

Reserved On : 25/08/2026

Pronounced On : 18/09/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17447 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE DIVYESH A. JOSHI : Sd/-**

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Approved for Reporting	Yes	No
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JASUMATIBEN NAVALDAS DASANI & ORS.**Versus****STATE OF GUJARAT & ORS.**

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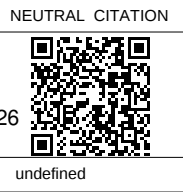
Appearance:**MR ANSHIN DESAI, Sr. Adv. with VENU H NANAVATY(7458)****for the Petitioner(s) No. 1,2,3,4****DELETED for the Respondent(s) No. 3,4,5****MR JAY TRIVEDI AGP for the Respondent(s) No. 1,2**

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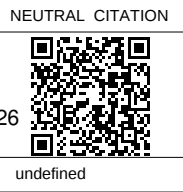
CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**CAV JUDGMENT**

1. By way of filing present petition under Articles 226 and 227 of the Constitution of India as well as under the provision of the Saurasthra Gharkhed Tenancy Settlement & Agricultural Lands Ordinance, 1949 (hereinafter referred to as "Ordinance, 1949" for short), the petitioners have challenged the order dated 19.08.2016 passed by the respondent no.2 – Collector, whereby Entry Nos.4864, 4865 & 4866 dated 26.05.1990 based on registered sale deeds have been cancelled.

2. The facts of the case in nutshell are as under,

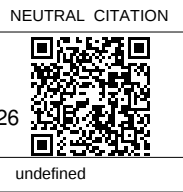


- 2.1 One Bavalal Jadavji was having three sons viz., Harjivanlal, Nathalal (father of the petitioner no.1) and Bachulal and after the sad demises of said Bavalal Jadavji on 13.04.1974, the land owned by him had parted amongst three brothers, out of which, land bearing Survey Nos.25 pk. & 45 Pk. situated in the sim of Village : Jaspar, Taluka : Jamkandorna, District : Rajkot came to the share of Nathalal. The said Nathalal had two children viz., daughter, Jasumatiben (i.e. the petitioner no.1 herein) and son, Rameshbhai Aadatiya. However before the death of Bavalal, the father of the petitioner no.1 passed away. Therefore after the sad demise of said Nathalal, the name of his heirs i.e. the petitioner no.1 and the said Rameshbhai ought to have been recorded in the revenue record but by playing fraud and on the strength of the forged documents like pedigree, Kabulatnama etc. as also forging her signature in the statement, the said Rameshbhai got his name entered in the revenue record behind the back of the petitioner no.1, for which, Entry No.654 came to be mutated in the revenue record on 09.10.1967 in his favour.
- 2.2 On attaining the majority, the petitioner no.1 got married and shifted to her matrimonial house and, thereafter, settled in



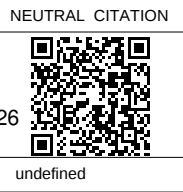
her matrimonial life. After getting married, the petitioner no.1 wanted to purchase agricultural land, therefore, she applied for Certificate from the Talati-cum-Mantri, Jaspur declaring her as an agriculturist and pursuant thereto, Talati-cum-Mantri, Jaspur had issued Certificate dated 07.12.1989 recording inter alia that after having verified the record, it appears that the name of Rameshkumar Nathalal Aadatiya is running in the revenue record for the land having Khata No.228 admeasuring 12 Acre & 00 Guntha, for which, Entry No.654 came to be mutated in the revenue record on 09.10.1967 and the petitioner no.1 is the sister of said Rameshkumar.

- 2.3 Therefore on the strength of the aforesaid Certificate issued by the Talati-cum-Mantri, Jaspur, the petitioner no.1 herein had purchased land admeasuring 1 Acre & 25 Guntha; land admeasuring 1 Acre & 25 Guntha; and land admeasuring 3 Acre & 33 Guntha of land bearing Survey No.27/2 from three different occupiers by way of executing registered sale deed all dated 17.04.1990 and on the strength of the said registered sale deeds, Entry Nos.4864, 4865 & 4866 came to be mutated in the revenue record, which were subsequently certified by the competent revenue authority on 15.08.1990, 29.06.1990



and 15.08.1990 respectively after following due procedure of law including by issuing notice under Section 135D of the Bombay Land Revenue Code.

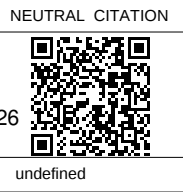
- 2.4 However one advocate viz., Kishan M. Patel had applied for information under the Right to Information Act with regard to the documents produced by the petitioner no.1 at the time of mutation of Entry No.4864, 4865 & 4866 by submitting an application before the learned Mamlatdar, Ranavav.
- 2.5 Thereafter, one Pravinbhai Patel had instituted Special Civil Suit No.607/2004 before the court of learned Civil Judge, (SD), Rajkot inter alia praying for specific performance of the land bearing Survey No.369 situated at Village : Khedvan on the strength of the satakhat.
- 2.6 Thereafter, the brother of the petitioner no.1, Rameshkumar had tried to sell out inherited land bearing Survey No.45/4 pk. situated in the sim of Village : Jaspur, Taluka : Jamkandorna, District : Rajkot by way of executing registered sale deed on 21.07.2008 in favour of one Pravinbhai Bachubhai Aadatiya behind the back of the petitioner and Entry No.3871 came to be mutated in the revenue record on 11.08.2008, however, as soon as the said fact came to the notice of the petitioner no.1, she submitted



her written objection before the learned Mamlatdar, Jamkandorna, therefore, it has been registered as Dispute Case No.1/2008-09.

2.7 On 15.12.2008, one Ghanshyamsinh Jadeja, who is Power of Attorney Holder of Jayantibhai Premjibhai Patel had submitted an application before the respondent – Mamlatdar on 15.12.2008 inter alia praying for cancellation of Entry Nos.4864, 4865 & 4866 mutated in favour of the petitioner no.1 on the ground that though the petitioner no.1 was not an agriculturist, she entered into sale transaction of land and on the strength of the said application, the learned Deputy Collector, Porbandar, by communication dated 12.01.2009, instructed the learned Mamlatdar, Ranavav to take appropriate action in the matter.

2.8 Thereafter, the petitioner had collected information and documents and come to know that mischief has been committed by his brother while mutating Entry No.654 in the revenue record after the sad demise of her father, whereby she came to know that at the time of mutating said entry, her signature was forged; forged pedigree and kabulatnama were produced and the said act had been done in connivance with the officers of the revenue department at the relevant point of time as no notice as required under Section



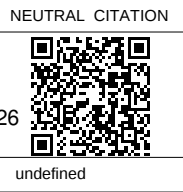
135D of the Revenue Code was served upon her and not only that, there is one kabulatnama purportedly signed by the petitioner no.1 dated 10.11.1967 had been placed in the revenue record, wherein in fact, the petitioner no.1 had not made any signature and the said document is forged one.

2.9 However despite pointing out all facts including the fraud played by said Rameshbhai with the petitioner, no.1, the objection raised by the petitioner no.1 has been turned down by an order dated 31.01.2009 and thereby Entry No.3871 came to be certified

2.10 On 09.02.2009, the petitioner no.1 submitted an application before the learned Deputy Collector, Gondal under Section 206 of the Revenue Code on 04.03.2009 challenging Entry No.654 dated 09.10.1967 mutated on the strength of the fraud played by her brother and also prayed for condonation of delay, which was allowed by the learned Deputy Collector, Gondal by an order dated 17.03.2009.

2.11 Aforesaid order dated 17.03.2009 condoning the delay was challenged by the brother of the petitioner no.1, Rameshkumar before the learned Collector, Rajkot by filing Revision Application No.69/2009 on 08.04.2009.

2.12 On 02.05.2009, the said Ghanshyamsinh Jadeja being Power of Attorney Holder of Jayantilal

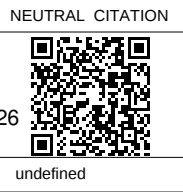


Premjibhai Patel submitted an application before the learned Collector, Rajkot, whereby he had prayed for cancellation of Revenue Entry Nos.4864, 4865 & 4866 mutated in the revenue record in the name of the petitioner no.1 stating inter alia that on the strength of bogus document, the petitioner no.1 has obtained status of an agriculturist.

2.13 The petitioner no.1 had challenged the order dated 31.01.2009 passed by the learned Mamlatdar, Jamkandorna by filing Appeal No.77/2008-09 before the learned Deputy Collector, Gondal, who by an order dated 11.05.2009, allowed the said Appeal and quashed and set aside the order dated 31.01.2009 passed by the learned Mamlatdar, Jamkandorna as also Entry No.654 and thereby remanded the matter back before the learned Mamlatdar with a direction to verify the pedigree of said Nathalal and make necessary entry.

2.14 Aforesaid order dated 11.05.2009 passed by the learned Deputy Collector, Gondal was challenged by the brother of the petitioner no.1 before the learned Collector, Rajkot by filing Land Appeal No.69/2008-09.

2.15 Thereafter, the said Kishan M. Patel, advocate, issued notice to the learned Talati-cum-Mantri, Jaspar; learned Mamlatdar, Jamkandorna; and learned Deputy Collector,



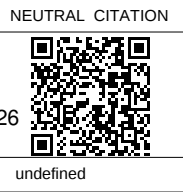
Porbandar on 20.05.2009 in connection with Entry No.3871 in relation of land situated at Village : Jaspar, Jamkandorna and Entry Nos.4864, 4865 & 4866 in relation of land situated at Village : Vadvala with a sole intent to pressurize the revenue authorities and to oust the petitioner no.1 from her legitimate right.

2.16 However, the respondent – Collector, by an interim order dated 18.06.2009 passed in aforesaid Appeal No.69/2009, kept the order dated 31.01.2009 of the learned Deputy Collector in abeyance.

2.17 However to the utter shock and surprise of the petitioner, the learned Collector, Porbandar initiated suo motu proceedings being RRT Revision Case No.58/2009 by issuing notice upon the petitioner on 06.07.2009, whereby Entry Nos.4864, 4865 & 4866 were taken into suo motu revision and pursuant thereto, the petitioner appeared and submitted her detailed reply on 14.07.2009 and on 30.07.2009.

2.18 However, the learned Collector, Porbandar, by an order dated 16.09.2009, allowed the aforesaid revision application and cancelled Entry Nos.4864, 4865 & 4866 on the ground of breach of Section 54 of the Ordinance, 1949.

2.19 The learned Collector, Rajkot, by an order dated 21.01.2010, allowed Land Appeal



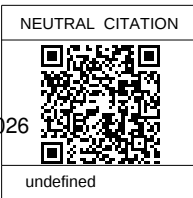
No.69/2008-09 preferred by the brother of the petitioner no.1, Rameshbhai and thereby quashed and set aside the order dated 11.05.2009 passed by the learned Deputy Collector, Gondal and further directed the parties to approach the competent civil court for declaration and permanent injunction of their rights in the properties.

2.20 Against the aforesaid order dated 21.01.2010 of the learned Collector, Rajkot, the petitioner no.1 preferred Revision Application before the learned SSRD.

2.21 The petitioner no.1 herein instituted Special Civil Suit No.3/2010 against Rameshbhai Aadatiya and Pravinbhai Aadatiya before the court of learned Principal Civil Judge, Dhoraji inter alia for claiming share in the ancestral property and partition thereof on 27.01.2010.

2.22 Against the aforesaid order dated 16.09.2009 passed by the learned Collector, Porbandar, the petitioner no.1 preferred Revision Application No.MVV/HKP/PRB/9/2009 before the respondent – SSRD, who by an order dated 24.02.2011 allowed the said revision application and issued direction for restoration of the entries in the revenue record.

2.23 On the strength of the aforesaid order dated 24.02.2011 (03.11.2011), by communication



dated 30.03.2011, the Collector, Porbandar directed the concerned Mamlatdar to restore the position prior to the order of the Collector and further directed to initiate proceedings under the provision of the Ordinance, 1949.

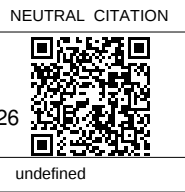
2.24 Therefore on the strength of the aforesaid communication dated 30.03.2011 as well as the order dated 24.02.2011 passed by the learned SSRD, Entry No.7681 came to be mutated in the revenue record on 14.06.2011, whereby Entry Nos.4864, 4865 & 4866 came to be restored.

2.25 However to the utter shock and surprise of the petitioner no.1, the petitioner no.1 has been served with the show cause notice dated 20.04.2012 on the ground of breach of Section 54 read with Section 75 of the Ordinance, 1949 and took the entries impugned into suo motu. Not only that, the said Ghanshyamsinh Jadeja, Power of Attorney Holder of Jayantilal Patel also requested for cancellation of entries impugned.

2.26 On 31.05.2012, the petitioner no.1 submitted her detailed reply to the said show cause notice and requested to withdraw the same.

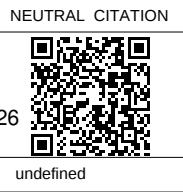
2.27 After submission of the reply, hearings had taken place and it was concluded on 20.12.2014.

2.28 However after a period of 1 year and 8 months from the date of conclusion of the hearing,

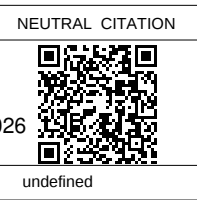


the impugned order came to be passed by the respondent – Collector on 09.08.2016 whereby the entries impugned have been cancelled on the ground of breach of provision of Section 54 read with Section 75 of the Ordinance, 1949 and also imposed cost of Rs.50,79,744/- upon the petitioners.

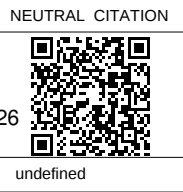
3. Heard learned Senior Counsel, Mr. Anshin Desai assisted by learned advocate, Ms. Venu Nanavty for the petitioners and learned AGP Mr. Jay Trivedi for the respondents.
4. Learned Senior Counsel, Mr. Desai referred to the facts as well as the documents produced on record and submitted that the initiation of the proceedings against the petitioner no.1 for the breach of the provision of the Ordinance, 1949 is against the settled proposition of law and the said aspect has not been properly considered by the respondent – Collector while passing impugned order, therefore, the same requires to be quashed and set aside. He submitted that as can be evident from the facts narrated hereinabove, the petitioner no.1 is the daughter of one Nathalal, who had two children i.e. one of the petitioner no.1 herein and another is one son, Rameshbhai and the said Nathalal was having agricultural land in his name, which came to his share on sad demise of grandfather of the petitioner no.1 by way of partition amongst three brothers, therefore, the petitioner no.1 can be said to hold the status of



an agriculturist by birth as her grandfather was an agriculturist as he was holding huge parcel of agricultural land. He submitted that in fact, the brother of the petitioner no.1 had played fraud with her with oblique reasons and/or with an intention to grab the valuable land, did not wish to part their inherited land by taking advantage of her marriage and settled in her life altogether in different village in her matrimonial house. He submitted that in fact, after the partition of the ancestral land, the land bearing Survey Nos.25 pk. & 45 Pk. situated in the sim of Village : Jaspar, Taluka : Jamkandorna, District : Rajkot came to the share of the father of the petitioner no.1 and after his sad demise, taking advantage of the marriage of the petitioner no.1, the brother of the petitioner no.1, Rameshbhai had produced forged copy of the pedigree, copy of which is produced on record at Page No.101 of the petition, which clearly goes on to show that in the said pedigree, the name of the petitioner is not mentioned as one of the legal heirs of Nathalal. He further submitted that in fact, at that point of time, brother of the petitioner no.1 had also produced one Kabulatnama, copy of which his produced on record at Page No.103 of the petition, wherein signature purportedly signed by the petitioner was mentioned and the said Kabulatnama has not been given by her and thus, the signature of the petitioner no.1 had been forged at the

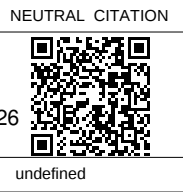


instance of said Rameshbhai. He submitted that all these exercise have been undertaken by the said Rameshbhai behind the back of the petitioner no.1 and in connivance with the officers of the revenue department and thereby, the petitioner no.1 was deprived of her legitimate rights to get share in the ancestral property as well as her status as an agriculturist and by doing so, Entry No.654 got mutated in the revenue record on 09.10.1967, whereby the name of the petitioner has been deleted from the revenue record. He submitted that since the petitioner no.1 wanted to purchase the land, she had sought certificate from the Talati-cum-Mantri of Jaspur, who in turn after verifying the record, issued such certificate and based on it, the petitioner no.1 had purchased the land by way of executing three different registered sale deeds on 17.04.1990 and on the strength of it, entries impugned came to be mutated in the revenue record and subsequently certified also and before mutation of those entries, requisite procedure as provided under the law have already been followed by the revenue authorities in a scrupulous manner. He submitted that if the Hon'ble Court would make a cursory glance upon the Certificate dated 07.12.1989 issued by the Talati-cum-Mantri, Jaspr, copy of which is produced on record at Page No.98 of the petition, in that event, it is evident that the said Talati-cum-Mantri has verified the record and, thereafter, the said Certificate has been



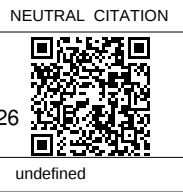
issued recording inter alia that the petitioner no.1 herein is the sister of said Rameshbhai Aadatiya, who is having land in Account No.228 and Entry No.654 came to be mutated in the revenue record on 09.10.1967.

5. Learned Senior Counsel, Mr. Desai submitted that in fact, as stated above, the brother of the petitioner no.1, Rameshbhai had played mischief with the petitioner no.1 herein and produced forged document of pedigree and bogus and concocted kabulatnama, where upon forged signature of the petitioner no.1 has been endorsed and on the basis of which, the name of the petitioner no.1 came to be deleted from the revenue record and in that process, the officers of the revenue authority had also played vital role and as the petitioner no.1 was settled in her life, she did not inquire about the same and in fact, she had kept trust upon her brother, however, when the attempt was being made by his brother to sell out the said land, the petitioner no.1 came to know about the fact that behind her back, the said Rameshbhai is trying to sell out their ancestral property, therefore, the petitioner no.1 raised objection against the mutation of Entry No.3871 and, thereafter, she digged out revenue records and sought certain information about the mutation of entry in the revenue record and while doing so, she came to know about the fraud committed by her brother and thereby deprived her from her

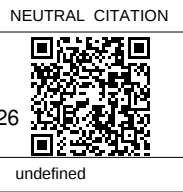


legitimate right of having share in the ancestral property as well as status of an agriculturist. He submitted that while deleting the name of the petitioner no.1, her brother, Rameshbhai had submitted a forged pedigree (not disclosing her name) and a document of Kabulatnama containing her signature and in connivance with the officers of the revenue department, entries were mutated in the record of rights and thereby her name had been deleted, therefore as soon as the said fact came to her notice, she immediately challenged the said entry, which was registered as Dispute Case No.1/2008-09, however, without properly considering the objections raised by the petitioner, the objection of the petitioner no.1 has been rejected by an order dated 31.01.2009, therefore, the said order was challenged by the petitioner no.1 before the learned Deputy Collector, Gondal by filing appropriate application along with an application for condonation of delay and the learned Deputy Collector, Gondal, by an order dated 17.03.2009, allowed the application for condonation of delay, therefore, the brother of the petitioner no.1, Rameshbhai had challenged the said order before the learned Collector, Rajkot by filing Revision Application No.69/2008-09.

6. Learned Senior Counsel, Mr. Desai submitted that in fact, challenge made by the petitioner no.1 to the order dated 31.01.2009 by way of filing Appeal

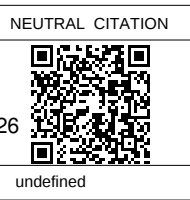


No.77/2008-09 has been allowed and the matter was remanded back with appropriate direction, however, the said order was challenged by the brother of the petitioner no.1 before the learned Deputy Collector, Rajkot by filing Land Appeal No.69/2008-09, which was allowed by the learned Collector by an order dated 21.01.2010, against which, Revision Application was preferred. He submitted that however in the meantime, suo motu proceedings have been initiated by the learned Collector, Porbandar against the mutation of Entry Nos.4864, 4865 & 4866 and by an order dated 16.09.2009, the entries impugned have been cancelled, therefore, the petitioner no.1 was constrained to prefer Revision Application No.9/2009 before the learned SSRD, who by an order dated 24.01.2022, allowed the said Revision Application and thereby restored the entries impugned, however while passing said order, the learned SSRD, relying upon the order dated 16.02.2010 of this Hon'ble Court passed in Special Civil Application No.11309/2009, issued direction to initiate appropriate proceedings under the provision of the Ordinance, 1949 and on the strength of it, suo motu proceedings have been initiated against the impugned entries, that too, after huge delay and on receipt of notice, the petitioner no.1 had submitted detailed reply before the authority concerned and requested to withdraw the proceedings, however despite



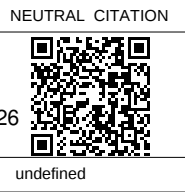
conclusion of last hearing on 20.12.2014, the impugned order has been passed after a period of 1 year and 8 month, therefore, the petitioners have preferred present petition.

7. Learned Senior Counsel, Mr. Desai submitted that in fact, initiation of the *suo motu* proceedings against the entries impugned is against the settled law in view of the fact that those entries were mutated in the year 1990, which were taken into suo motu in the year 2009 and thus, there is huge delay of more than 19 years, which is not permissible in view of numerous decisions of the Hon'ble Supreme Court as well as this Hon'ble Court. In support of this submission, learned Senior Counsel, Mr. Desai has placed reliance upon the decision of this Hon'ble Court in case of **The State of Gujarat & Ors. Vs. Hussainbhai Satarbhai Memon**, reported in 2024 (4) GLH 410 and submitted that in the said decision, the said Letters Patent Appeal was preferred by the State of Gujarat against the order of the learned Single Judge, whereby the writ petition preferred by the petitioner concerned had been allowed and the initiation of the proceedings after unreasonable delay has been quashed and set aside relying upon the decision of the Hon'ble Supreme Court in case of **State of Gujarat Vs. Patel Raghav Natha**, reported in (1969) 2 SCC 187 followed by the Division Bench of this Hon'ble Court in case of **Chandulal Gordhandas Ranodariya Vs. State of**



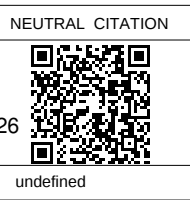
Gujarat, reported in **2013 (3) GLR 1788** and considered the facts of the case and various decisions of the Hon'ble Supreme Court as well as this Hon'ble Court, the said appeal had been dismissed. He, therefore, submitted that here in the present case on hand, there is huge delay of 19 years in initiation of suo motu proceedings against the petitioner, which cannot be said to be reasonable period, therefore, the same may be quashed and set aside.

8. Learned Senior Counsel, Mr. Desai submitted that it is an admitted position of fact that the grandfather of the petitioner no.1 was holding huge parcel of land and he was cultivating the same and the said huge parcel of land had been parted amongst three brothers including the father of the petitioner no.1, however as he passed away before the death of grandfather of the petitioner no.1, certain portion of land had come to the share of the petitioner no.1 and her brother, Rameshbhai, however taking advantage of settling the petitioner no.1 in her marriage life at her matrimonial house altogether at a different place, the brother of the petitioner, Rameshbhai had played mischief by preparing forged pedigree, wherein the name of the petitioner no.1 had not been stated as a legal heir; one document titled as Kabulatnama has been prepared and supplied to be authority, wherein forged signature of the petitioner no.1 is found and by doing so, he duped



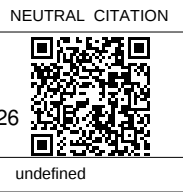
the rights of the petitioner, therefore, by no stretch of imagination, it can be said that the petitioner no.1 has already relinquished her legitimate right to get share in the ancestral property as well as status as an agriculturist but in fact, the petitioner no.1 is an agriculturist by birth and the said status would continue after her marriage also.

9. Learned Senior Counsel, Mr. Desai submitted that as stated above, upon coming to know about the fraud played by her brother, the petitioner no.1 has initiated proceedings against the same, which itself shows and suggests her bonafide conduct. In support of his submission, learned Senior Counsel has placed reliance upon decision of this Hon'ble Court in case of **Kankuben J. Bharwad Vs. State of Gujarat & Anr.**, reported in **2006 (3) GLH 659** and submitted that in the said case, the daughter of an agriculturist married to a non-agriculturist person, therefore in the said decision, it is held that if a woman married to a non-agriculturist would not result into abolishing of her status as an agriculturist. He, therefore, submitted that here in the present case, there is no dispute about the marriage of the petitioner no.1 to a non-agriculturist, therefore as stated above, the petitioner no.1 being a daughter of an agriculturist will have status of an agriculturist, therefore, the said entry ought not to have been di-stabled after a period of 19 years



and the petitioner no.1 may not be made to suffer for the fraud played upon her by his own brother and as stated above, upon coming to know about the said fraud, the petitioner no.1 has initiated revenue as well as civil proceedings before the competent authority against her brother and those proceedings are still pending before the competent authority for adjudication, herein deposition of the petitioner no.1 had been recorded and she strucked with her version.

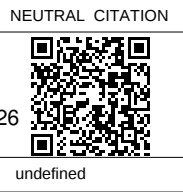
10. Learned Senior Counsel, Mr. Desai, at this stage, submitted that in fact, fraud committed upon the petitioner no.1 has been challenged before the revenue authority and lastly, it was before the learned Collector, where the proceedings were concluding and it was lastly heard on 20.12.2014 and immediately thereafter, no order was pronounced but after a period of more than 1 year and 8 months, the impugned order came to be passed on 09.08.2016. He submitted that during the interregnum period, the State Government has come with an amendment in the statute by amending the statutory provision of law, therefore as per the settled law, if there are substantial changes came to be introduced in the statutory provision of law by way of amending the statute, the effect of the amended provision of law should be considered prospectively and not retrospectively and here in the present case on hand, while passing impugned order, whereby the penalty has been imposed,



respondent – Collector had relied upon the said amendment without affording opportunity to the petitioners. In support of this submission, learned Senior Counsel, Mr. Desai has placed reliance upon the decision of the Hon'ble Supreme Court in case of **Vijay Vs. Union of India & Ors.**, reported in (2023) 17 SCC 455, wherein the Hon'ble Supreme Court has held that effect of any amendment has to be given prospectively unless any specific provision is inserted in the statute to treat it as retrospectively. Relying upon the said decision, it is submitted that here in the present case on hand, admittedly, there is delay in passing impugned order i.e. more than 1 year and 8 months and if the impugned order would have been given within 2 or 3 days, in that event, effect of new provision would not be applicable to the present case and by doing so, the learned Collector has exceeded his jurisdiction, which can be said to be against the settled law.

11. At this stage, learned Senior Counsel, Mr. Desai has placed reliance upon following decisions,

- (1) the decision of the Division Bench of this Hon'ble Court in case of **State of Gujarat Vs. Jethiben Bhagvandas Shambhuvani** delivered in Civil Application No.5822/2025 in Letters Patent Appeal No.32776/2025 : 2025 (0) GUJHC 70892;
- (2) the decision of this Court in case of **Dhirubhai Bhupatsinh Barad Vs. State of**



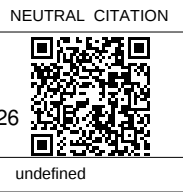
Gujarat, delivered in Special Civil Application No.12168/2018 : 2026 (0) GUJHC 40152;

(3) the order passed by this Hon'ble Court in case of **Jethiben Bhagvandas Shambhuvani Vs. State of Gujarat & Ors.**, delivered in Special Civil Application No.846/2010;

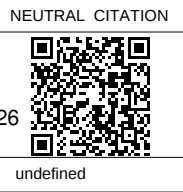
(4) the decision of this Hon'ble Court in case of **Legal Heirs & Rep. Of Decd. Sidibhai Badhabhai Vs. State of Gujarat**, reported in **2026 (1) GCD 538 (Guj);**

12. Relying upon the aforesaid decisions of this Hon'ble Court, it is submitted by learned Senior Counsel, Mr. Desai that the case of the petitioners is squarely covered by the ratio decidendi decided in the said decisions. It is, therefore, urged that considering the above facts of the case and the ratio laid down by the Hon'ble Supreme Court as well as this Hon'ble Court, the present petition may be allowed.

13. On the other hand, learned AGP Mr. Trivedi appearing for the respondents has opposed the present petition on the ground of maintainability of the present petition on the ground of having alternative remedy available under the law, therefore only on that ground alone, the present petition may be dismissed with a specific direction to approach the concerned authority. He submitted that it is an admitted position of fact that the petitioner no.1 herein had purchased

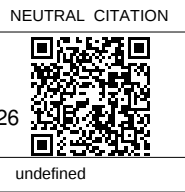


three different parcels of land by way of executing registered sale deed on 17.04.1990 and pursuant to which, impugned entries have been mutated in the revenue record in view of the settled law that as and when the registered document is produced, in that event, effect of the said document (village form) is required to be given by the concerned Designated Officer, therefore, the aforesaid entries were mutated and subsequently certified also. He submitted that it appears that necessary inquiry about the agricultural status of the petitioner no.1 was not carried out at the instance of the revenue authority and only Certificate has been issued by the Talati-cum-Mantri, Jaspur stating that the brother of the petitioner no.1 is holding agricultural field in a particular region and putting reliance upon the contents of the said Certificate, aforesaid entries had been mutated and subsequently certified also. He submitted that in fact, the proceedings have been initiated at the instance of third party by way of seeking certain documents under the provision of the Right to Information Act and pursuant to which, the revenue authority concerned had verified the record and *prima facie* of the opinion that when the transaction had taken place between the parties, the petitioner no.1 was not holding status of an agriculturist and despite the said fact, she had purchased the agricultural land,



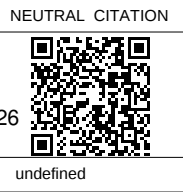
therefore, the said transaction is in violation of the statutory provision of law and as soon as the said particulars have come to the notice of the authority concerned, without wasting any time, straightway the proceedings have been initiated under the provision of Section 54 read with Section 75 of the Ordinance, 1949 by way of issuing notice. He submitted that during the pendency of the proceeding, not a single piece of document has been produced by the petitioner no.1 before the competent revenue authority, which would clearly goes on to show that the petitioner no.1 was holding status of an agriculturist.

14. Learned AGP Mr. Trivedi submitted that it is an admitted position of fact that the grandfather of the petitioner no.1 holding huge parcel of land, out of which, certain portion of land has gone into the share of the father of the petitioner no.1 and in turn, she inherited the said ancestral property as a legal heirs along with her brother, therefore, she did have status of an agriculturist till mutation of Entry No.654 on 09.10.1967 but thereafter, after having deletion of her name from the revenue record, she lost her status as an agriculturist. He submitted that after the sad demise of the grandfather of the petitioner no.1, at the time of mutating the entry, the petitioner no.1 herein had relinquished her right from the land in question and pursuant to which, pencil entry was mutated on 09.10.1967, which was



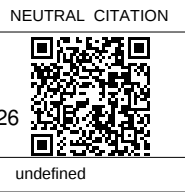
subsequently certified on 27.11.1967 and during interregnum period, Kabulatnama of the petitioner no.1 has been recorded on 10.11.1967, which bears her signature. He submitted that till these years, the petitioner no.1 herein remained silent and as soon as the proceedings have been initiated against her, she has started to make hue and cry and filed various application before the various authorities concerned stating that her name had not been mutated in the revenue record and/or deleted from the record without her consent and by playing fraud on the strength of the forged documents and forged signature but before that, she had never raised her voice about the said entry mutated in the revenue record, therefore, the said act and conduct of the petitioner no.1 herein itself speaks volume about it. He, therefore, submitted that from the above facts clearly go on to show that at the time of purchase of the land by the petitioner no.1, she was not holding status of an agriculturist, therefore, the authority concerned has rightly passed an order and during the pendency of those proceedings, the petitioner no.1 has failed to produce any document to substantiate her claim and on the strength of the documents available on record, the authority concerned has passed impugned orders, which do not require any interference at the hands of this Hon'ble Court.

15. Having heard learned advocates appearing for the

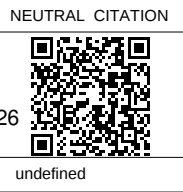


parties and having considered the documents available on record, the moot question, which would fall for consideration of this Court, is as to whether the initiation of suo motu proceedings by the revenue authority after a period of 19 years can be said to be justifiable one and as to whether the petitioner no.1 can be said to be an agriculturist after having lost status of an agriculturist on account of mutation of Entry No.654, whereby her name was not inserted in the revenue record.

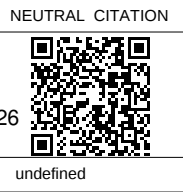
16. Having considered the facts of the case, it has emerged that one Bavalal Jadavji was having three sons viz., Harjivanlal, Nathalal and Bachulal and the land owned by him had been parted amongst three brothers, out of which, land bearing Survey Nos.25 pk. and 45 pk. situated in the sim of Village : Jamkandorna, Rajkot came to the share of the father of the petitioner no.1 viz., Nathalal, however before the death of grandfather of the petitioner no.1, her father passed away, therefore, the share of ancestral property of her father ought to have been parted amongst the brother and sister but it appears that brother, Rameshbhai had played fraud with the system by producing false pedigree and forged Kabulatnama and the name of the petitioner no.1 had not been mutated in the revenue record and by doing the same, the said Rameshbhai had usurped the legitimate right of the petitioner no.1 by taking



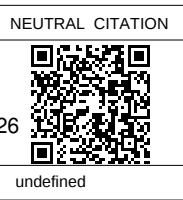
advantage of her marriage, however after the marriage, the petitioner no.1 had purchased three different parcels of land by way of executing three different registered sale deeds and on the basis of the said registered registered sale deeds, entries impugned came to be mutated and at the time of purchasing three parcels of land by the petitioner no.1, she sought Certificate from the Talati-cum-Mantri, Jaspur, who after verifying the record, issued the said Certificate and on the strength of the said Certificate, the petitioner no.1 had purchased the said parcel of land. However one advocate, Kishan Patel sought certain documents produced by the petitioner no.1 at the time of mutation of impugned entries under the Right to Information Act and, thereafter, one Ghanshyam Jadeja had submitted an application for cancellation of impugned entries mutated in favour of the petitioner no.1 on the ground that she is not an agriculturist and despite that, she had purchased agricultural land. However in the meantime, the brother of the petitioner no.1, Rameshbhai had tried to sell out the land to one Pravinbhai Aadatiya by way of executing registered sale deed, pursuant to which, Entry No.3871 came to be mutated and at that point of time, the petitioner no.1 came to know about the fraud committed upon her by her brother, therefore, she gathered certain documents and information and on the basis of those set of documents, first she



raised objection against the mutation of the said entry, however, the said objections were turned down by the authority concerned by an order dated 31.01.2009 and Entry No.3871 came to be certified, against which, Appeal No.77/2008-09 was preferred by the petitioner no.1 before the learned Deputy Collector, Gondal, who by an order dated 11.05.2009, allowed the said order and while setting aside Entry No.654, remanded the matter back with a specific direction to verify the pedigree of said Nathalal and make necessary entry, however, the said order was challenged by the brother of the petitioner no.1 before the learned Collector, Rajkot by filing Land Appeal No.69/2008-09 and the learned Collector, Rajkot kept an order dated 31.01.2009 in abeyance. Not only that, the petitioner no.1, upon coming to know about the fraud committed upon her by her brother, had challenged Entry No.654 before the learned Deputy Collector, Gondal on 04.03.2009 and also prayed for condonation of delay and the learned Deputy Collector, Gondal, by an order dated 17.03.2009, allowed the said application, however, the said order was challenged by the brother of the petitioner before the learned Collector, Rajkot by filing Revision Application No.69/2009 and, thereafter, the said revision application was allowed by the learned Collector by an order dated 21.01.2010 and thereby directed the parties to approach the competent civil court

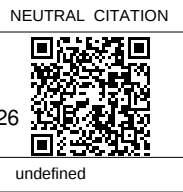


for declaration and permanent injunction of their rights in the properties, against which, revision application was preferred before the learned SSRD. However thereafter, said Ghanshyamsinh Jadeja had challenged the impugned entries before the learned Collector, Rajkot on the ground that the petitioner no.1 is not an agriculturist. Thereafter, the learned Collector, Porbandar initiated suo motu proceedings being RRT Revision Application No.58/2009, whereby entries impugned have been called in question, by issuing notice and pursuant thereto, the petitioner no.1 had appeared and submitted her detailed reply on 14.07.2009 and 30.07.2009, however without properly appreciating the facts of the case and the documents available on record, the learned Collector, Porbandar allowed the said revision application and thereby cancelled entries impugned on the ground of breach of Section 54 of the Ordinance, 1949 by an order dated 16.09.2009, against which, Revision Application No.9/2009 was preferred by the petitioner no.1 before the learned SSRD, who by an order dated 24.02.2011 allowed the said revision application and thereby directed to restore the impugned entries and accordingly, entry No.7681 came to be mutated in the revenue record on 14.06.2011, whereby impugned entries came to be restored. However despite above order, again the aforesaid entries were taken into suo motu on the ground of breach of Section 54



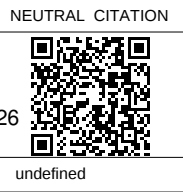
read with Section 75 of the Ordinance, 1949 by issuing notice, which was replied, however by an impugned order dated 19.08.2016, the impugned entries have been cancelled, which led to filing of the present petition.

17. Having considered the facts of the case, first aspect, which is required to be considered, is with regard to the status of the petitioner no.1 at the time of purchase of land by her after her marriage on the strength of the Certificate issued by the Talati-cum-Mantri, Jaspar. In this regard, it is required to be noted that there is no dispute about the fact that the grandfather of the petitioner no.1 was an agriculturist and he was having huge parcel of agricultural land and he had parted his land amongst his three sons, one of them was the father of the petitioner no.1, therefore, the petitioner no.1 being daughter and granddaughter of an agriculturist, can be said to be an agriculturist by birth and just because of the fact that her name has been deleted from the revenue record by playing fraud, she does not loose her "status" as an agriculturist in view of the fact that the land owned by the father of the petitioner no.1 was an ancestral property, therefore, the petitioner no.1 will have an equal share in the ancestral property (land).
18. A useful reference can be made to the decision in the case of **Kankuben J. Bharwad (supra)**, upon which reliance has been placed by learned Senior



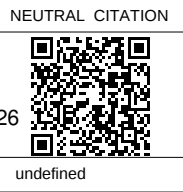
Counsel, Mr. Desai. In the said decision, the facts were to the effect that the said petitioner purchased an agricultural land through a registered sale deed and pursuant to which, entry was mutated based on the sale deed, however, proceedings were initiated under Section 84C of the Gujarat Tenancy and Agricultural Lands Act, 1948 on the ground that the land is purchased by a non-agriculturist. However if the facts of the present case are examined, in that event, it is clear that the petitioner no.1 herein is the daughter and granddaughter of an agriculturist but her legitimate right of having status of an agriculturist has been deprived of by her own brother by playing fraud with her and upon coming to know about the said fact, as stated above, appropriate steps have been taken by her by filing appropriate revenue proceedings as also civil proceedings. Not only that, at the time of purchase of the land by the petitioner no.1, she sought for the Certificate from the concerned Talati-cum-Mantri and after having verified the records, the Certificate has been issued, copy of which is already produced on record. Therefore, it cannot be said that the petitioner had become an agriculturist on the basis of the bogus documents but admittedly, she is an agriculturist by birth.

19. A useful reference can be made to the decision of this Hon'ble Court in case of **Babiben Rikhavchand Doshi Vs. Deputy Collector, Thara & Ors.**, reported



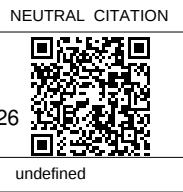
in 1986 GLH 845, wherein it has been observed and held that the petitioner was a daughter of an agriculturist and the father, being an agriculturist was holding an agricultural land, it cannot be said that the petitioner daughter was not legal heir to inherit the land in question held by her father. It has also been held and observed that the crucial aspect, which is required to be considered would be whether the petitioner could be said to have lawful interest in the agricultural land held by the father and if the answer is in affirmative, she continues to retain the status of an agriculturist, even if her marriage has taken place and even after the marriage, such status as daughter of an agriculturist and thereby agriculturist, as per the provisions of the Act, would remain unaltered. Relevant observation made by this Hon'ble Court in Paragraph No.7 of the said decision read as under,

"7. Merely because a woman marries in another family, she does not cut off or sever her relations with her family of birth so that her relatives by 'blood cease to be her family members. On marriage a woman goes to her husband's house but does that mean her relations with her paternal family are totally snapped? Does it mean that her brothers cease to be her family members? Is it permissible and necessary to give such a narrow meaning to the words 'any members of one's family' used in section 2(6) of the Act, particularly when the Act does not manifest an intention to restrict its scope and amplitude? I am of the view that the expression must be construed in a wider sense as observed by J. B. Mehta, J. I am therefore, of the view that her brothers who were cultivating the land on her behalf as



well as on behalf of the other co-owners were doing 50 as her family members. In this view that I take, I think the tribunal was wrong in reversing its earlier view in a review application. The tribunals approach that a woman whose husband is a shop keeper can never be an agriculturist must be stated to be rejected. If a woman is an agriculturist before marriage she cannot cease to be an agriculturist merely because she Marries a shop Keeper. A woman is entitled to her own occupation distinct from that of her husband. She does not loose her identity On marriage, she is entitled to pursue her own occupation or avocation, including that of an agriculturist. I am, therefore, of the view that in review the tribunal betrayed a very narrow approach.

20. Not only that, as per Section 10 of the Hindu Succession Act, 1956, the petitioner no.1 herein is falling under Class I – heirship, which would suggest that the property of intestate shall be divided among the heirs as shown in Class I. Any person, male or female, who is entitled to succeed the property of an intestate under the Hindu Succession Act is legal heir - immediate family members like his son, wife, daughter or mother, who can claim property of deceased after his death under Clause - I of Hindu Succession Act or in absence of Class - I heir, Class - II heir and likewise, other classes of heirs are legal heirs. Therefore in view of the said provisions, the petitioner no.1 herein, who being Class I heir, admittedly, cannot be denied mutation of her name in the revenue record, however as stated above, the brother of the petitioner no.1 has duped her legitimate right of having share in the ancestral



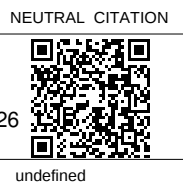
property with a sole intent to grab the valuable land, however for that, the petitioner no.1 may not be made to suffer.

21. Further as can be seen from the facts of the present case, one Ghanshyamsinh Jadeja sought certain information from the revenue authority with regard to mutation of impugned entries in favour of the petitioner no.1 and, thereafter, requested for cancellation of the entry and pursuant thereto, proceedings have been initiated against the petitioner no.1. Therefore considering the above, the said Ghanshyamsinh Jadeja cannot be said to be aggrieved person against the mutation of impugned entries in favour of the petitioner no.1. In this regard, I would like to refer to and rely upon the decision of the Division Bench of this Hon'ble Court delivered in Letters Patent Appeal No.433 of 2011 in Special Civil Application No.6168 of 2010 (in case of Navuji Lalji Vaghela & Ors. Vs. State of Gujarat & Ors., wherein it has been observed as under,

"..... the party aggrieved must show that any of his fundamental rights or any other legal rights have been infringed and thereby the party is aggrieved by such infringement.

22. In the aforesaid decision, it is further observed as under,

"We have been consistently noticing that many persons like the present appellants have started abusing the process of law and have started taking advantage of such proceedings, more particularly, in land matters. After entering into a transaction with eyes wide open, knowing fully well that the transaction



is in breach of the provisions of the Tenancy Act and after pocketing huge amount when the transaction is declared invalid and subsequently if the purchaser succeeds, the original owner would come before the Court saying that the transaction be declared invalid. Such parties need to be deprecated."

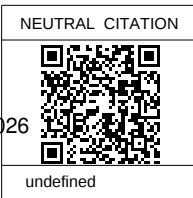
23. At this stage, I would like to refer to and rely upon the decision of the Hon'ble Supreme Court in case of **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors.**, reported in (2013) 4 SCC 465, wherein the Hon'ble Supreme Court has observed as under,

"7. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons.

Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law."

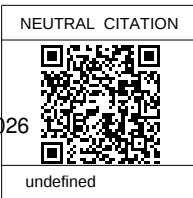
24. In view of the above decisions of the Hon'ble Supreme Court as well as this Hon'ble Court, it is evident that an aggrieved party is typically defined as someone who has suffered a legal injury or deprivation of a right, enabling them to seek redress through legal channels. It would be profitable to refer to a decision of the Hon'ble Supreme Court in case of **A. Subash Babu Vs. State of A.P. & Anr.**, reported in (2011) 7 SCC 616, wherein it has been observed as under:-

"The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined that the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute



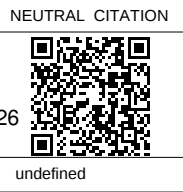
of which contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and extent of the prejudice or injuries suffered by him."

25. Further, the expression 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized. Aforesaid aspect has been considered by the Hon'ble Supreme Court in a decisions in case of **Shanti Kumar R. Canji Vs. Home Insurance Co. of New York**, reported in (1974) 2 SCC 387.
26. Thus from the above proposition of law as well as facts of the present case, it cannot be said that the said Ghanshyamsinh Jadeja is an aggrieved persons against the mutation of impugned entries in favour of the petitioner no.1. It is required to be noted that the impugned entries, which the said Ghanshyamsinh Jadeja has sought for cancellation, are the entries mutated based on registered sale deed, that too, after her marriage, which has nothing to do with the ancestral land of the petitioner no.1 and her brother, Rameshbhai. Therefore considering above facts of the case, in my considered opinion, the initiation of the proceedings at the instance of said Ghanshyamsinh Jadeja and/or one advocate, Kishan M. Patel is not justifiable.
27. Now last submission canvased by learned Senior



Counsel for the petitioners with regard to initiation of the suo motu proceedings after much delay is also required to be considered. So far as the aspect of delay in initiation of the revision proceedings is concerned, the law laid down by the Hon'ble Supreme Court in the case of **State of Raghav Natha (supra)** would be squarely applicable to the present case. It is an admitted position of fact that there has been a delay of 19 years in the exercise of revisional powers under Section 211 of the BLRC by the Collector. The Hon'ble Supreme Court in a judgment in case of **Raghav Natha (supra)** has made the observation that even if such transactions have restrictions or a statutory restrictions, exercise of power has to be within a reasonable period. The observations made by the Hon'ble Supreme Court in the said decision are as under,

"12. It seems to us that sec. 65 itself indicates the length of the reasonable time within which the Commissioner must act u/s. 211. u/s. 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Ss. 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from



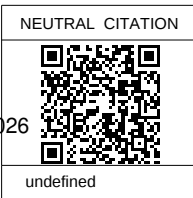
the date of the permission. In this case the Commissioner set aside the order of the Collector on 12.10.1961, i.e., more than a year after the order, and it seems to us that this order was passed too late.

28. The aforesaid view has been reiterated time and again in catena of judicial pronouncements including the another judgment of the Hon'ble Surpeme Court in case of **Joseph Severance v/s Benny Mathew** reported in (2005) 7 SCC 667. Thereafter it has been reiterated by the Division Bench of this Hon'ble Court in case of **Chandulal Gordhandas Ranodriya & Ors. Vs. State of Gujarat & Ors.**, reported in (2013) 2 GLR 1788, wherein it has been observed:

"It must be fairly said that if the statute does not prescribe time limit for exercise of revisional powers, it does not mean that such powers can be exercised at any point of time even if there is a breach of Section 43 of the Act, which is a provision which relates to a new tenure land, rather it should be exercised within a reasonable period of time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. It is clear from various judgments of the Supreme Court that where a statutory provision for exercise of any suo motu powers of revision does not prescribe any limitation, the powers must be exercised within a reasonable period of time even in the case of transaction which would be termed as void transaction."

[emphasis supplied]

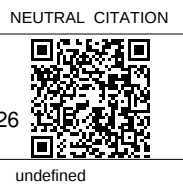
29. At this stage, a useful reference can be made to the decision of the Division Bench of this Court in case of **Hussainbhai Satarbhai Meman (supra)**, upon which reliance has been placed by learned Senior Counsel, Mr. Desai, wherein the Division



Bench of this Hon'ble Court has considered the well-known decision of **Raghav Natha (supra)** as well as other decision of the Hon'ble Supreme Court with regard to the initiation of the suo motu proceedings after much delay and considering those decision, it has been observed as under,

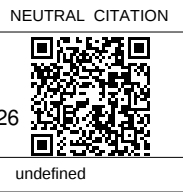
"102 A bare reading of the said provision indicates that it confers powers upon the Collector to deal with such properties which are not the properties of the individuals or of aggregates of persons legally capable of holding the property. We may note that with the summary eviction of the transferee under Section 75 of the Ordinance' 1949, though sale deeds in his favour can be held to be invalid, but it does not result in extinction of the right of the vendor or owner in the property-in-question. Though there is no provision for restoration of the land to the vendor, but the provisions does not contemplate divesting of the title of the vendor. So the words which are not the property of individuals or of aggregates of persons legally capable of holding the property cannot attract. No declaration of the property-in-question being the State property can be made with the aid of Section 37 of the Revenue Code, 1979 and the Collector has no power to take possession of the lands subject matter of sale and dispose of the same under Section 37 of the Land Revenue Code, 1979.

117 It may be noted from the law discussed above pertaining to the reasonable time for exercise of suo motu action, that the legislature in its wisdom did not fix the time limit for exercise of summary eviction, however, it does not mean that the legislature intended to leave the action under the Act for an indefinite period of time, inasmuch as, it would have an effect of rendering title of the land holders/transferees in a state of perpetual uncertainty. The Court has to construe the statutory provisions in a way which makes the provision workable advancing the purpose and object of the enactment of the statute (reference be made to paragraph No.

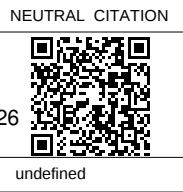


'28' of the decision of the Apex Court in Sulochana Chandrakant Galande).

- 123 The said case arose out of the proceedings initiated under Section 84C of the Tenancy Act, 1948 on the premise that the sale transactions of the year 1970 was hit by the provisions of Section 63 of the said Act. The appeal filed by the transferor, i.e. the original owner seeking for a declaration of transaction of the year 1970 as invalid and restoration of possession of the property in his favour was dismissed by the Division Bench noticing that legality and the validity of the transaction cannot be looked as power in suo motu review was exercised after unreasonable period of time.
- 128 At the cost of repetition, it may be reiterated that a declaration of the sale deed as invalid was required to be made after an inquiry which must have been conducted within a reasonable time before the Summary eviction. The sale deeds remained valid for considerable long period of time and moreover, they are binding on the vendors. The inquiry into the status of the predecessor-in-title of the petitioners or the petitioners herein after such a long lapse of time, can not be permitted, as it may not be possible to bring on record all the relevant documents in such an inquiry(s). A transaction hit by Section 54 is not void ab initio, but may be invalidated and hence remains valid till it is declared invalid. The settled position of law that the transaction which remained valid and effective for a considerable period of time cannot be unsettled, is not to be deviated. Further, there is no vesting contemplated under the Ordinance, 1949 and as noted hereinbefore, the show cause notices are prescribing for not only eviction of the transferees, but resumption of the land in favour of the State Government by directing for entry of the name of the State in the revenue records after deletion of the entries, even of the original landholders while deleting the name of the transferees, which is wholly without jurisdiction."

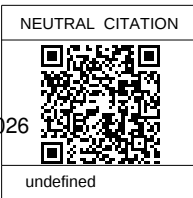


30. From the aforesaid decisions rendered by the Hon'ble Supreme Court as well as this Court, it can be said that the suo motu powers are required to be exercised within reasonable time. In the present case, as observed hereinabove, the suo motu proceedings were initiated by the Collector after a period of approximately 19 years by issuing show cause notice upon the petitioner, therefore, the suo motu proceedings were not initiated within reasonable period. Not only that, having considered the facts of the case coupled with the order dated 24.02.2011 passed by the learned SSRD in Revision Application No.MVV/HKP/PRB/9/2009, it is evident that learned SSRD allowed Revision Application preferred by the petitioners herein by the aforesaid order relying upon the order passed by this Hon'ble Court in Special Civil Application No.11309/2009, however while passing said order, direction was issued to initiate appropriate proceedings available under the law and on the strength of the said direction, suo motu proceedings have been initiated against the mutation of impugned entries. However in view of the above facts of the case, I am of the considered opinion that when the suo motu proceedings were initiated after a delay of more than 19 years, the impugned orders passed by the revenue authorities are required to be quashed and set aside in view of the settled legal proposition of law as discussed above.



31. At this stage, it would be profitable to refer to the decision of this Hon'ble Court in case of **Valjibhai Jagjivanbhai Vs. State of Gujarat**, reported in **2005 (3) GLR 1852**, wherein the Division Bench of this Hon'ble Court has observed in Paragraph No.23 as under,

"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,

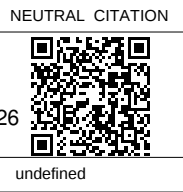


hold that even powers conferred upon the Collector under sub-sections (2) and (3) of section 9 are required to be exercised within a reasonable time."

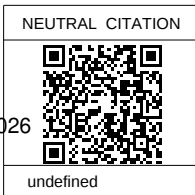
32. A useful reference can be made to the decision delivered by the Division Bench of this Hon'ble Court in case of **Chandulal Gordhandas Ranodriya & Ors. Vs. State of Gujarat & Ors.**, reported in **(2013) 2 GLR 1788**, wherein it has been observed:

"It must be fairly said that if the statute does not prescribe time limit for exercise of revisional powers, it does not mean that such powers can be exercised at any point of time even if there is a breach of Section 43 of the Act, which is a provision which relates to a new tenure land, rather it should be exercised within a reasonable period of time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. It is clear from various judgments of the Supreme Court that where a statutory provision for exercise of any suo motu powers of revision does not prescribe any limitation, the powers must be exercised within a reasonable period of time even in the case of transaction which would be termed as void transaction."

33. The plea of alternative remedy as raised by the learned AGP Mr. Trivedi for the respondents with regard to the efficacious remedy available for the petitioner contending inter alia that the order of the learned Collector has been directly challenged before this Hon'ble Court by filing said writ petition despite the fact that the said order ought to have been challenged before the learned SSRD, is required to be considered. It is a settled principle of law that existence of alternative remedy can never be a bar for



entertaining a writ application and in spite of an alternative remedy which may be available to an aggrieved party, but even then a writ petition is entertainable when the writ petition seeks enforcement of the fundamental rights, or when there is a violation of the principles of natural justice. Therefore if the facts of the present case are examined, in that event, it is found out that it is an admitted position of fact that the petitioner herein has challenged the order of the learned Collector directly before this Hon'ble Court by filing present writ petition. However if the facts of the present case, as noted above, are examined, in that event, it is found out that by an order dated 16.09.2009, learned Collector, Porbandar had allowed suo motu revision application and thereby cancelled the impugned entries based on registered sale deed on the ground of breach of the provision of Section 54 of the Ordinance, 1949, which was challenged before the learned SSRD by filing revision application, which was allowed by the learned SSRD by an order dated 24.02.2011, however, direction was issued to initiate appropriate proceedings available under the law in view of the order dated 16.02.2010 passed by this Hon'ble Court in Special Civil Application No.11309/2009 and pursuant thereto, the petitioner no.1 has been served with show cause notice dated 20.04.2012 on the ground of breach of Section 54 read with Section 75 of the

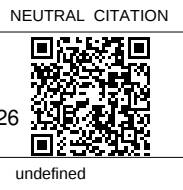


Ordinance, 1949, whereby the impugned entries, which have already been restored, have been taken into suo motu, to which, detailed reply was submitted pointing out all aspects of the matter but despite the said fact, the impugned order has been passed, whereby impugned entries have been cancelled. Therefore, it can be said that fundamental rights of the petitioner guaranteed under the Constitution of India have been violated.

34. The exceptions to the "rule of alternate remedy" are well laid out in terms of judicial precedents and would include situations where the statutory authority has not acted in accordance with the provisions of law or acted in defiance of the fundamental principles of judicial procedure; or where an order has been passed in violation of the principles of natural justice. The exceptions to the 'rule of alternate remedy' were considered in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks**, reported in (1998) 8 SCC 1, wherein it was observed as follows :-

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

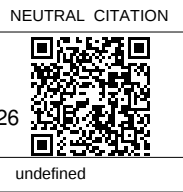
15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the



case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

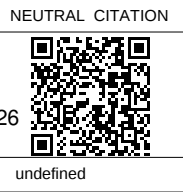
35. Following the aforesaid decision, the Hon'ble Supreme Court in another decision in case of **Harbanslal Sahnia Vs. Indian Oil Corporation Ltd.**, reported in (2003) 2 SCC 107 has observed as under,

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1. The present case attracts applicability of the first two



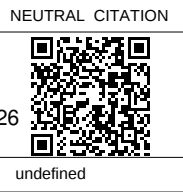
contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

36. The 'rule of alternate remedy' in the context of maintainability of a writ petition under Article 226 has been examined in a recent decision in the case of **Radha Krishan Industries vs. State of Himachal Pradesh & Ors.**, reported in (2021) 6 SCC 771 and it has been held that since the power under Article 226 to issue writs can be exercised not only for enforcement of fundamental rights but for any other purpose as well, the High Court has the discretion not to entertain a writ petition and one of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.
37. At this stage, it is pertinent to note that if the order dated 20.08.2016 is read together with the order dated 16.09.2009, in that event, it is evident that both the orders are passed on the ground of breach of Section 54 of the Ordinance, 1949, however as can be seen from the facts narrated hereinabove, the order dated 16.09.2009 has already been quashed and set aside by the learned SSRD, therefore, despite such position, on the ground of breach of the provision, once again the entries have been taken into suo motu revision, which in my considered opinion, is not



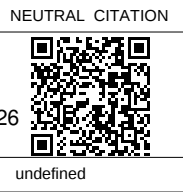
permissible. Further, the hearing before the respondent – Collector was concluded on 20.12.2014 and the impugned order came to be passed on 09.08.2016 and while passing impugned order, the respondent – Collector has relied upon the amendment made in the statute by the State Government, which came into effect after conclusion of the hearing and the effect of the said amendment can be said to have been considered as retrospectively. It is a matter of fact on record that after the conclusion of argument and before the pronouncement of the judgment, if any statutory provision is amended, in that event, appropriate opportunity is required to be given to the parties before passing any final order.

38. Further, there is no dispute about the fact that the land possessed by the brother of the petitioner, Rameshbhai (either by way of inheritance or by way of playing fraud with the petitioner no.1) was ancestral property, therefore as per the settled proposition of law, at the time of mutation of succession entry, names of all legal heirs are required to be mutated. Therefore if the facts of the present case are examined, in that event, it is evident that while mutating succession entry, the said Rameshbhai had produced forged pedigree, wherein the name of the petitioner was not mentioned and, thereafter, a document in the form of Kabulatnama purportedly signed by the petitioner no.1 has been produced



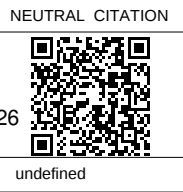
before the revenue authority, whereby it is declared that the petitioner no.1 has relinquished her rights from the said property. Therefore instead of mutating the name of the said Rameshbhai only, the revenue authority ought to have mutated the name of the petitioner no.1 and his brother, Rameshbhai and, thereafter on the strength of the said so-called Kabulatnama, her name requires to be deleted. But above stated facts clearly goes on to show that some mischief has been done and malpractice has been adopted at the time of mutation of name of the said Rameshbhai, for which, as stated above, civil as well as criminal proceedings have already been initiated by the petitioner no.1 as soon as she came to know about the said fact. Even against the mutation of entry based on registered sale deed, objections were raised by the petitioner no.1. Therefore, the view adopted by the revenue authority at the time of mutating the entries prima facie seems to be not in consonance with the statutory provision of law, therefore, it can be assumed that the officer of the revenue department had also hand-in-glove with the brother of the petitioner no.1.

39. Having regard to the foregoing discussion, it appears that much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the

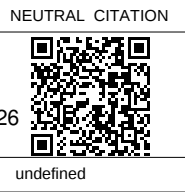


jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution of India, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. Not only that, the order impugned is of the year 2016, against which, the present petition has been preferred immediately in the year 2016 and we are in the year 2026, therefore after much period, the petitioner cannot be relegated to avail alternative remedy in view of the fact that by the impugned order, fundamental rights of the petitioners guaranteed under the Constitution of India have been admittedly violated.

40. In view of above legal pronouncements regarding exercise of revisional powers and limitation, on perusal of the factual aspects of this case, it appears that the revenue authority has suo motu exercised the power of revision in the year 2009 against impugned entries, which were posted in the revenue record in the year 1990. It is also an admitted fact that Certificate was issued by the Talati-cum-Mantri, Jaspar with regard to the status of the brother of the petitioner no.1 as an agriculturist and on the strength of the said Certificate, the petitioner no.1 had purchased the land after her marriage, for which, impugned



entries have been effected. But as stated above, the brother of the petitioner no.1 had played mischief with her and deleted her name from the revenue record, but against the said fraud, appropriate proceedings have already been initiated by her, wherein she had led evidence by categorically describing entire sequence of event of incidents occurred in a very graphically manner and strucked with her pleading (complaint), which clearly goes on to show that fraud has been committed by her brother, Rameshbhai, which resulted into loosing of her legitimate rights of having status as an agriculturist. However just because of removal and/or deletion of name of the petitioner no.1 from the revenue record, that too, by fraud, she does not lose her status as an "agriculturist". As per the latest amendment in the Hindu Succession Act, now daughter is to be treated as a co-parcener in father's property. Therefore, exercise of revisional powers by the authority only on the basis of an application of third party, who has nothing to do with the mutation of impugned entries is not proper. The authority has lost sight of the fact that the Certificate clearly reveals that her brother, Rameshbhai is having agricultural land, which he got by way of inheritance, therefore, the petitioner no.1 being a daughter of an agriculturist can be said to have status of an "agriculturist". Therefore, the basis for taking



the entry into revision is baseless. Not only that, the entries, which have been taken into suo motu revision, were mutated on the strength of the registered sale deed for the land, which have been purchased by the petitioner no.1, the said lands have already been sold by the petitioner no.1 to the third party by way of executing registered sale deed and that entry had also been mutated in the revenue record.

41. In the result, the present petition stands allowed. The impugned order dated 19.08.2016 passed by the respondent no.2 – Collector is hereby quashed and set aside. Accordingly, Entry Nos.4864, 4865 & 4866 dated 26.05.1990 based on registered sale deeds shall stand restored in the revenue record. Rule is made absolute to the aforesaid extent. Direct service is permitted.

Sd/-
(DIVYESH A. JOSHI, J.)

Gautam