

**HIGH COURT OF GUJARAT**

**STATE OF GUJARAT**

*Versus*

**NATHABHAI SHIVABHAI PRAJAPATI & 4**

**Date of Decision:** 01 August 2006

**Citation:** 2006 LawSuit(Guj) 837

**Hon'ble Judges:** [H N Devani](#)

**Eq. Citations:** **2007 1 GCD 188**

**Case Type:** Special Civil Application

**Case No:** 460 of 1995

**Subject:** Constitution

**Acts Referred:**

[Constitution Of India Art 227](#)

[Bombay Tenancy And Agricultural Lands Act, 1948 Sec 74, Sec 64, Sec 63, Sec 84C, Sec 84B, Sec 76, Sec 84C\(2\), Sec 84C\(3\)\(a\), Sec 84C\(1\).](#)

**Advocates:** [R C Jani](#), [Rita Chandarana](#)

**H. N. Devani, J.**

**[1]** By this petition under Article 227 of the Constitution of India, the State of Gujarat challenges the order dated 6th November, 1992 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN/BA/464/92 whereby the Revision Application made by the respondents No.1 to 4 herein has been allowed and the order dated 12th July, 1991 in Tenancy Case No.442 of 1991 passed by the Mamlatdar & Agriculture Land Tribunal (Mamlatdar & ALT) as well as the order dated 21st April, 1992 passed by the Deputy Collector (Land Reforms), Appeal, Mehsana in Tenancy Appeal No.270 of 1991, confirming the order of the Mamlatdar & ALT have been set aside.

**[2]** The facts giving rise to the present petition are that lands bearing survey No.523 of Mouje Aluva, Taluka: Kalol, (hereinafter referred to as the "subject lands") were standing in the name of one Shah Buddhisagar Nanalal. As per mutation entry No.1080 dated 2nd February, 1972, the name of one Shri Nathalal Shivabhai (respondent No.1

herein), resident of Limbodra was entered in the record of rights in respect of the subject lands on the basis of a consensual statement that the same had been sold to the said Nathalal Shivabhai eight years ago.

The said entry was certified on 25th January, 1971.

**[3]** It appears that the Collector, Mehsana by a communication dated 15/2/1991 informed the Mamlatdar & ALT that by virtue of a pencil entry names of Jashwantlal Popatlal and others, in all three persons (respondents No.2 to 4 herein) have been entered in the Village Form No.7/12 along with that of Prajapati Nathalal Shivabhai from the year 1977-78 and that, from 1978-79 to 1989-90, the names of the aforesaid three persons have been written in ink along with the name of Shri Nathalal Shivabhai. The Collector pointed out that the names of non-agriculturists have been entered in the revenue record and directed the Mamlatdar & ALT to initiate proceedings under Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act) for violation of provisions of Section 63 of the Act.

**[4]** Pursuant to the aforesaid directions of the Collector, Mehsana, the Mamlatdar & ALT initiated proceedings under Section 84-C of the Act, which culminated into an order dated 12th July, 1991, whereby it was held that Prajapati Nathabhai Shivabhai, being a non-agriculturist, the transfer of lands admeasuring Acres 1 07 Gunthas of land bearing survey No.523 of Mouje village Aluva, Taluka : Kalol was violative of the provisions of Section 63 of the Act. The Mamlatdar and ALT, accordingly, declared that the lands be vested in the State Government free from all encumbrances under Section 84-C (3)(a) of the Act.

**[5]** Being aggrieved by the aforesaid order dated 12th July, 1991, the respondents No.1 to 4 preferred an appeal before the Deputy Collector, (Land Reforms), (Appeals), Mehsana, under the provisions of Section 74 of the Act. Before the Deputy Collector, on behalf of the respondents No.1 to 4, it was contended that the subject lands had been purchased in 1963 and mutation entry in respect of the same has been duly made in the record of rights; that the said entry has been certified; that the sale was between agriculturists; that there was no evidence to show that there was any breach of the provisions of the Act; that proceedings under Section 84-C of the Act have been initiated after a period of 12 years and as such were barred by limitation.

**[6]** The Deputy Collector, held that the name of Shri Nathabhai Shivabhai had been entered in the record of rights by way of mutation entry No.1080 on the basis of a consensual statement; that the said entry was not based on a transaction evidenced by a registered sale deed, hence, the said mutation entry is improper and illegal, hence,

separate proceedings have been initiated in respect of the same, therefore, the said entry cannot be taken into consideration.

It was further held that the transaction in question was not effected by a registered sale deed; that mutation entry No.1080 had been made with an ulterior motive, namely to enable a nonagriculturist to become an agriculturist, hence, on the facts and in the circumstances of the case, the proceedings were not beyond the period of limitation. Even otherwise, Section 84-C of the Act does not prescribe any time limit. The Deputy Collector, accordingly, by an order dated 21st April, 1992, dismissed the appeal and confirmed the order of the Mamlatdar & ALT.

**[7]** The respondents No.1 to 4 carried the matter further by way of revision before the Gujarat Revenue Tribunal (Tribunal) under Section 76 of the Act, which was registered as Revision Application No. TEN. B.A. 464/92. By the impugned order dated 6th November, 1992, the Revision Application was allowed and the orders dated 12.7.1991 and 21.4.1992 passed by the Mamlatdar & ALT and the Deputy Collector (Land Reforms), respectively, were set aside. Hence, this petition.

**[8]** Heard Ms.Rita Chandarana, learned Assistant Government Pleader for the petitioner and Mr.R.C.Jani, learned advocate for the respondents No.1 to 4. Though served, there is no appearance on behalf of respondent No.6.

**[9]** The learned Assistant Government Pleader has taken the Court through the entire record of the case. It was submitted that the Tribunal had erred in holding that there was an unreasonable delay in initiating proceedings under Section 84C of the Act. Placing reliance upon a decision of this Court in the case of [Patel Jividas Trikamdass v. District Collector, Mehsana](#), 1996 2 GLR 688, it was submitted that the question of delay has to be considered in the facts and circumstances of each case. It was contended that limitation has to be considered from the date of knowledge and as such, it cannot be said that there was any unreasonable delay in initiating the proceeding under Section 84C of the Act. In conclusion, it was submitted that the orders passed by the Mamlatdar & ALT as well as the Deputy Collector were just, legal and proper and as such, deserved to be confirmed and the impugned order of the Tribunal, not being in consonance with the provisions of the Act, was required to be set aside.

**[10]** Mr.R.C.Jani, learned advocate for the respondents No.1 to 4 submitted that the impugned order passed by the Tribunal was just, legal and proper and does not warrant any interference at the hands of this Court. It was submitted that the order of the Mamlatdar & ALT, as confirmed by the Deputy Collector, was bad in law mainly on three counts. Firstly, on the ground that the proceedings under Section 84C of the Act

were not conducted in accordance with the provisions of the said section, and that the original owner namely, the transferor was not issued any notice, nor was he a party to the proceedings. Secondly, on the ground that entry No.1080 had attained finality as the same had not been challenged. Thirdly, on the ground that proceedings under Section 84-C had been initiated after an inordinate delay of about 20 years.

**[11]** It was submitted that it is settled legal position that even if the statute does not prescribe any period of limitation, action has to be taken within a reasonable time. In support of his contention, learned advocate placed reliance upon a decision of the Apex Court in the case of [Mohammad Kavi Mohammad Amin v. Fatmabai Ibrahim](#), 1997 6 SCC 71, to point out that the Apex Court, while considering the provisions of Section 84C of the Act, had, in a case where the transfer had taken place in December, 1972 and suo motu inquiry was started by the Mamlatdar in September, 1976, held that the power under Section 84-C of the Act had not been exercised by the Mamlatdar within a reasonable time. It was submitted that, in the present case where there was a delay of more than 20 years in the initiation of the proceedings under Section 84-C of the Act, the Tribunal was justified in setting aside the orders of the lower authorities.

**[12]** As can be seen from the impugned order of the Tribunal, the Tribunal has set aside the impugned orders on two grounds. Firstly, on the ground that the said orders were in breach of the provisions of Section 84C(2) of the Act, and secondly, on the ground that the proceedings under Section 84-C of the Act had not been initiated within a reasonable time.

**[13]** Section 84C of the Act, as is relevant for the purpose of the present petition, reads as under :

"84C Disposal of land, transfer or acquisition of which is invalid -

[1] Where in respect of the transfer or acquisition of any land made on or after the commencement of the amending Act, 1955, the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in Section 84B and decide whether the transfer or acquisition is or is not valid.

[2] If after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land to be invalid, he shall make an order declaring the transfer or acquisition to be invalid. [Unless the parties to such transfer or acquisition give an undertaking in writing that within a period of three months from such date as the Mamlatdar may fix, they shall restore the land along with the

rights and interest therein to the position in which it was immediately before the transfer or acquisition, and the land is so restored within that period."

**[14]** Under the provisions of sub-section (1) of Section 84C, the Mamlatdar while initiating proceedings under Section 84C is required to issue notice and hold an inquiry as provided for in Section 84B and decide whether the transfer or acquisition is or is not valid. Section 84B provides that if the Mamlatdar has reason to believe a transfer or acquisition to be in contravention of Section 63 or 64 of the Act, the Mamlatdar shall issue a notice in the prescribed form to the transferor, the transferee or the person acquiring such land, as the case may be, to show cause why the transfer or acquisition should not be declared invalid and shall hold an inquiry and shall decide whether transfer or acquisition is or is not valid.

**[15]** In the facts of the present case, the Tribunal has in paragraph No.6 of the impugned order, after appreciating the evidence on record, recorded the following findings of fact:

"The notice issued by the ALT in proceeding under Section 84C in June 1991 shows that he had issued notices only to the transferees, viz. Nathabhai Shivabhai and other three persons, and no such notice was issued to the transferor Buddhisagar Nanalal. There is nothing on record that any notice was ever issued to Buddhisagar Nanalal in the proceeding under section 84C, and consequently his reply was not obtained."

In the circumstances, there is a clear breach of the provisions of sub-section (1) of Section 84-C of the Act, inasmuch as the transferor has not been issued notice of the proceeding as envisaged under Section 84-B of the Act.

**[16]** Under sub-section (2) of Section 84C of the Act, if the Mamlatdar, after holding inquiry as envisaged under sub-section (1), comes to the conclusion that the transfer or acquisition of land is invalid, he is required to make an order declaring the transfer or acquisition to be invalid, subject to the caveat that if the parties to such transfer or acquisition give an undertaking in writing that within a period of three months from such date as the Mamlatdar may fix, they shall restore the land along with the rights and interest therein to the position in which it was immediately before the transfer or acquisition, and that the land is so restored within that period. In the circumstances, it was incumbent upon the Mamlatdar, to hear the transferor and upon coming to conclusion that the transfer is invalid, give an opportunity to the parties to restore the land to its original position as envisaged under sub-section (2) of Section 84C of the Act. Upon perusal of the order of the Mamlatdar & ALT, it is evident that the provisions of sub-section (2) of Section 84C have not been complied with, hence, the order of the

Mamlatdar & ALT, stands vitiated on the ground of violation of the aforesaid statutory provisions.

**[17]** Last but not the least, the transfer in question was effected somewhere in the year 1963 and mutation entry recording the said transfer was made in the record of rights on 2nd February, 1971. The names of the respondents No.2, 3 and 4 were entered in the revenue record in 1977-78.

The proceedings under Section 84C of the Act were initiated by the Mamlatdar & ALT, Kalol somewhere in the year 1991. In the circumstances, the proceedings have been initiated after a delay of around 13 to 14 years from the date on which the names of the respondents No.2 to 4 were entered in the revenue records and 20 years from the date of mutation entry No.1080.

**[18]** It is settled legal position, as laid down by numerous decisions of the Apex Court as well as of this Court that even where the statute does not prescribe any limit for exercise of revisional powers, the same have to be exercised within a reasonable time. The Apex Court, in the case of Mohammad Kavi Mohammad Amin v. atmbai Ibrahim , while considering the question of delay in initiation of proceedings under Section 84-C of the Act has held thus:

"Section 84-C of the Act does not prescribe any time for initiation of the proceeding. But, in view of the settled position by several judgments of this Court that wherever a power is vested in a statutory authority without prescribing any time-limit, such powers should be exercised within a reasonable time." In the facts of the said case, wherein the transfer took place as early as in the year 1972 and suo motu inquiry was started by the Mamlatdar in September, 1976, the Court observed that if the sale deeds are declared to be invalid, the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. The Court was satisfied that, in the facts and circumstances of the case, the suo motu power under Section 84C of the Act was not exercised by the Mamlatdar within a reasonable time.

**[19]** Applying the aforesaid principles to the facts of the present case, no infirmity can be found in the order of Tribunal in holding that the proceeding under Section 84C of the Act has been initiated after an unreasonable period.

**[20]** For the afore stated reasons, the Tribunal was, accordingly, justified in setting aside the order dated 12th July, 1991 passed by the Mamlatdar & ALT, as confirmed by the order dated 21st April, 1992 passed by the Deputy Collector (Land Reforms), as being illegal and improper.

**[21]** The petition, therefore, fails and is hereby rejected. Rule is discharged, with no order as to costs.

