

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9067 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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HIRABHAI GOVINDBHAI PATEL & 4 others

Versus

STATE OF GUJARAT & 5 others

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Appearance:

MR HRIDAY BUCH(2372) for the Petitioner Nos. 1, 2, 3, 4, 5

MR. K.M. ANTANI, AGP (1) for the Respondent Nos. 2,3,4,5

MR. MAULIN RAVAL, SENIOR ADVOCATE ASSISTED BY MR DEEP D VYAS(3869) for the Respondent(s) No. 6

RULE SERVED(64) for the Respondent No. 1

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 07/05/2021

CAV JUDGMENT

1. Heard learned advocates appearing for the parties.
2. By this petition under Article 227 of the Constitution of India, the

petitioners have prayed for quashing and setting aside the orders dated 7th January, 2015, 28th February, 2009 and 31st March, 2008 passed by the Special Secretary (Appeals) Revenue Department (for short 'SSRD'), Collector, Ahmedabad and Deputy Collector, Ahmedabad City respectively.

3. Briefly stated facts are as follows :-

3.1 The petitioners who are agriculturists, were in occupation of agricultural land bearing Survey no.514/A/1 admeasuring about 625153 sq. mtrs. of village Chharawadi, Taluka City Ahmedabad.

3.2 The forefathers of the petitioners were given the land in question for agriculture purpose under "Ek Saali" lease in the year 1945-46 and since then the land in question was in possession of the forefathers of the petitioners. It is the case of the petitioners that lot of improvements have been done for use of the land in question for agriculture operations since then and as per the conditions, the vegetables produced on the land in question were sold only for the citizens of Ahmedabad.

3.3 The period of "Ek Saali" lease was extended from time to time and the rent was also paid regularly and thereafter on 18th October, 1954 the land in question was given on permanent basis to the forefathers of the petitioners. The Mamlatdar passed an order dated 28th October, 1954 enhancing the amount of revenue (Mojdar) meaning thereby that the land in question was given to the forefathers of the petitioners on "new tenure". The said amount was recovered from the petitioners in the year 1981.

3.4 The respondent no.6 – Ahmedabad Municipal Corporation was in

need of the land for the purpose of its sewage farm and therefore, the revenue department of the then Government of Bombay allotted various parcels of land of Shahwadi and Gyaspur around Ahmedabad city to the respondent no.6 by order dated 4th January, 1955, wherein it was specifically mentioned that the petitioners were in possession and the respondent no.6 – Municipal Corporation would give an undertaking in writing to the fact that it would pay additional amount of compensation for the improvements made by the petitioners and any other incidental charges like interest etc.

3.5 It is the case of the petitioner that the Municipal Corporation has never paid any compensation to the forefathers of the petitioners and issued a notice under Section 202 of the Bombay Land Revenue Code, 1879 (for short 'the Code') directing to handover the possession of the land within 7 days of the date of the notice. The forefathers of the petitioners therefore, filed Civil Suit no.413 of 1956 before the Civil Court, Ahmedabad Rural. However, there was technical difficulties in the said suit and accordingly the suit was withdrawn with a permission to file a fresh suit, which was Granted by the Court vide order dated 23rd July, 1959.

3.6 It appears that the another suit was filed on 30th July, 1959 being Civil Suit no.1212 of 1959 before the Civil Court, Ahmedabad Rural, which was subsequently transferred to City Civil Court, Ahmedabad and was renumbered as Civil Suit no.536 of 1961. The City Civil Court, Ahmedabad by judgment and decree dated 31st August, 1965 decreed the suit and ordered that the State Government and Officers were restrained from taking possession of the land in question from the plaintiffs and it was ordered that the possession could be taken by the municipal corporation in accordance with due process of law and not by

following the summary eviction process.

3.7 The respondent no.1 State challenged the judgment and decree before this Court by filing First Appeal no.814 of 1968, which was dismissed by judgment and order dated 10th October, 1968.

3.8 The respondent no.6 – Municipal Corporation by letter dated 22nd October, 1970 sought refund of the amount of compensation that was deposited by the Corporation before the State Government during pendency of the aforesaid Civil Suit. The State of Gujarat vide order dated 9th March, 1971 cancelled Grant of the land to the Municipal Corporation for sewage purpose because the land was in dispute. The office of the District Collector permitted the municipal corporation to withdraw the amount of Rs.68,090/- deposited by the Corporation by passing order dated 7th January, 1971.

3.9 It appears that the Municipal Corporation on the basis of the allotment of the Grant from the Government, mortgaged entire land including the land in question with Life Insurance Corporation and obtained the loan of Rs.3.85 Crore for the purpose of development of sewage farm. The City Mamlatdar, Ahmedabad by letter dated 14th June, 1971 informed the municipal corporation that the amount of Rs.68,090/- would not be permitted to be withdrawn unless the entire land was released from the mortgage.

3.10 The respondent no.6 – Ahmedabad Municipal Corporation by letter dated 31st March, 1972 requested the Revenue Department of the State to continue the Grant of the land which was cancelled. In response whereof, it was by communication dated 23rd May, 1972, the Revenue Department informed that the order of cancellation of order of Grant

dated 9th March, 1971 would be revoked separately. However, necessary steps be taken to get the possession of the land from the petitioners.

3.11 It appears that no order was passed for revoking the order dated 9th March, 1971 by which the Grant of land in question in favour of the respondent municipal corporation was cancelled.

3.12 It appears that the respondent no.6 - Municipal Corporation applied before the Talati-cum-Mantri Shahwadi village on 1st April, 1977 for mutation of the name of the Municipal Corporation in the revenue record so as to give effect to the order dated 4th January, 1955 with regard to the Grant of the land in question without disclosing that the said order was cancelled subsequently on 9th March, 1971.

3.13 It appears that on the basis of the application filed by the respondent no.6 – Ahmedabad Municipal Corporation, revenue entry no.1844 was mutated inserting the name of the municipal corporation in the revenue records with regard to the land in question. The petitioners, therefore, objected for passing such entry no.1844 of 23rd April, 1977 pointing-out that the petitioners were in possession and after such a gross delay, no such entry could have been passed. Accordingly, a Disputed Case no.19 of 1977 was registered and the matter was referred to the Mamlatdar. During the pendency of the revenue proceedings, the respondent no.6 – Municipal Corporation by letter dated 12th April, 1979 addressed to the Circle Officer, Sarkhej Division informing that the Corporation was ready and willing to pay whatever compensation, which may be decided either by the Civil Court or by the Government to the petitioners. It was also stated in the said letter that there was no objection if the names of the petitioners were mutated in the revenue records about the right of the petitioners to claim compensation.

3.14 The Circle Officer by order dated 30th July, 1980 cancelled the mutation entry no.1844 upholding the objections of the petitioners and accordingly the entry was deleted on 29th August, 1980 from the revenue records.

3.15 It appears that in the year 1984 a part of the land in question admeasuring 63728 sq. mtrs. was acquired for Fatehwadi canal under the provisions of the Land Acquisition Act, 1894 and part of the land admeasuring 6136 sq. mtrs. was acquired for the purpose of expanding national highway. For the claim of the compensation, disputes were raised by the petitioners, as well as, the municipal corporation, which was resolved by the Civil Judge (S.D.), Ahmedabad Rural vide order dated 21st April, 2004 passed in Land Reference Case no.3 of 2003 (Old LAR no.380 of 1988) and it was held that the municipal corporation was not entitled to claim an amount of Rs.22,30,480/- as compensation and the petitioners were awarded the said compensation.

3.16 The respondent no.6 – municipal corporation challenged the order passed in the aforesaid Land Reference Case by preferring First Appeal before this Court being First Appeal (st.) no.2490 of 2004, which was dismissed for default and thereafter, an application for restoration was moved after five years being Misc. Civil Application no.3333 of 2009, which was also rejected by this Court vide order dated 29th July, 2011.

3.17 It appears that the respondent no.6 – Corporation challenged the order passed by this Court in First Appeal, as well as, in Misc. Civil Application by preferring SLP (C) (CC) no.22115 of 2011 before the Supreme Court, which was also dismissed by order dated 13th January, 2012.

3.18 The respondent no.6 – Corporation thereafter, again tried to disturb the possession of the petitioners and therefore, the petitioners filed Civil Suit No.700 of 2005 before the City Civil Court, Ahmedabad seeking various reliefs including the relief that the Corporation and officers be permanently restrained from interfering with the possession of the petitioners without following the due process of law. The Municipal Corporation also filed Civil Suit no.2011 of 2005 seeking declaration that the disputed land is of the ownership of the Corporation and the possession be handed over to the Corporation. Both the Civil Suits are pending. However, the application below Exh.-7 in Civil Suit no.700 of 2005 seeking temporary injunction was allowed by the City Civil Court and the respondent no.6 – corporation was restrained from taking possession of the suit premises i.e. the land in question without due process of law.

3.19 Meanwhile, the respondent no.6 – Municipal Corporation preferred RTS Appeal no.47 of 2005 before the Deputy Collector challenging the order of the Mamlatdar City Ahmedabad dated 3rd July, 1980 passed in disputed case no.19 of 1977 whereby mutation entry no.1844 was ordered to be cancelled. The said appeal was filed along with the application for condonation of delay on the ground that the respondent corporation was not aware about the order of cancellation of mutation entry.

3.20 The respondent no.4 - Deputy Collector, Ahmedabad City without passing any order on the application for condonation of delay, heard the matter on merits and by impugned order dated 31st March, 2008 quashed and set aside the order of the Mamlatdar with further order that mutation entry no.1844 be certified.

3.21 The petitioners therefore, being aggrieved and dissatisfied with the order dated 31st March, 2008 passed by the respondent no.4 preferred Revision Application under Rule 108(6) of the Gujarat Land Revenue Rules, 1972 (for short 'the Rules') before the respondent no.3 - Collector, Ahmedabad, who by order dated 28th February, 2009 rejected the Revision Application filed by the petitioners. The petitioners therefore, preferred Revision Application no.81 of 2009 before the SSRD.

3.22 The petitioners also preferred an application for stay before the SSRD along with the Revision Application, which was granted vide order dated 14th February, 2012 by directing to maintain status-quo with regard to the land in question.

3.23 The SSRD after hearing the matter on merits passed the impugned order dated 7th January, 2015 holding that the dispute about the right and title can be looked into only by the Civil Court and as the Civil Court suits are pending, the same would be considered by the Civil Court. It was further held that the order was passed for granting the land to the Municipal Corporation on 4th January, 1955 and the contention of the petitioners that the said order was cancelled by order dated 9th March, 1971 is not correct in view of the subsequent communication dated 23rd May 1972 and therefore, the petitioners were not justified in raising objection against the mutation entry no.1844 as the same was just passed to give effect of order of Grant passed in the year 1955. Thus, the revision application filed by the petitioners was rejected by continuing the name of the respondent no.6 in the revenue records.

3.24 Being aggrieved and dissatisfied by the impugned orders passed

by the Deputy Collector, Collector and SSRD, the petitioners have preferred this petition.

4. Appearing for the petitioners, learned advocate Mr. Hriday Buch submitted that the impugned orders are passed relying upon the order of Grant dated 4th January, 1955 ignoring the subsequent developments including the cancellation of the said order vide Memorandum dated 9th March, 1971. It was submitted that it is not in dispute that the order dated 9th March, 1971 is not revoked by any other order passed by the State Government.

4.1. It was further submitted that none of the authorities considered the undisputed fact that the Municipal Corporation never fulfilled conditions mentioned in the order of Grant dated 4th January, 1955 with regard to the payment of compensation to the petitioners and therefore, when the Grant itself was conditional and the conditions are not fulfilled the name of the Corporation cannot be mutated in the revenue records.

4.2. It was submitted that the Mamlatdar has rightly cancelled the order of mutation of entry no.1844 relying upon the memorandum / order dated 9th March, 1971 wherein it is specifically stated that the order dated 4th January, 1955 qua the land in question stands cancelled. It was therefore, submitted that when the suits filed by the petitioners, as well as, Municipal Corporation are pending before the Civil Court, no interference could have been made by the authorities after the period of 25 years by quashing and setting aside the order passed by the Mamlatdar in the year 1980.

4.3. It was submitted that the impugned orders are passed

without considering the delay caused in preferring the RTS Appeal by the respondent no.6 – Municipality before the Deputy Collector challenging the order passed by the City Mamlatdar. It was pointed-out that there is no order of condonation of delay by the Deputy Collector condoning the delay of 25 years in preferring the appeal by the Municipal Corporation.

4.4. It was submitted that the reliance placed by the authorities below on communication dated 23rd May 1972 is also misplaced as the said communication only refers to that the order for revocation of the order cancelling Grant would be passed separately. However, no order of revocation of the order cancelling the Grant is produced on record or is in existence.

4.5. It was further submitted that even in the land acquisition proceedings, the petitioners were awarded with the compensation, which has been finalized till the Apex Court and it was therefore, pointed-out that all the authorities below have ignored such facts.

4.6. It was also submitted that once the revenue authorities have come to the conclusion that the mutation would be subjected to the outcome of the civil proceedings, then in that circumstance, the order cancelling the mutation entry could not have been quashed and set aside and the position that prevailed on the date of the filing of suit in the year 2005 ought to have been ordered to continue to operate. It was submitted that admittedly the order of the Mamlatdar quashing the revenue entry no.1844 was passed in the year 1980, which continued on the date of filing of the suits by the petitioners, as well as, Municipal Corporation in the year 2005 and therefore, the authorities could not have altered the situation by quashing the order of the Mamlatdar

passed in the year 1980. It was therefore prayed that the impugned orders are required to be quashed and set aside subject to outcome of the civil proceedings pending before the Civil Court.

5. On the other hand, the learned Senior Advocate Mr. Maulin Raval assisted by the learned advocate Mr. Deep Vyas submitted that there are disputed questions of fact which in turn would require detail fact finding inquiry and leading of evidence, which is not permissible under the extraordinary writ jurisdiction of this Court and as such the petition is required to be dismissed.

5.1. It was submitted by the learned Senior Advocate Mr. Raval that Grant in favour of the forefathers of the petitioners was only on the basis of the “Ek Saali” lease i.e. land given for cultivation only for one year as such the period of allotment is short one subject to terms and conditions. It was pointed-out that the land was allotted only for the limited purpose of agriculture and after completion of one year; the same was required to be handed over back to the State. It was however, pointed-out that vide order dated 4th January, 1955, the land in question was granted to the Municipal Corporation on payment of occupancy price for public purpose for sewage farm and the Municipal Corporation had paid complete occupancy charges amounting to Rs.2,64,180/- by depositing the same with the State Government. Reliance was placed upon the letter produced at Annexure – R3 along with the affidavit-in-reply.

5.2. It was submitted that under the purport of challenging the proceedings of eviction under Section 202 of the Land Revenue Code, Civil Suit no.536 of 2004 was filed, but the respondent no.6 Municipal Corporation was deleted at the behest of the plaintiffs and ultimately suit was allowed on the premise that if the land was sold by the

Corporation, the proceedings were not maintainable.

5.3. It was further submitted that pursuant to the exchange of various communications, the communication dated 9th March, 1971 from the Revenue Department provides order to cancel the land granted to the municipal corporation. However, it was submitted that such communication does not seem to have been acted or to have been addressed to the corporation. Much reliance was placed on the order dated 23rd May, 1972 of the State Government wherein it is stated that the land in question belonged to the Corporation and the office order dated 9th March, 1971 was being revoked and necessary instructions was passed for taking steps to get the possession from the persons occupying such land in question.

5.4. It was therefore, submitted that the name of the municipality certified by revenue entry no.1844 was wrongly cancelled by the Mamlatdar as the petitioners suppressed the material fact with regard to the purport of "Ek Saali" lease which would go to the root of the issue. It was pointed-out that the Collector had also decided the compensation amount for the land in question aggregating to Rs.2,50,000/- to be paid to the petitioners vide communication dated 3rd May, 1990, which was never challenged by the petitioners.

5.5. It was submitted that the Circle Officer, who passed an order on 28th September, 1980 has no jurisdiction to cancel the mutation entry and as such the order was nonest, *ab-initio void* and nullity. It was submitted that the provision of Chapter 10A of the Code are not followed and the exercise of the powers for cancellation of the revenue entry was without jurisdiction.

5.6. Learned Senior Advocate Mr. Raval submitted that there are concurrent finding of fact arrived at by the Deputy Collector, Collector, Ahmedabad City against the petitioners and such petition is not maintainable under Article 227 of the Constitution of India.

5.7. Learned Senior Advocate Mr. Raval further submitted that after filing of the Civil Suits by the petitioners, as well as, the respondent corporation in the year 2005, part of the land was required for Metro Rail Project to connect the important joints and in view of the exigencies required for public purpose pursuant to the application filed by the respondent corporation, the City Civil Court by order dated 19th December, 2015 directed to deposit compensation amounting to Rs.84,11,825/- till the outcome of the suit proceedings. Similarly, it was pointed-out that the part of the land required from Sarkhej-Narol link road admeasuring 61306 sq. mtrs. for National Highway is also subject matter of litigation and Second Appeal no.28 of 2016 is pending before this Court.

5.8. It was therefore, submitted that the impugned orders are passed quashing the order cancelling the revenue entry no.1844 are in accordance with law as the same is subject to outcome of the civil proceedings between the parties and therefore, no interference is required to be made in the facts of the case.

5.9. The learned Senior Advocate Mr. Maulin Raval relied upon the following decisions in support of his submissions.

1. *Govindbhai Somabhai Nai and Ors. Vs. State of Gujarat and Others reported in 1987 (2) GLH 47*
2. *Janardan D. Patel Vs. State of Gujarat reported in*

- 1991 (1) GLR 50.
3. *Hinch Lal Tiwari vs Kamala Devi and Ors reported in 2001(6) SCC 496*
 4. *Popatkharma Ramani Vs. Collector reported in 2002 (2) GHJ 985*
 5. *Mithusinh Samratsinh Parmar Vs. State of Gujarat reported in 2006 (2) GLH 743*
 6. *Ghanshyam Jashwantlal Raval Vs. State of Gujarat reported in 2009 (2) GLR 1743*
 7. *Kandala Press and Oil Mills Pvt. Ltd., Vs. State of Gujarat reported in (2017) 13 SCC 701*
 8. *Unreported decision in case of Bharat Gagdevbhai Gohel Vs. M B Parmar or His successor in Office in Special Civil Application no.26861 of 2007 and allied matters dated 29th August, 2008.*

6. Having heard learned advocates for the respective parties and having gone through the material question, the short question which falls for consideration is whether the authorities below i.e. Deputy Collector, Collector and SSRD were justified in quashing and setting aside the order cancelling the revenue entry no.1844 passed in the year 1980 after a period of 25 years.

7. The forefathers of the petitioners were granted “Ek Saali” lease in the year 1945-46, which was made permanent by order dated 18th October, 1954 and subsequently vide order dated 4th January, 1955 the land in question was granted to the Ahmedabad Municipal Corporation on certain terms and conditions.

8. It is also not in dispute that the Grant in favour of the Ahmedabad

Municipal Corporation was cancelled vide order dated 9th March, 1971 and such order is never revoked by the State Government. It is also not in dispute that the proceedings are pending before the City Civil Court, Ahmedabad in respect to the title and ownership of land in question since 2005 as the petitioners have filed Regular Civil Suit no.700 of 2005, whereas the respondent-corporation has preferred Regular Civil Suit no.2011 of 2005.

9. In view of the above facts, when vide order dated 30th July, 1980 the Circle Officer, Sarkhej has cancelled the entry no.1844 relying upon the order dated 9th March, 1971 and considering the subsequent communication dated 23rd May, 1972, the same could not have been quashed and set aside by the respondent authorities after the period of 25 years.

10. The respondent authorities have apparently ignored the order dated 9th March, 1971 whereby the Grant in favour of the respondent – corporation was cancelled. The order dated 9th March, 1971 reads as under :-

No. LMN.1670/109774-G

Revenue Department
Sachivalaya, Gandhinagar
Dated 9.3.1971.

Subject: Lands: Ahmedabad
Shawadi and Gyaspur
Taluka City
Grant of at to the Ahmedabad
Municipality for sewage farm.

MEMORANDUM,

Government had sanctioned the grant of the Marginally noted land to the Ahmedabad Municipal Corporation for sewage purpose

under Govt Memo No.

S.No.	A.Gs.	Location	
514/A/1	170/9	Shahwadi	LMN 1654/114922-P dated 4-1-1955. The possession of the land situated at Shahwadi measuring A. 170-9 Gs. Comprised in S.no.514/A/1.
514/A/2	77/0	Shahwadi	
97/A/1	286-24	Gyaspur	
97/A/2	139-5	Gyaspur	

has not been given so far to the Municipal Corporation as the land is in dispute, Government is, therefore pleased to cancel the grant of this land to the Municipal Corporation, Ahmedabad.

By order & in name of the Governor of Gujarat.

Sd/-

(A.K.Babi)

Under Secretary to the
Government of Gujarat
Revenue Department.

To,
The Collector,
Ahmedabad District,
Ahmedabad.

With reference to his letter No.CB/Land/G.R. No.402 dated 10.02.1971.

No. C.B. Lnd.

Office of the Collector
Ahmedabad Dt. 26.3.1971

Copy with the case papers forwarded to the City Deputy Collector, Ahmedabad for further necessary action in the matter. Notes should be made in record Rights, immediately.

Sd/----

For Collector of Ahmedabad.

11. The respondent – Corporation has placed reliance upon the

communication dated 23rd May, 1972, which was accepted by the respondent authorities to quash and set aside the order dated 30th July, 1980 without considering that in the said communication it was only stated that the order dated 9th March, 1971 was being revoked separately. However, there is no other document on record to show that the order dated 9th March, 1971 is revoked at any point of time. The communication dated 23rd May 1972 reads as under :-

NO.LMN/1670/31145/G

GOVERNMENT OF GUJARAT
Revenue Department
Sachivalaya, Gandhinagar
23rd May, 1972

The Municipal Commissioner,
Ahmedabad Municipal Corporation,

Sub. : Lands Ahmedabad.
Shahwadi & Gyaspur, Tal. City,
S.No. 514/A/1.

Sir,

I am directed to refer to your letter No. C.T.S./ALQ/1200 dated 31-3-72 on the above subject and to state that the land of Shahwadi S.No. 514/A/1 measuring 170 Acres 9 Gunthas granted to you under GMRD No.LMN/1654/714922-P dated 4-1-55 belongs to The Ahmedabad Municipal Corporation and the order is issued in GMRD No.LMN/1670/109774/G dated 9-3-71 is being revoked separately. The said land is in possession of one Shri Govindbhai Prabhudas. Necessary steps may kindly be taken to get possession of the land from the above person.

Yours faithfully,

Under Secretary to the
Government of Gujarat
Revenue Department,
Ahmedabad.

12. From the above communication, there is nothing to infer that the order dated 9th March, 1971 is revoked. Once the order dated 9th March, 1971 is not revoked, no revenue entry could have been passed on the basis of the order dated 4th January, 1955, which stood cancelled by order dated 9th March, 1971. In such circumstances, the submissions made by the learned senior advocate for the respondent corporation cannot be accepted more particularly when the proceedings are pending before the Civil Court with regard to the counter claims made by the petitioners, as well as, the respondent corporation in the pending Civil suits preferred by them.

13. In view of the above undisputed facts , it would be necessary to refer to the various case decisions relied upon on behalf of the respondent corporation as there cannot be any dispute with regard to the proposition canvassed in each of the decisions, which are stated in brief as under:-

(i) In case of *Govindbhai Somabhai Nai (Supra)* it was held by this Court that the order which is nullity in the eye of law on account of total absence of jurisdiction and even if not satisfied would have no efficacy in the eye of law. However, in the facts of the case, when the order based upon which the revenue entry was passed was already cancelled, no entry could have been passed and therefore, such entry would be nullity.

(ii) In case of *Janardan D. Patel Vs. State of Gujarat (supra)*, this Court held that the Revenue Authorities has no power to decide validity of transaction in contravention of any statutory provision contained in any other enactment. Here in the facts of the case, only the veracity of the revenue entry is under challenge and the revenue authority has not decided the validity of Grant in favour of the respondent – Corporation.

(iii) In case of *Hinch Lal Tiwari vs Kamala Devi And Ors (supra)* the Apex Court while dealing with cancellation of allotment of plots for construction of house building or allied purpose which formed part of the pond, held that in view of concurrent finding of the Revenue Authorities, no part of the pond could have been allotted and cancellation was upheld to maintain ecological balance long forming part of pond to be developed and maintained as recreational spot in the interest of the public at large. It appears that the decision is relied upon to submit that the land in question is required for the setting-up of sewage farm for the public and therefore, no interference is required to be made in view of concurring finding given by the Revenue Authorities. However, in the facts of the case, when the order of Grant is cancelled in the year 1971 no revenue entry could have been passed unless and until such order is revoked.

(iv) In case of *Popatkharma Ramani Vs. Collector (supra)* this Court held that the Court would not upset the orders on the ground of delay in filing the appeals and the authorities were justified in deleting the entry moment if it was found that contents of application constituted misrepresentation. However, in the facts of the case, there is no allegation of misrepresentation but on the contrary the entry was passed on the basis of the order of Grant which was already cancelled by the State Government.

(v) In case of *Mithusinh Samrathsinh Parmar Vs. State of Gujarat (supra)*, this Court held that exercise of power under Rules 104, 105 and 106 are in exercise of purely administrative nature and therefore, principle of *res-judicata* is not applicable. However, in the facts of the case, the respondent authorities have exercised powers contrary to the facts relying upon the communication dated 23rd May, 1972 ignoring

that the order of Grant in favour of the Corporation stood cancelled vide order dated 9th March, 1971.

(vi) In case of *Ghanshyam Jashwantlal Raval Vs. State of Gujarat (supra)*, it was held by this Court that simply by filing suit in Civil Court and by getting the said *lis pendens* registered, the petitioners cannot acquire any right, which is to be recorded in revenue records and the Mamlatdar was justified in cancelling entry of *lis pendens*. However, in the facts of the case, the revenue entry no.1844 was cancelled by the Mamlatdar relying on the order dated 9th March, 1971, which could not have been quashed and set aside in the facts of the case.

(vii) The Apex Court in case of *Kandala Press and Oil Mills Pvt. Ltd., Vs. State of Gujarat (supra)* has held that the appellant was not entitled to claim that the lease deed must be renewed in his favour and High Court rightly concluded that the appellant cannot claim that he is entitled to renew of lease deed as a matter of right. In the facts of the case, the proceedings are pending before the Civil Court and therefore, applicability of this decision would be relevant while deciding the said suits. So far as the issue in this petition is with regard to the order passed in 1980 cancelling the revenue entry no.1844 should be restored or not as the same was quashed and set aside by the respondent authorities.

(viii) In Special Civil Application no.26861 of 2007, decided by this Court on 29th August, 2008, it was held that the possession of the petitioners for more than 34 years cannot regularize the encroachment by protecting the possession of the petitioners in the said case. However, in the facts of the case, the question is only with regard to the cancellation of the revenue entry no.1844 subject to outcome of the proceedings before the Civil Court.

14. In view of the above facts and circumstances the respondent authorities have committed an error by quashing and setting aside the order dated 30th July, 1980 cancelling the revenue entry no.1844 in favour of the respondent no.6 – Municipal Corporation in view of the undisputed fact that basis of such entry being Grant of land vide order dated 1st April, 1955 already stood cancelled vide order dated 9th March, 1971 and such order was never revoked by the State Government. Therefore, in such circumstance, no interference could have been made by the respondent no.4 - Deputy Collector by entertaining the appeal filed by the respondent corporation after the period of 25 years that too without passing any order for condonation of delay and subsequent orders passed by the Collector and SSRD are also therefore required to be quashed and set aside

15. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned orders dated 7th January, 2015, 28th February, 2009 and 31st March, 2008 passed by the Special Secretary (Appeals) Revenue Department, Collector, Ahmedabad and Deputy Collector, Ahmedabad City respectively are hereby quashed and set aside and the order dated 30th July, 1980 passed by the Mamlatdar cancelling the revenue entry no.1844 is restored however, the same would be subject to outcome of the pending civil proceedings before the City Civil Court, Ahmedabad. ***Rule is made absolute to the aforesaid extent.*** No order as to costs.

(BHARGAV D. KARIA, J.)

FURTHER ORDER

After pronouncement of the judgment learned Senior Advocate Mr.Maulin Raval prays for stay of this order for further four weeks.

Considering the nature of the controversy in the matter with regard to the entry proceedings only, the request is rejected.

(BHARGAV D. KARIA, J.)

AMAR RATHOD...

