not voidable. If an Act is void or ultra vires it is enough for the Court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs." 6. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In Smith v. East. Elloe Rural District Council, [1956] AC 736 at 769 Lord Redcliffe observed: "An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders." The Apex Court also observed that:-

"8. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for."The Apex Court further observed:- "First of all, to say that the suit is not governed by the law of Limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable.

10. Earlier i.e. in 1995 the issue about exercise of revisional power in absence of any provision prescribing period of limitation was considered by Apex Court in the case where the factual backdrop had an added dimension to the case i.e. when the case is infected by suppression of facts, came up for consideration and the concept of reasonable time came to be further clarified in the case of State of Orissa and others vs. Brundaban Sharma and another (1995 Supp. 3 SCC 249) wherein the Apex Court observed that:- "16. It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to refrain from exercising the revisional power to unravel fraud and to set it right? The answers would be no. 18. Under these circumstances, it cannot be said that the Board of Revenue exercised the power under Section 38-B after an unreasonable lapse of time, though from the date of the grant of patta by the Tehsildar is of 27 years. It is true that from the date of the alleged grant of patta 27 years did pass. But its authenticity and correctness was shrouded with suspicious features. The records of the Tehsildar were destroyed. Who is to get the benefit? Who was responsible for it? The reasons are not far to seek. They are self-evident. So we hold that the exercise of revisional power under Section 38-B by the Board of Revenue was

legal and valid and it brooked no delay, after it had come to the Board's knowledge. That apart as held by the Board of Revenue, the order passed by the Tehsildar without confirmation by the Board is non est. A non est order is a void order and it confers no title and its validity can be questioned or invalidity be set up in any proceedings or at any stage." (emphasis supplied)

11. As noted earlier, it was in 2004 in the case between Valjibhai Jagjivanbhai vs. State of Gujarat, that, in light of the divergent views the Division Bench of this Court examined, upon reference, the issue about applicability of concept of the reasonable time in the case where transaction in question is void.

11.1 Before considering the decision further it would be appropriate to take into consideration recent decisions dated 28.10.2010 and 30.12.2010 by the Division Bench in the case between Labhubhai Valjibhai Gajra vs. Secretary (Appeals) Revenue Department and in the case between Patel Somabhai Devidas vs. Dahyaji Somaji Thakor arising from the provision under Fragmentation Act. In the former case i.e. Mr.L.V. Gajra (supra) the submission opposing, the applicability of concept of reasonable time on the ground that the transaction was void was not considered, more particularly because the facts of the case left room for adjudication of claim that the transaction was not void. Likewise in the later case in view of the facts of the case, the Court did not enter into and did not examine the contention on the ground that the transaction is void because in the said case also there was scope of adjudication for the purchaser's claim since the learned single Judge had rejected the petition preferred by the purchaser, observing, inter alia, that "....there is nothing on record to suggest as to when the entry was made in the record reflecting the sale.....difficult to hold that the initiation of the proceedings was belated." and then in the Appeal the appellants not only emphasized that the transaction in question was saved by virtue of section 31(2)(b) and that any declaration of fragment under Section 6(2) of the Act was not published but had also sought to produce on record copy of Village Form No. 6 (Hakpatrak) to show the date when entry was made hence it was considered appropriate to remand the case to the first authority, without entering into the said issue and in the facts of the said case the said issue was not considered.

12. In the decision in case of Valjibhai (supra) the Division Bench, upon reference in light of divergent views - examined the issue of the applicability of the concept of reasonable time in case of void transaction. In para 16 of the said judgment the Division Bench observed that:- "16. A comparative study of the aforesaid decisions cited by Counsels of both the sides would show that so far the present Act is concerned, there are two different views taken by this Court. One view is that so far as the revisional powers under Section 35 are concerned, since there is no limitation prescribed under the concerned statute, these powers are required to be exercised within reasonable time. However, when the action is required to be taken, as in the preset case under Section 9, the impugned act cannot be validated only on the ground of lapse of considerable time. In other words, the act which is void ab initio is non-est and it can be declared as such at any point of time. Such act be validated only on the ground that it has remained as such, without being disturbed, for considerably long period. The other view is that even power under Section 9 of the Act is required to be exercised within reasonable time .." With regard to the said "other view" the Division Bench made an important observations that "In these decisions, the learned single Judges of this Court did not have an opportunity to consider Apex Court's decision rendered in the case of State of Punjab vs. Gurdev singh (supra). In the end, having observed thus, the division bench observed and concluded that:- "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.....even the void transaction cannot be said to b e nonexistent in all cases and in all situations. It can remain effective an d in existence till it is invalidated and set aside. If its existence is allowe d to remain for a considerable period and with the passage of time it brings about several changes, creating valuable rights in favour of considerable sect ion of people, it is difficult to accept the proposition that despite the ch ange the Collector would be entitled to exercise power under sub-sect ion (3) of section 9 of the Act.....In our opinion when the things have been allowed to remain as such for ye ars together, the purchaser cannot be deprived of his possession so as to rend er indirect benefit to the seller who was equally responsible for entering in to 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."

12.1 The petitioner has heavily relied on the said decision in support of the contention that the impugned proceedings and orders are vitiated in view of inordinate delay. However as noted earlier it is necessary to consider and determine in light of the facts of the case, whether the Appeal should be accepted and the orders should be interfered with or not.

13. So as to get the reply it is appropriate, and also necessary, to take into consideration that when the statute prescribes the condition that permission of the Collector/Authorized Officer shall be necessary in case where the agriculture land is to be transferred to a non-agriculturist, then it would be obligatory for the parties to the transaction to clearly state before the authority as to whether the purchaser is an agriculturist or not. The obligation to seek permission in the event the purchaser is not an agriculturist also entails the obligation to clearly and explicitly declare such fact and the said obligation is a positive and affirmative obligation, inbuilt in the section, imposed on the parties to the transaction. We may hasten to add and clarify that this does not mean, and is not to be construed to mean, that the said obligation is not cast on the vendor. Actually the obligation is equally on the vendor who is also statutorily obliged to not to sell the land to a non-agriculturist.

14. In this background, we may also consider the petitioner's case before the authorities below (though the said contention is not raised and argued before us). From the record it appears that at the relevant time what the petitioner stated is that he was an agricultural labourer and artisan preparing agri-tools and was cultivating various agricultural lands and that he belonged to baxi-panch category. Thereafter when the authority initiated the action (against the transaction of the land in question on the ground that it was in violation of statutory prohibition /

restriction) the petitioner placed on record before the adjudicating authority, a copy of certificate issued by the Talati reflecting that the petitioner was an artisan preparing agri-tools and on the strength of the said document, the petitioner claimed before the lower authorities, during the hearing pursuant to the Notice, that his case was included in the proviso of Section 54.

14.1 In this view of the matter it is necessary to revisit the said provision. It may be recalled that sub-section (1) of section 54 of the Ordinance prohibits transfer of land to a person who is not agriculturist, however in view of the first proviso such transfer can be made if the Collector or authorized officer grants permission. According to the second proviso, the permission may be granted provided the income of the person from other sources does not exceed of Rs.5,000.

14.2 It is undisputed position that at the time of transaction the appellant was not an agriculturist. Actually, strictly speaking, as recorded by the learned Single Judge also, the said factual aspect viz. the petitioner, at the relevant time, was not agriculturist, has not been even disputed by the appellant-petitioner. Even according to the appellant's own defence his case was within the purview of proviso of Section 54. It is also not in dispute that the permission of the Collector was not requested for and was not granted. It is not even the case of the appellant. It emerges from the record that the petitioner's case would not be covered under first proviso to Section 54. Even otherwise when the permission was, admittedly, never requested for, the question of applicability of the said provision will not arise. It does not come out from the record that any evidence about petitioner's income from other sources, was placed before the authority. Hence, in absence of such evidence, the second proviso would not be applicable.

14.3 Now, so far as subsection (2) of section 54 is concerned the said provision also would not help the appellant because the said subsection provides that the prohibition prescribed in subsection (1) shall not be applicable in case where "a dwelling house or site thereof" is intended to be transferred "in favour of agricultural labourer or artisan". Meaning thereby the exemption under subsection (2) is available only in respect of dwelling house or site of the dwelling house. Therefore the said provision also would not be applicable in present case since the

disputed transaction was not executed for transferring dwelling house or a site thereof and that therefore the subsection would not help the petitioner.

15. The competent authority, after considering the fact-situation, the explanation and defence of the petitioner passed the order dated 02.02.2000, holding and declaring that the transaction was in breach of provision under Section 54 of the Ordinance, which, in the facts of this case, cannot be said to be erroneous.

15.1 However, so far as the said decision and declaration are concerned it cannot be disputed and/or overlooked that the declaration has been made after 17 years.

16. Thus, in view of the indisputable facts, particularly about the petitioner's status as non-agriculturist and in light of the glaring delay in initiating the action, the only shield and defence available to the appellant, when the authority initiated the action, was the contention on the ground of concept of reasonable time, which the appellant has raised.

17. Now, so far as the said concept vis-a-vis facts of present case are concerned, the facts have been noted earlier, in view of which the question, which survives, is, should the absence of provision prescribing period of limitation be, now, in facts of present case, allowed to preserve and validate the transaction which caused violation of the statutory provision.

18. In this context it is necessary and appropriate to recall that at the time when transaction was executed and the entry was mutated in the Revenue Record the petitioner had, without being explicit and vocal as to whether he was agriculturist or a non-agriculturist, merely submitted a certificate issued by the Talati of the Village certifying that the petitioner was preparing agri-tools. However, it is also equally pertinent that the authority, at that stage, did not demand any other details or clarification from the appellant and/or did not initiate any action. The authority allowed the transaction to operate for 17 years. Subsequently, when the action to annul the transaction came to be initiated after 17 years, the appellant, while raising the objection on the ground that the action was unsuitable because of the inordinate delay, also claimed, during the hearing before the lower authorities, that since the time when transaction was entered into, he had put the land in question

to agricultural use only i.e. status and the nature and the status of the agricultural land has been retained and maintained by him.

19. In this background, it deserves to be considered that when the respondent's action of scrutinizing the transaction in question after delay of 17 years is under consideration and when it is apparent that if the respondent's action and decision are allowed to prevail and are not interfered with, the purchaser (i.e. the appellant), as a consequence of the said decision, will be deprived of the land purchased by him before 17 years (by now almost 30 years) then in such facts, circumstances the aforesaid aspects i.e. the fact that the appellant has put the land in question for agricultural use only and has not used the land for any purpose other than agricultural use and has not changed its status and has even incurred expenditure to improve the quality of soil, would become relevant and would deserve due consideration.

20. Even if the concept that the void action cannot be validated on the ground of belated action is applied in present case, then also, in view of the special facts and circumstances of present case it would be appropriate to take into account the peculiar facts of present case which emerge from the record viz:- (a) during the entire period of 17 years the vendor has not taken out any action in law against the transaction and any suit or proceeding for declaration or for any other relief does not appear to have been filed by the vendor. (b) the petitioner was an agricultural labourer at the time when the transaction was executed and was tiling and cultivating various agricultural lands. (c) The petitioner was also artisan i.e. engaged in the activity of preparing agri-tools. (d) more important is the fact that even after purchasing the land in question the petitioner has, as claimed by him, continued to use the land for agricultural purpose and the status or nature of the land in question as agricultural land is not changed and it continues to be agricultural land (said factual assertion by the petitioner has not been disputed by the respondents and any contrary evidence is not placed on record) (e) the petitioner has also claimed that he has incurred substantial expenditure in improving quality of soil. (f) another important factor which, in the facts of present case, has emerged is that in view of the orders of the authorities it is only the vendor who will stand to gain/benefit since the land, even after the orders, will not

vest in the government in absence of any provision providing for such consequential.

21. In light of aforesaid facts of present case, we are of the view that while the conclusion and the decision of the competent and appellate authority holding the transaction in question as void, is in consonance with the provisions of the ordinance and cannot be faulted, in the interest of justice and equity it also ought not be overlooked that the impugned action in exercise of the power under Section 75 of the Ordinance to summarily evict the petitioner, after having allowed the transaction to remain alive for 17 years not only ignores the wide chasm between the date of transaction and the dates of the notice and the order but it also overlooks the fact that the petitioner has continued to put the land to use for agricultural purpose and has not changed the status and nature of the land and that he has also incurred expenditure to improve the quality of soil and invested further amounts for betterment of the land in question. The figures of such expenditure by the petitioner are not available on record, however the respondents have not disputed the said factual assertion by the petitioner.

22. In backdrop of the aforesaid facts and circumstances if we recall the observations by the larger bench in the case of Shailesh J. Varia (supra) to the effect that:- "if delay of few months cannot be explained it would be beyond reasonable period. If a delay of years can be explained and justified it would be "within reasonable period" (emphasis supplied) and when we consider present case in light of said observations, then we have to record that from the material on file the respondents do not appear to have, in any manner, explained and justified the long gap of 17 years in initiating the action. The said delay of 17 years has remained unexplained and unjustified. It is only defended on the ground that the transaction is statutorily void. However, while defending the action the aforesaid relevant aspects and the absence of explanation regarding delay are not being taken into account.

22.1 In this context, we may refer to the decision by the Apex Court in the case between Smt. Sulochana Chandrakant Galande v. Pune Municipal Transport and ors (AIR 2010 SC 2962) wherein, while considering the legal position with regard

to Section 34 of Urban Land (Ceiling and Regulation) Act 1976 observed in paragraph 23 that:- "23.The legislature in its wisdom did not fix a time limit for exercising the revisional power nor inserted the words "at any time" in Section 34 of the Act, 1976. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case, it is assumed that the legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure. The Court has to construe the statutory provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute. In view of the above, we reach the inescapable conclusion that the Revisional powers cannot be used arbitrarily at belated stage for the reason that the order passed in Revision under Section 34 of the Act, 1976, is a judicial order. What should be reasonable time, would depend upon the facts and circumstances of each case." (emphasis supplied)

22.2 We may also refer to a recent decision in the case between Krishnadevi Malchand Kamathia vs. Bombay Environmental Action Group (2011 {3} SCC 363), the Apex Court, has, with regard to void order, observed in paragraph No.16 that:- "16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil*, *Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*, *M. Meenakshi v. Metadin Agarwal* and *Sneh Gupta v. Devi Sarup*, this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum. While referring to the earlier decisions in the case *State of Punjab (supra)* as well as in the case of *Sultan Sadik v. Sanjay Raj Sabba* (2004 [2] SCC 377) the Apex Court has observed:- "19.Thus, from the above it emerges that even if the order / notification is void / voidable, the party aggrieved by the same cannot decide that the said order / notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is

challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person"

23. Under the circumstances, upon considering the overall facts and circumstances of the present case and in light of the foregoing discussion and having regard to the fact that at the time of transaction the petitioner was agricultural labourer and he purchased the land for agriculture use and since then he has maintained the status of the land and continues to put the land to agricultural use, the decision to compulsorily evict the petitioner after lapse of 17 years (by now almost 30 years) deserves to be set aside.

23.1 One of the reasons for our aforesaid view and conclusion is that the only person who would benefit because of the orders of the lower authorities is the vendor who is party to the disputed transaction. The consequence of the impugned order by the authorities would, ultimately and eventually result into unjust enrichment for the vendor who entered into the transaction and has, since then not taken out any action in law before any competent Court against the transaction.

23.2 Therefore, in view of the facts of the present case, and having regard to the aspects noted in paras 20 to 23.1 above, we are inclined to set aside the impugned orders passed by the lower authorities. We order accordingly.

24. The Appeal is allowed and the order dated 27.3.2009, 6.8.2001 and 02.02.2000 are set aside. Since the orders by the authorities are set aside, the judgment by the learned Single Judge would not survive. There, shall be, however no order as to cost.

In view of the order passed in the main Appeal the Civil Application does not survive and the same is disposed of.