

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 246 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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

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BAI JANNAT D/O GAFURJI MOLAJI AND W/O MOHAMAD HANIF BAFATI  
 Versus  
 STATE OF GUJARAT

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Appearance:

MR A J PATEL(595) for the PETITIONER(s) No. 1

MR PRANAV TRIVEDI, AGP for the RESPONDENT(s) No. 1

RULE SERVED(64) for the RESPONDENT(s) No. 1,2

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**CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI****Date : 31/08/2018****ORAL JUDGMENT**

1. The petitioner has challenged an order dated 30.1.1973 passed by the Deputy Collector, Viramgam and an order dated 8.10.2007 passed by the Secretary (Appeals),

Revenue department, Government of Gujarat.

2. Brief facts are as under. Father of the petitioner Gafurji Maulaji had purchased an agricultural land situated at block no.177 of village Kamod, Taluka Daskroi admeasuring 2 acres and 2 gunthas under a registered sale deed dated 30.6.1967 for a consideration of Rs.3000/- from the erstwhile owners. The Deputy Collector was of the opinion that this sale transaction breached the provisions of section 31 of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ("the Act" for short) since consolidation of holding in the village as per section 37 of the Act was done on 20.6.1967. He therefore, issued an notice to the parties to the said transaction on 5.9.1972. The seller in the meantime had expired. The purchaser appeared and filed a reply stating that he has been in possession of the land in question ever since the purchase. On account of ignorance of the provisions, permission for sale was not taken. The Deputy Collector by his order dated 30.1.1973 held that the transaction in question was hit by section 31 of the Act. He therefore, declared the sale as invalid in terms of section 9 of the said Act. However, he observed that the purchaser was in actual possession of the land since long time. It would therefore, not be appropriate to remove him from such possession. He therefore provided that despite his declaration, the illegal possession of the purchaser may continue and accordingly an entry be made in 7/12 record to this effect. The original purchaser Gafurji did not take any steps to challenge this order. He however expired in the year 1975. The petitioner- his daughter claimed that she was not

aware about such legal technicalities and the condition imposed by the Deputy Collector. Much later she needed to raise money. She therefore, tried to sell the land which was not possible on account of the said order. She therefore, filed a revision petition before the Secretary (Appeals) in the year 2007. Secretary dismissed such revision on the ground that there was gross delay of nearly 34 years in filing the same. Such delay was not explained. These orders, the petitioner has challenged in the present petition.

3. It is undoubtedly true that revision petition filed by the petitioner was grossly belated. Explanation for delay which is sought to be made in the petition may not be sufficient to cover the entire period even if I were to believe that the petitioner who inherited the land in question after the death of her father, may not be immediately aware about the order passed by the Deputy Collector and its implications. However, gap of 34 years is a long time. Under ordinary circumstances, I would have confirmed the view of Secretary (Appeals). Situation in the present case however, is rather peculiar. The father of the petitioner having purchased the land, transaction was declared as invalid by the Deputy Collector. The natural consequence thereof should have been that in terms of sub-section(3) of section 9 of the Act, there would be summary eviction. Deputy Collector in view of long possession of the purchaser did not provide for this eventuality. He instead allowed the unauthorised possession to continue with a corresponding entry to be made in the revenue records. This was clearly a very unusual order. If the Deputy

Collector was of the opinion that because of long passage of time, it was not correct to disturb the sale in question, he ought to have dropped the proceedings altogether. If he was convinced that despite such delay, sale had to be declared invalid, which he did, there had to be summary eviction of the occupant. The two courses he adopted for declaring the sale as invalid but not ordering eviction of the occupant are incongruent to each other. The order has brought about a situation where the title of the purchaser has been invalidated. His possession however is protected. The position of a person, not having title and whose possession is declared illegal, continuing in possession of the land, would perpetuate. For all times to come, therefore, there would be a complete deadlock so far as title and possession of the land are concerned. This situation needs to be remedied and cannot be left to prevail on the ground that the daughter of the purchaser failed to file revision petition in time. The wrong being a continuous one, the Court would like to intervene. The additional features of the case are that the original seller has shown no interest in the land. He abides by the sale transaction and has not shown any interest in getting the land back. As is well known, the provisions contained in the Bombay Prevention of Fragmentation and Consolidation of Holdings Act does not envisage vesting of the land in the Government upon the breach of the provisions of the Act is established. In other words, upon invalidation of the sale in this Act, the land would not vest in the Government. The only effect would be title would revert back to the original owner.

4. In the result, both the impugned orders are set aside. Though the petitioner has challenged only part of the order passed by the Deputy Collector, to the extent, it provides for an entry to be made that the petitioner is an unauthorised occupant of the land, in my opinion, deleting only such part would not solve the problem. The petitioner proceeded on the basis that the sale transaction in question was upheld by the Deputy Collector which is not true. The Deputy Collector in fact, invalidated the sale. The petitioner has to essentially challenge this portion of the order also.
5. In the result, both the orders are set aside. In other words, the proceedings under the said Act qua the land in question stands terminated.
6. Petition is disposed of.

**(AKIL KURESHI, J)**

Raghu