

(2014) 09 GUJ CK 0113

GUJARAT HIGH COURT

Case No: Special Civil Application No. 5442 of 1990 and Civil Application No. 8648 of 2014
in Spl.C.A. No. 5442 of 1990 and C.A. No. 4833 of 2006 in Misc. C.A. No. 1191 of 2006 in
Spl.C.A. No. 5442 of 1990 and Spl.C.A. No. 8352 of 2009

Bharatkumar C. Jinwala

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision: Sept. 2, 2014

Acts Referred:

- Bombay Land Revenue Code, 1879 - Section 135D(8), 149, 150, 151, 165 - Gujarat Co-operative Societies Act, 1961 - Section 106, 108 - Urban Land (Ceiling and Regulation) Act, 1976 - Section 42

Citation: (2015) 1 GLR 576

Hon'ble Judges: Rajesh H. Shukla, J.

Bench: Single Bench

Advocate: Y.N. Oza, Sr. Advocate, Apurva R. Kapadia, for the Appellant; Bharat Vyas, A.G.P., for the Respondent

Final Decision: Allowed

Judgement

Rajesh H. Shukla, J.♦The petitioner in Special Civil Application No. 5442 of 1990 is a registered co-operative society and it is filed through the President of this housing society which is said to have purchased the land bearing Survey No. 14/1 in public auction in or about 1981 on the basis of which Entry No. 816 dated 2-10-1981 has been made which is the subject-matter of this litigation. It is averred that the notice issued by the Asstt. Collector, Choryasi Prant cancelling the impugned entry by taking the matter in review on 6-1-1986 after a lapse of 5 years is without jurisdiction. The petitioner-society, therefore, filed an appeal before the Collector which came to be rejected vide order dated 4-7-1988. Thereafter, the petitioner-Society filed a revision before the Secretary, Revenue Department (Appeals), Gujarat State and the Tribunal also rejected the said revision and confirmed the order passed by the Collector. Therefore, the present petition is filed

by the petitioner-Society challenging the respective orders produced at Annexures A, B and C, on the grounds stated in the memo of petition. Special Civil Application No. 8352 of 2009 is filed by the petitioners who are the members of respondent No. 7-Society (petitioner in Spl.C.A. No. 5442 of 1990) challenging the impugned order by which Entry No. 816 dated 2-10-1981 is cancelled as they are also affected. The background of the facts has also been stated that members of the society have been informed not to enter in the plots which affect their possession or rights in the society, and therefore, having come to know that the society has filed Spl.C.A. No. 5442 of 1990, the petitioners who are members of the society are also affected and are aggrieved and has, therefore, filed this petition.

2. The society has purchased the land in question in auction sale conducted by the Special Recovery Officer in the year 1981 and the sale was confirmed and the possession was also handed over to the purchaser Shri Bharatkumar Jinwala and Entry No. 816 was also made in the revenue record dated 2-10-1981 and thereafter the said Bharatkumar Jinwala as President of the Society obtained the permission for construction of building and thereafter the co-operative housing society has been formed. However, as the notice was issued to me petitioner in Spl.C.A. No. 5442 of 1990 (Society and Shri Bharatkumar Jinwala) by the Asstt. Collector for cancelling Entry No. 816, the matter was pursued by me society and since the orders have been passed, the petition is also filed by the petitioners who are also affected by such orders as members of the same society.

3. Learned Sr. Counsel Shri Y.N. Oza appearing with learned Advocate Shri Apurva Kapadia for the petitioner (in Spl.C.A. No. 5442 of 1990) referred to the papers and submitted, at the outset, that the Court may determine the real interest by the respondents and the manner in which the petitioner-Society which is a bona fide purchaser in auction held by the Special Recovery Officer is made to suffer. He submitted that the entire sale of the land in auction is questioned or set at naught after a lapse of period only because the private respondent Nos. 4 and 6 are now having interest in the land in question. He submitted that the land in question which would have been originally declared as surplus under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the "U.L.C. Act") and vested in the Government was sought to be sold in auction pursuant to the default so that the provisions of the U.L.C. Act are not implemented effectively. However, when the U.L.C. Act has been repealed, and if the possession is not taken over by the Government, men such land would remain with the original land-holder, meaning thereby, the private respondents, and therefore, the entire auction proceedings which have been held pursuant to exercise of power under the Gujarat Co-operative Societies Act read with the provisions of the Bombay Land Revenue Code are challenged.

4. Learned Sr. Counsel Shri Oza submitted that the private respondents have never raised any objection. The authorities have also not raised any objection though the

land in question has been purchased by the petitioner-(Society) in Spl.C.A. No. 5442 of 1990 for which a sale certificate is issued dated 22-5-1981 on the basis of which Entry No. 816 was also certified on 2-10-1981. However, the Asstt. Collector issued a show-cause notice and in proceedings being RTS/REV-19 of 1985 passed the impugned order dated 6-1-1986 cancelling Entry No. 816 dated 2-10-1981. Learned Sr. Counsel Shri Oza submitted that, therefore, an appeal was preferred before the Collector and in R.T.S./Appeal No. 329 of 1986 the Collector, vide order dated 4-7-1988, confirmed the order passed by the Asstt. Collector observing that there is no evidence with regard to transfer of the land pursuant to the auction. It is also stated that since the U.L.C. Act would also be applicable it is violating of Sec. 42 of the Act, and therefore, the order cancelling the entry is confirmed. Learned Sr. Counsel Shri Oza submitted that the same thing was reiterated in the order passed by the Secretary, Revenue Department (Appeals), Gujarat State, in revision and all the authorities have not considered the fact that the provisions of Sec. 42 of the U.L.C. Act regarding transfer of the land would be applicable to a voluntary transfer and not to any such transaction of auction sale in purported exercise of statutory power under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the Act").

5. Learned Sr. Counsel Shri Oza, therefore, submitted that, in any case, the petitioner-Society is a bona fide purchaser for which the sale certificate is admittedly issued in favour of the petitioner. The presumptions are made on the basis of the contention raised by the authorities that no record of the auction is available, and therefore, there is no valid auction held. He submitted that the sale certificate which has been issued is not challenged. He emphasised that all the authorities while exercising powers under the revenue law could not have referred to violation of the provisions under the U.L.C. Act without providing any opportunity and without appreciating the contentions raised. He submitted that the auction sale by the authority and the sale certificate issued to the auction purchaser like the petitioner-society could not be brushed aside. He emphasised that unless the sale certificate is set aside or cancelled after appropriate proceedings for setting aside such sale certificate, it would be a conclusive proof. In support of his contention, he has referred to the provisions of Rule 128(6) of the Gujarat Co-operative Societies Rules, 1965 (hereinafter referred to as "the Rules") and emphasised that as provided such certificate shall be a conclusive evidence of the purchase in an auction sale.

6. Learned Sr. Counsel Shri Oza, therefore, submitted that in light of the sale certificate produced on record, the contention raised against any such auction may not be accepted. He emphasised that it will be for the party who is raising the dispute about such auction and the sale certificate to prove or establish by *prima facie* evidence. He submitted that admittedly the sale certificate issued in favour of the petitioner-Society has not been questioned or challenged anywhere though it could have been questioned as provided under the Gujarat Co-operative Societies Act or the Rules made thereunder. Again, he referred to the Rules and submitted

that Rule 127 refers to the application to set aside the sale on depositing the amount or as provided in Rule 128 an application could be moved within 30 days from the date of such sale of immovable property that there is any irregularity or mistake or fraud, and therefore, it may be set aside.

7. Learned Sr. Counsel Shri Oza, therefore, strenuously submitted that as the sale certificate has not been set aside, nor is any proceeding initiated to set aside such sale certificate and the auction sale, it cannot be presumed that there was no auction held at all merely because the authorities or the officers of the Government have not been able to produce the record. He submitted that as stated hereinabove the Court may appreciate the conduct of the private respondents that they have not made any effort to challenge such sale initially as the land would not have gone to them under the provisions of the U.L.C. Act, and therefore, have remained silent. However, as the U.L.C. Act has been repealed now there is a shift in the stand so that if the auction is set aside the land would revert to the original holder of the land.

8. Learned Sr. Counsel Shri Oza has referred to and relied upon the judgment of the High Court of Gujarat in the case of Valimohmad Pirmohmad Shaikh v. State of Gujarat, reported in 2003 (2) GLR 2742, and submitted that this very issue has been considered. He emphasised the observations made therein that once the Registrar has granted the certificate under Sec. 106 of the Act and it is sold in an auction sale, the revenue authorities exercising revisional jurisdiction after 4 years of such auction on the ground that there was a fraud cannot be believed or accepted. He, therefore, submitted that the facts of this case are more relatable to the present case and the exercise of revisional powers to claim the auction sale invalid has not been believed or accepted. Similarly, in the present case, the powers are sought to be exercised after 5 years which is not permissible.

9. Learned Sr. Counsel Shri Oza has also referred to the judgment of this High Court reported in Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State, in the case of Evergreen Apartment Co-operative Housing Society v. Special Secretary, Revenue Department, Gujarat State, and emphasised the observations made in Paras 8 and 11. He submitted that as observed in this judgment, the same officer exercising the power under a different statute may not exercise power while deciding the issue in another statute. He emphasised the observation:

"It is quite possible that an Officer of the Revenue Department may be occupying different capacities under different enactments. That, however, would not empower him to exercise any power under one enactment while proceeding under another enactment. So far as the proceedings under Rule 108 of the Rules, popularly known as R.T.S. proceedings are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title...."

He further emphasised that as observed whether the transaction is valid or not has to be examined by the competent authority subject to following the procedure and the officer cannot pass an order of cancelling the entry on the assumption that the transactions recorded in the entry are against the provisions of a particular enactment like U.L.C. Act in the present case.

10. Learned Sr. Counsel Shri Oza has also referred to and relied upon the judgment of this High Court in the case of [Smt. Prabhavatiben Chandrashanker Trivedi Vs. Special Recovery Officer and Others,](#), and submitted that it is observed referring to the certificate under Secs. 106 and 108 of the Gujarat Co-operative Societies Act that it would be a conclusive proof. He has also referred to and relied upon the order of this High Court (Coram : M.R. Shah, J.) in Special Civil Application No. 5883 of 2008. He has referred to the provisions of Secs. 149 to 151 of the Code. He has also referred to Sec. 165 of the Code which refers to the procedure in effecting sales and the proclamation of sale. He pointedly referred to Sec. 178 of the Code and submitted that it provides that any time within 30 days from the date of sale of the immovable property an application may be made to the Collector to set aside the sale on the ground of material irregularity, mistake or fraud which is pari materia with Rule 128 of the Gujarat Cooperative Societies Rules. He submitted that as there is no such application made, the impugned order passed in purported exercise of revisional powers under the Code are without jurisdiction or authority.

11. Learned Sr. Counsel Shri Oza has also referred to the judgment of the High Court of Gujarat, reported in [Laxmi Associates Vs. Collector and Another,](#) in support of his submission. He emphasised the observations that the Collector cannot allege breach of the provisions of one Act while initiating the proceedings under another Act without following the principles of natural justice. Learned Sr. Counsel Shri Oza submitted, that admittedly, no notice has been served. He has also referred to another judgment of the Division Bench of the High Court of Gujarat reported in [Patel Ratilal Maganbhai and Others Vs. State of Gujarat and Others,](#) and submitted that the proceedings at the instance of the original owners- private persons would not be justified and the appropriate remedy would be to cancel or set aside the sale certificate or by filing a suit.

12. Learned Sr. Counsel Shri Oza submitted that there is a delay in exercise of power which is not permissible. He emphasised that even if there is a power it has to be exercised within a reasonable period. In support of his submission, he has referred to and relied upon the judgment of the High Court reported in [Bhagwanji Bawanji Patel Vs. State of Gujarat and Another,](#) and also the judgment reported in [Labhubhai Valjibhai Gajera Vs. Secretary \(Appeals\), Revenue Deptt. and Others,](#) and emphasised the observations made in Para 18. He emphasised the observation:

"The power conferred under the statute should be exercised within prescribed limitation and if the Statute does not prescribe any time-limit then within reasonable time except the cases involving fraud and/or suppression of material facts.... This

plea is thus not available to him who himself is guilty of fraud or suppression of facts. This is too well settled position of law to need reiteration."

Learned Sr. Counsel Shri Oza, therefore, submitted that the conduct of the private respondents are also required to be considered as stated above and he emphasised that such powers cannot be permitted to be abused or exercised.

13. Learned Sr. Counsel Shri Oza has also referred to the judgment of the Hon'ble Apex Court in the case of [Ashwin S. Mehta and Another Vs. Custodian and Others](#), and emphasised the observations made in Paras 70 and 71. It reads:

"70. In that view of the matter, evidently, creation of any third- party interest is no longer in dispute nor the same is subject to any order of this Court. In any event, ordinarily, a bona fide purchaser for value in an auction-sale is treated differently than a decree-holder purchasing such properties. In the former event, even if such a decree is set aside, the interest of the bona fide purchaser in an auction-sale is saved....."

He has also referred to and relied upon the judgment of the Hon'ble Apex Court reported in [Chinnamal and others Vs. P. Arumugham and another](#).

14. Learned Sr. Counsel Shri Oza, has therefore, submitted that the present petitions may be allowed and the impugned orders cancelling Entry No. 816 dated 2-10-1981 may be quashed and set aside.

15. Learned Sr. Counsel Shri Dhaval Dave appearing with learned Advocate Shri Udayan Vyas for respondent No. 4 has raised an objection with regard to the locus standi of the petitioner and also the maintainability of the petition. He referred to the cause-title of Spl.C.A. No. 5442 of 1990 and submitted that the petitioner is an individual and not the society and there is no resolution of the society placed on record, and therefore, the petitioner has no locus standi. In support of his contention, he has referred to and relied upon the judgment of the Gujarat High Court in the case of Sunderdas Vitlialdas Tekwani v. State of Gujarat, reported in 2010 (3) GLR 2147. He has also referred to the impugned orders. Learned Sr. Counsel Shri Dave submitted that the land in question belonged to respondent Nos. 4 to 6 and respondent No. 5 was indebted to respondent No. 6-Society and respondent No. 4 was the guarantor. He submitted that R.T.S. proceedings including revision and appeal were initiated by the authorities as such transaction was without any permission as required under Sec. 42 of the U.L.C. Act. He submitted that though it is claimed that the petitioner-Society has purchased the land in an auction-sale, the petitioner has not been able to produce any *prima facie* material. He referred to the order passed by the High Court earlier and also submitted that the authorities have found that there is no record with regard to the auction-sale available. In absence of any material the mere say of the petitioner about the auction-sale may not be believed unless he *prima facie* establishes the auction-sale.

16. Learned Sr. Counsel Shri Dave referred to the papers and submitted that the conduct of the petitioner is required to be considered which has also been reflected in the order passed by the High Court (Coram : M.R. Shah, J.) in Misc. Civil Application St. No. 63 of 2006 dated 21-4-2005 at Annexure-R1. He submitted that the petitioner had deleted the concerned private respondent who had made an application to be joined as a party respondent. This reflects the attitude. He referred to the affidavit-in-reply and submitted that it is contended that the sale certificate is not issued and he submitted that the petitioner has made a false representation and has committed fraud. He submitted that a statement has been made that Shri Prabhubhai Durlabhbhai was to pay some amount to the Co-operative Society and since the outstanding could not be paid by Shri Prabhubhai Durlabhbhai the auction was held. He submitted that as stated in this affidavit he was never a member of Kurshad Vibhag Vivid Karyakari Sahakari Mandali. It is also stated that he has never stood as a surety for Lalbhai Narottambhai. Learned Sr. Counsel Shri Dave, therefore, submitted that it raises a doubt about the genuineness of the claim about the auction sale or the sale certificate. He submitted that the name of the present private respondents are also reflected as persons in possession and cultivating the land. He also submitted that a false statement was made that construction has been made. He emphasised that the contractor who visited the site has reported that it is an open land and there is no construction. Therefore, highlighting the conduct of the petitioner, learned Sr. Counsel Shri Dave has submitted that the auction may not be believed and if there is no auction sale, the orders which have been passed by the authorities on appreciation of material may not be disturbed.

17. Learned Sr. Counsel Shri Dave has referred to and relied upon the judgment of the Hon"ble Apex Court reported in A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, referred to Sec. 135D(8) of the Bombay Land Revenue Code which provides:

"Where the certifying officer has reason to believe that such mutation entry violates or contravenes any of the provisions of the Act or any other Act, he shall not certify such entry and shall intimate the same with reasons in writing to the person concerned."

18. Learned Sr. Counsel Shri Dave, therefore, submitted that the provisions of the statute has to be read as it is and when the provision clearly provides that the officer has reason to believe that there is a violation of any other Act he may refuse to certify such an entry. He submitted that it is not that the revenue officer exercising the power under one statute may ignore violation of the provisions of another law altogether. He has stated referring to Sec. 135D(8) of the Code that if the officer has a reason to believe that such mutation of entry violates or contravenes any of the provisions of the Act or any other Act, he shall not certify the entry. He, therefore, submitted that the observations in the judgment relied upon by learned Sr. Counsel Shri Oza may not have application in the present case so long as this provision has

remained in the statute book. He, therefore, submitted that the theory of auction purchase may not be accepted. (Emphasis supplied)

19. Learned Sr. Counsel Shri Y.N. Oza, in rejoinder, referred to the papers including the order at Annexure-A as well as the cause-title and submitted that it is evident that the petition is filed by the society through the President and the petitioner's name is referred as the office-bearer of the society. He also tried to reflect about the conduct of private respondent No. 4 and also submitted that Shri Prabhubhai Durlabhbai was aware about the proceedings and still he did not remain present. He submitted referring to the background that for a small amount the land has been taken and thereafter a default is created so that the land is sold in auction. Therefore, learned Sr. Counsel Shri Oza submitted that the persons like the private respondents herein have preferred to remain silent over the period of time when the land was not to revert to them. However, when the situation has changed now, they have started making allegation about fraud and submissions have been made to disregard the auction sale and the sale certificate. He submitted that as could be seen from the orders passed by the Asstt. Collector, when the notice was served upon the respondents they should have remained present but they have conveniently not remained present before the authorities. The contention of the petitioner-Society has not been challenged. He has referred to and relied upon the affidavit-in-reply filed by the Chitnis to the Collector in Spl.C.A. No. 5442 of 1990. He submitted that it is evident that auction has been held even as per this affidavit, and therefore, the genuineness of the auction cannot be questioned.

20. Learned Sr. Counsel Shri Oza has referred to and relied upon the judgment of this High Court (D.A. Mehta, J.) in the case of Valimohmad Pirmohmad Shaikh v. State of Gujarat (supra) and emphasised the observations made in Paras 8, 10, 12, 13, 21, 22, 23, and particularly in Paras 25 and 26. He submitted that if the sale certificate is not challenged, the same cannot be appreciated, and therefore, the present petition may be allowed. Learned Sr. Counsel Shri Oza has referred to and relied upon the judgment reported in State of Punjab and Others Vs. Bhajan Kaur and Others, and emphasised the observations with regard to fraud and submitted that fraud has to be established in terms of reasonable manner. Similarly, he referred to the judgment of the Hon'ble Apex Court reported in Purbanchal Cables and Conductors Pvt. Ltd. Vs. Assam State Electricity Board and Another, and also the judgment in the case of Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. and its Estate Officer, and submitted that as observed in Para 46, a legislation is not to be given retrospective effect unless it is expressly and specifically provided. He referred to Sec. 135D(8) of the Code and submitted that it merely refers to the procedure or the steps and Sec. 135D(8) provides that the provision of the other law may also be considered. However, he submitted that it has been amended subsequently in the year 2010, and therefore, this provision would not have any application in the facts of the case when it was decided at the relevant time prior to the amendment.

21. In view of these rival submissions, it is required to be considered whether the present petitions deserve consideration.

22. As could be seen from the detailed submissions with reference to the background, both the sides have reflected on the conduct of the other side. From the background it is evident that the sale certificate has been issued and in the affidavit of the Chitnis to the Collector in this proceedings it has been clearly stated that the entry was cancelled because the land was included in the Urban agglomeration and was subject to the provisions of the U.L.C. Act, and therefore, the transaction which has taken place without the permission of the competent authority is invalid. This is the reason which has weighed as could be seen from the concurrent findings of the authorities in the impugned orders at Annexures A, B and C. However, the moot question is, the provisions of Sec. 42 of the U.L.C. Act can be said to be applicable? The provisions of the U.L.C. Act would apply to a voluntary transfer or sale and not any such sale pursuant to the operation of law. Further, the affidavit of the Chitnis to the Collector does reflect about the auction which was undertaken with a mala fide intention of circumventing the provisions of the U.L.C. Act, meaning thereby, the original respondents could have some benefit in view of the repeal of the U.L.C. Act.

23. It is required to be noted from the record that for a small amount of Rs. 7,561/- that the respondent No. 5 was owing to respondent No. 6 society, a default has been committed and the auction took place. Though the record of the auction is not available, it is not in dispute that the sale certificate has been issued in favour of the petitioner-Society. Further, Annexure-R2 produced with the affidavit of the Chitnis to the Collector also refer to the auction proceedings. There is no explanation in this affidavit of the Chitnis with regard to the sale certificate. Moreover, respondent No. 4 Shri Prabhubhai Durlabhbhai while filling up Form No. 6 under the U.L.C. Act has not mentioned about this land. They have not remained present though the notice is served by the Asstt. Collector and the Collector. In the order passed in suo motu revision Case No. 30 there is a discussion about this aspect and reference is made to the petitioner-Society as a purchaser. This itself reflects something about the conduct of the respondents-original holders of the land.

24. Therefore, the moot question is, can the sale certificate issued in favour of the petitioner-Society be brushed aside at such belated stage? As discussed above, the provisions of Sec. 178 of the Code which is pari materia with Rule 128 of the Gujarat Co-operative Societies Rules though specifically provide for making an application within 30 days for setting aside such sale no steps have been taken. Admittedly, the entry has been made which has also been certified. Admittedly, there is no challenge to the sale certificate by any proceedings. The purported exercise of suo motu powers after the period of 5 years, assuming that the exercise of such power has to be considered with reference to the background of the facts whether it can be said to be within reasonable period or not. In the facts of the case, it cannot be

said to be a reasonable period for exercise of such powers after 5 years. Therefore, having regard to the observations made by the Hon'ble Division Bench in its judgment reported in [Chandulal Gordhandas Ranodriya and Others Vs. State of Gujarat and Others](#), where the Division Bench of this Court has considered this aspect of exercise of powers at belated stage considering the aspect of reasonable period, it has been observed referring to catena of judicial pronouncements that even if the statute does not provide for limitation or prescribed period for exercise of such power, it has to be within a reasonable period.

25. The submissions which have been made by learned Sr. Counsel Shri Oza with regard to exercise of such power after a period of 5 years also require consideration. As referred to hereinabove, the statutory powers are required to be exercised within limitation or the time prescribed in the statute. Even if there is no time prescribed, it has to be exercised within a reasonable period. Again, what could be said to be a reasonable period is a matter which will depend upon the facts of a case. At the same time, in catena of judicial pronouncements, this aspect has been discussed and dealt with by the Courts including the Hon'ble Apex Court and the High Courts. The Division Bench of this High Court in the judgment reported in the case of Chandulal Gordhandas Ranodriya (supra) has made the observation as to what could be said to be a reasonable period for exercise of such powers and justification for exercise of such powers and has also clearly observed that exercise of power beyond a reasonable period would not be justified even if there is an irregularity or the transaction is not valid. It has been observed:

"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 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."

26. Therefore, right from the judgment in the case of Patel Raghav Natha, [1969 GLR 992 (SC)] till this judgment, the view has been consistent on this aspect and there is no justification for exercise of such powers after 5 years, particularly in background of the peculiar facts as stated above. It is also required to be noted, which has also been highlighted by learned Sr. Counsel Shri Oza referring to the conduct of the private respondents and the background, that for a small amount the recovery is sought to be made and the auction is permitted to be held for the land and even after the sale certificate is issued there is no challenge, though both the Code as well as the Gujarat Co-operative Societies Act provide for such objection which could be raised. After a long period, the auction sale is questioned or rather is taken in exercise of powers for cancellation of an entry. The learned A.G.P. has not been able to explain the exercise of such powers after 5 years. The effect of cancellation of an entry would be a blessing in disguise to the private respondents in light of the repeal of the U.L.C. Act. This aspect cannot be totally overlooked particularly the

manner in which the entire event has taken place.

27. Further, as both the sides have claimed about the conduct it appears to be a foul cry on both the sides inasmuch as, as pointed out by learned Sr. Counsel Shri Oza, the private respondents have started taking interest only after the repeal of the U.L.C. Act so that they can get the benefit under the Repeal Act and the land could revert to the land-holder if the auction sale is set aside. On the other hand, as reflected about the conduct of the petitioners also, it leaves much to be desired particularly the way in which they have deleted the interested persons and thereafter have not been able to place on record certain material. However, in spite of such attitude, it cannot be said that there was no auction sale and the petitioner-society has not purchased the land. Admittedly, the material or the papers are missing. The sale certificate is not questioned or challenged by anybody in any proceedings. The affidavit of the Chitnis to the Collector as well as the order passed which has been produced with the affidavit of Chitnis to the Collector at Annexure-R3 referring to the suo motu exercise of power under Sec. 211 of the Code by the Collector dated 3-5-1989, on the contrary, lend support to the contention by learned Sr. Counsel Shri Oza that it is only to get out of the provisions of the U.L.C. Act the default is made so that the land is sold in auction and the advantage is availed under the U.L.C. Act. However, with the passage of time the circumstances and equations have changed. The guarantor, as reflected in this order, has not taken any steps. If the land of the person is sold in auction sale who claims to be only the guarantor, then, he would have certainly raised an objection including the procedure for the auction sale. No such steps have been taken by the interested persons at all which itself is unbelievable. Again, these orders refer to the fact that the outstanding amount was paid or deposited on 5-11-1981 and the auction is said to have taken place on 14-4-1981, which again raises doubt about the entire affair.

28. One more aspect which requires consideration referring to Sec. 135D(8) of the Code, though learned Sr. Counsel Shri Dave has referred to this provision to support his submission that as per the language used in the statute the authority exercising power under one Act could examine the transaction with reference to any other provision. He has also submitted that all these judgments which have been referred have to be read in context of the language employed in the statute (Sec. 135D(8) of the Code), and therefore, they are not to be followed. Though the submissions have been made, the same are without any merit. The judgments in which the observations have been made that while exercising powers under one statute the same authority may not proceed to decide in exercise of powers under other statute have been made on the basis of the law or the statutory provision at the relevant time.

29. Section 135D(8) of the Code has been amended by Gujarat Act No. 7 of 2010 and it has been brought into force from 31-3-2010. Therefore, it will not have any

application at the relevant time when the issue was decided by the authorities and the judgment of this High Court in the case of Evergreen Apartment Co-operative Housing Society (supra) will squarely apply to the facts of the case. Therefore, the submission made by learned Sr. Counsel Shri Dave has no merit.

30. It is well-settled that the statute is normally not given retrospective effect unless the intention of the Legislature is expressly stated or specifically mentioned in the provision of the statute or the enactment. The judgment of the Hon"ble Apex Court in the case of State of Punjab v. Bhajan Kaur (supra), has clearly referred to this aspect where it is observed:

"....It was required to be so stated expressly by Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect...."

In this very judgment, the Hon"ble Apex Court has quoted referring to the earlier judgment in the case of [Zile Singh Vs. State of Haryana and Others, :](#)

"17. Maxwell states in his work on Interpretation of Statutes (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it "may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it".

If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary secundum materiam""

31. The Hon"ble Apex Court in a judgment in the case of the [Income Tax Officer, Alleppey Vs. M.C. Ponnoose and Others, ,](#) has observed:

"....The Courts will not, therefore, ascribe retrospectively to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the Legislature. The Parliament can delegate its legislative power within the recognised limits..... But where no such language is to be found, it has been held by the Courts that the person or authority exercising subordinate legislation or bye-law which can operate with retrospective effect...."

32. It is in this background, considering the principles of propriety and equity, the interest of justice would be served by allowing the petitions so that the land in question which is stated to have been purchased by the petitioner-society is allowed to remain with the society and its members rather than rejecting this petition which may lead to a situation by which the land may revert back to the original owner or land-holder who is said to have also deliberately played such a mischief only to have an advantage under the U.L.C. Act. Therefore, in order to see that the persons should not be allowed to take undue advantage of the Court proceedings, the present petitions deserve to be allowed.

33. The present petitions accordingly stand allowed. The order passed by the Asst. Collector dated 6-1-1986 cancelling the entry at Annexure-A, confirmed in appeal by the Collector, Surat by order dated 4-7-1988 at Annexure-B and further confirmed in revision by the Secretary, Revenue Department (Appeals), Gujarat State by order dated 20-9-1989 at Annexure-C are hereby quashed and set aside and Entry No. 816 dated 2-10-1981 is ordered to be restored. Rule is made absolute. No order as to costs. In view of the fact that the petitions are allowed, Civil Application Nos. 4833 of 2006 and 8648 of 2014 filed in Special Civil Application No. 5442 of 1990 do not survive and the same are accordingly disposed of.