



# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.15609 of 2016

With

R/SPECIAL CIVIL APPLICATION NO.15610 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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SULEIMAN AHMED MINTY

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR MEHUL SHARAD SHAH(773) for the Petitioner(s) No. 1

MR JAY TRIVEDI AGP for the Respondent(s) No. 1

ADVOCATE NOTICE NOT RECD BACK for the Respondent(s) No. 3

DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES for the Respondent(s) No. 4,4.1,5,5.1,6,7

DELETED for the Respondent(s) No. 6.1,7.1

NOTICE NOT RECD BACK for the Respondent(s) No. 4.2,7.2,7.3

NOTICE SERVED for the Respondent(s) No.

4.1.1,4.1.2,4.3,5.2,5.3,6.2,6.3,6.4,6.5,6.6

NOTICE SERVED BY DS for the Respondent(s) No. 1,2,8,9

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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 18/02/2026

## COMMON ORAL JUDGMENT

1. Since the facts of both these petitions are related to land bearing Survey No.231 (Old Survey No.224) situated in the sim of Village : Kandoli, Taluka : Jalalpor, District : Navsari, both these petitions are heard together and are being decided by this common judgment.



2. By filing present petition under Article 226 of the Constitution of India and under the provision of the Bombay Land Revenue Code, 1879, the petitioner has prayed for quashing and setting aside the orders dated 19.07.2016 (posted on 25.07.2016) passed by the learned Special Secretary, Revenue Department in Revision Application No.MVV/HKP/NVS/23/2015 & Revision Application No.MVV/HKP/NVS/43/2015 and thereby prayed for restoration of the order dated 28.01.2015 passed by the learned Collector, Navsari in Revision Application No.158/2014.
3. The brief facts leading to filing of the present petition are as under,
  - 3.1 The dispute pertains to land bearing Survey No.231 (Old Survey No.224) situated in the sim of Village : Kandoli, Taluka : Jalalpor, District : Navsari (hereinafter referred to as "land in question" and Entry No.760 mutated in the revenue record on 09.06.1984.
  - 3.2 The father of the petitioner viz., Ahmed Ismail Minty had purchased the land in question by way of executing registered sale deed and the said land in question was self-acquired property and entry to that effect came to be mutated in the revenue record and thus, he was absolute owner and in occupation of the land in question. However subsequently the said Ahmed Ismail Minty expired on 12.07.1977 leaving behind his wife, Sakinaben



(who also expired on 05.02.1992), Yunus Ahmed Minty (son), Ayesh Ahmed Minty (daughter), Zubeida Ahmed Minty (daughter) and Suleiman Ahmed Minty (son, who is the petitioner herein).

3.3 At this stage, it is pertinent to note that the father of the petitioner had settled in South Africa and died on 12.07.1977 in South Africa. However prior to his death, the father of the petitioner had executed Will in favour of the petitioner herein and pursuant thereto, the petitioner submitted an application before the Hon'ble Bombay High Court for the purpose of obtaining probate on the basis of the said Will and in that proceedings, siblings of the petitioner had given declaration with regard to waiving of their rights from the land in question, therefore, probate was issued in favour of the petitioner herein by the Hon'ble Bombay High Court.

3.4 However in the meantime, one Mohammad Suleman Mangera, who is cousin brother of the father of the petitioner and who was cultivating the land in question, had entered his name in the revenue record as tenant and pursuant thereto, Entry No.14 came to be mutated in the revenue record on 24.07.1958. However during the period between 1957-58 to 1964-65, the name of the father of the petitioner was



shown as owner of the land in question, whereas the name of said Mohammad Suleman Mangera was shown as tenant. However subsequently, by an order dated 03.07.1959 passed in Tenancy Case No.3/1958-59, the name of said Mohammad Suleman Mangera came to be deleted from the revenue record as tenant.

3.5 However as stated above, the father of the petitioner passed away on 12.07.1977 and his mother passed away on 05.02.1992 in South Africa and the petitioner was also residing outside India, therefore taking advantage of the situation, the said Mohammad Suleman Mangera by showing incorrect facts of the death of the father of the petitioner at Dabhel and on the basis of forged power of attorney, applied for mutation of succession entry with a sole intent to mutate his name, name of his nephews, sister-in-law, brothers etc. i.e. in all total 11 names and by misleading the revenue record and suppressing material facts from the revenue record, their names came to be mutated and accordingly, Entry No.760 came to be mutated in the revenue record on 09.06.1984.

3.6 Thereafter behind the back of the petitioner and with a sole intent to grab the valuable land in question, on the basis of the forged power of attorney, the private respondents have instituted tenancy proceedings being



Tenancy Case No.3/2012 before the learned Mamlatdar & ALT, Jalalpor to declare them as tenants. However at that point of time, when the petitioner returned back to India at the age of 65 years, he came to know about such tenancy proceedings as also mutation of Entry No.760 in the revenue record.

3.7 Thus on coming to know about the irregularities committed by the private respondents, the petitioner instituted RTS proceedings being RTS Appeal No.172/2013 before the learned Assistant Collector, Navsari challenging Entry No.760, however, the learned Assistant Collector, Navsari, by an order dated 16.08.2014, dismissed the said RTS Appeal only on the ground of delay in challenging the said entry.

3.8 Being aggrieved by the aforesaid order, the petitioner preferred Revision Application No.158/2014 before the learned Collector, Navsari, where after hearing both the parties and after considering the material and evidence available on record, the learned Collector, Navsari, by an order dated 28.01.2015, allowed the said Revision Application and thereby quashed and set aside the order dated 16.08.2014 passed by the learned Assistant Collector.

3.9 Being aggrieved by the aforesaid order passed by the learned Collector, the respondent no.3



(of Special Civil Application No.15609/2016)  
preferred Revision Application  
No.MVV/HKP/NVS/23/2015 before the learned  
Special Secretary (Revenue Department).

3.10 Simultaneously, the respondent no.4 (of  
Special Civil Application No.15610/2016)  
preferred Revision Application  
No.MVV/HKP/NVS/43/2015 before the learned  
Special Secretary (Revenue Department).

3.11 Both the aforesaid revision applications were  
clubbed together as the same were arising out  
of the same order passed by the learned  
Collector, however without properly  
considering the facts of the case, the  
learned SSRD partly allowed those revision  
applications and remanded the matter back  
before the learned Collector, Navsari for  
fresh consideration by quashing and setting  
aside the order dated 28.01.2015 passed by  
the learned Collector.

3.12 Therefore being aggrieved by the aforesaid  
orders passed by the learned SSRD, the  
petitioner herein preferred aforesaid two  
petitions, one challenging the order passed  
in No.MVV/HKP/NVS/23/2015 and second  
challenging the order passed in Revision  
Application No. MVV/ HKP/NVS/43/2015.

4. Heard learned advocate, Mr. Mehul Sharad Shah  
appearing for the petitioner and learned AGP Mr.  
Jay Trivedi for the respondents authorities.



Though served, none appears for the private respondents.

5. Learned advocate, Mr. Shah for the petitioner referred to the facts as stated above and submitted that the father of the petitioner was the owner and occupier of the land in question, whereas one Mohammad Suleman Mangera, who is cousin brother of the father of the petitioner, was cultivating the said land, however thereafter, the father of the petitioner had left India and settled in South Africa along with his family consisting of wife and four children, however the father of the petitioner passed away on 12.07.1977 in South Africa, whereas mother passed away on 05.02.1992 in South Africa, however before the death of the father of the petitioner, he executed Will in favour of the petitioner and on the basis of the said Will, an application was preferred by the petitioner before the Hon'ble Bombay High Court seeking probate, wherein other siblings of the petitioner had given declaration waiving their rights from the land in question, therefore, the Hon'ble Bombay High Court had issued probate in favour of the petitioner herein. He submitted that as stated above, all throughout, the father of the petitioner was not in India and settled in South Africa and even the petitioner was also not in India, therefore taking advantage of the situation, the said Mohammad Suleman Mangera tried to grab the valuable land of the petitioner by



applying mutation of succession entry mentioning incorrect facts of death of the father of the petitioner at Dabhel and thereby an attempt was being made by him to enter his name, name of his nephew, sister-in-law and brothers, wherein he had succeeded and Entry No.760 came to be mutated in the revenue record on 09.06.1984. He submitted that in fact, thereafter, the said Mohammad Suleman Mangera had instituted tenancy proceedings being Tenancy Case No.3/2012 before the learned Mamlatdar & ALT, Jalalpor to declare certain persons as tenant and at that point of time, when the petitioner had returned back to India, he came to know about mutation of impugned entry as also initiation of tenancy proceedings, therefore upon coming to know about the same, the petitioner herein had gathered certain information and documents and on the basis of which, the petitioner preferred RTS Appeal No.172/2013 before the learned Assistant Collector, Navsari challenging Entry No.760, however, the said Appeal came to be dismissed by an order dated 16.08.2014 only on the ground of delay observing that there is gross delay of more than 29 years, therefore, the said order was challenged before the learned Collector by filing Revision Application No.158/2014, where after considering the facts of the case and the material available on record, the learned Collector allowed the said Appeal by quashing and setting aside the order dated





16.08.2014 and also cancelled the Entry No.760, however against the said order, as stated above, two different revision applications were preferred before the learned SSRD, where without proper application of mind, the learned SSRD partly allowed the said revision applications remanding the matter back before the learned Collector for fresh consideration and the said order has been assailed by the petitioner before this Court by filing aforesaid two writ petitions.

6. Learned advocate, Mr. Shah submitted that in fact, with a sole intent to grab the valuable land of the petitioner, the private respondents have forged one power of attorney and on the basis of which, they have applied for mutation of succession of the entries of the members, who are not direct lineal descendants of the father of the petitioner but in fact, the private respondents have misguided the revenue authorities and also suppressed material facts and thereby they succeeded in their attempt to mutate succession entry, which is impugned in the present petition. He submitted that in fact, at the time of succession entry in the year 1984, the private respondents have stated that the family members, whose names are mutated based on Entry No.750, are the direct lineal descendants, however, the said details were absolutely incorrect because at that relevant point of time, the mother of the petitioner was alive as she passed away on



05.02.1992, therefore, the name of mother of the petitioner and after her death, the name of the petitioner ought to have been mutated but here in the present case on hand, name of brother of the father of the petitioner and his family members came to be mutated. He further submitted that in fact, as stated above, the father of the petitioner had executed Will in favour of the petitioner and on the basis of the said Will, the petitioner has already obtained probate from the Hon'ble Bombay High Court and in the said proceedings, other siblings of the petitioner have also given declaration of waiving their rights from the land in question, therefore, the petitioner is the absolute owner of the land in question, wherein the names of the private respondents are wrongly mentioned by playing fraud.

7. Learned advocate, Mr. Shah submitted that in fact, just because of the fact that the father of the petitioner were residing in South Africa, the private respondents have tried to grab the valuable land owned by the petitioner. He submitted that as can be seen from the facts of the case, the private respondents have shown that the father of the petitioner passed away in Dabhel, however, the said fact is absolutely incorrect as he passed away in South Africa and in support of it, death certificate is produced on record at Page No.28 of the compilation, which



clearly goes on to show that the private respondents have played fraud with the petitioner. He further submitted that in fact, they have also suppressed the fact of mother of the petitioner, who was alive at that relevant point of time as she passed away on 05.02.1992. He, therefore, submitted that in fact, absolute fraud has been committed by the private respondents with a sole intent to grab the valuable land owned by the petitioner taking advantage of their absenteeism in India. He further submitted that in fact, the aforesaid Entry No.760 came to be certified by the revenue authority on 12.04.1985 and while doing so, procedure as required under the law by issuing notice under Section 135D of the Revenue Code was not issued, which itself suggests that the officers of the revenue authorities have hand-in-glove with those persons with a sole intent to help them in mutating and certifying the succession entry.

8. Learned advocate, Mr. Shah submitted that after having got mutated their name in the revenue record by playing fraud, the private respondents have instituted tenancy proceedings and at that relevant point of time, the petitioner was to return back to India and after his arrival, he came to know about the fraud committed by the private respondents, therefore, he gathered information and on the basis of which, aforesaid succession entry mutated in favour of the private



respondents have been challenged by filing RTS Appeal, however, the learned Assistant Collector only on the ground of delay, rejected the said RTS Appeal. He submitted that there is no dispute about the succession of entry in the year 1984 but the said fact was not within the knowledge of the petitioner herein and it is in the year 2013, when the petitioner came to India, he came to know and immediately thereafter, the said entry was challenged, therefore the cause of action has arisen from the said date of his knowledge in the year 2013 and thus within time limit, the entry was challenged but on the contrary, the said fact has not been properly considered by the learned Assistant Collector and rejected the said Appeal. He submitted that when the said order was challenged before the learned Collector, all the facts have been properly considered and on the basis of which, the order of the learned Assistant Collector has been quashed and set aside and impugned entry has also been cancelled, however, the said facts have not been properly considered by the learned SSRD nor the findings given by the learned Collector have not been properly considered and thereby partly allowed the revision applications preferred by the private respondents. He submitted that in fact, the learned SSRD ought to have appreciated the fact that succession entry ought to have been mutated in the name of direct lineal descendants, who are the mother of the



petitioner and the petitioner and not in the name of family members of the private respondents.

9. Learned advocate, Mr. Shah submitted that in fact, earlier also, such type of attempt was also made by the private respondent in the year 1958, where the said Mohammad Suleman Mangera had entered his name in the revenue record as tenant by Entry No.14, which was effected on 24.07.1958 and accordingly, his name was reflecting in the revenue record as tenant, whereas name of the father of the petitioner was reflecting as owner of the land in question during the period between 1957-58 to 1964-65, however at the relevant point of time, the revenue authority had come to a conclusion that both the parties are related to each other, therefore, by an order dated 03.07.1959 passed in Tenancy Case No.3-1958-59, the name of said Mohammad Suleman Mangera was deleted, however subsequently, one more attempt was being made to dupe the rights of the petitioner, wherein they got success. He submitted that however all above facts have been properly considered by the learned Collector and cancelled the order of the learned Assistant Collector as also entry mutated in their favour but the said aspect has not been properly considered and wrongly partly allowed the revision applications by the learned SSRD. He submitted that as on date, the petitioner is in occupation of the land in question and he is carrying out agricultural



activity and no civil litigation is pending and/or instituted by the parties. He, therefore, submitted that the present petitions may be allowed by quashing and setting aside the orders of the learned SSRD and by restoring the order of the learned Collector.

10. At this stage, learned advocate, Mr. Shah has replied upon following decisions,

(1) the judgment of the Hon'ble Supreme Court in case of **A.V. Papayya Sastry & Ors. Vs. Government of A.P. & Ors.**, reported in (2007) 4 SCC 221;

(2) the judgment of this Hon'ble Court in case of **Babubhai Bhagwanji Mehta VS. State of Gujarat**, reported in 2004 (1) GLR 532;

(3) the judgment of this Hon'ble Court in case of **Bhikhabhai Mavjibhai Patel Vs. State of Gujarat**, reported in 1994 (1) GLR 151;

11. Referring to the observations made by the Hon'ble Supreme Court as well as this Court in the aforesaid decisions, learned advocate, Mr. Shah submitted that the case of the petitioner is squarely covered by the above decisions. It is, therefore, urged that the present petitions may be allowed as prayed for.

12. On the other hand, learned AGP Mr. Jay Trivedi appearing for the respondent authorities has opposed the present petition contending inter alia that the orders passed by the learned Assistant Collector as well as the learned SSRD are just,



legal and based upon sound principle of law and no error has been committed by the revenue authorities while passing the same, therefore, same do not require any interference at the hands of this Hon'ble Court. He referred to the observations made by the learned Assistant Collector while passing order and submitted that admittedly there is gross delay of more than 29 years in challenging the entry and considering the said fact, the learned Assistant Collector has rightly rejected the RTS Appeal preferred by the petitioner and in the revision applications preferred by the private respondents, the said aspect has been properly considered by the learned SSRD, therefore, the matter was remanded back to the learned Collector for deciding the issue afresh as ordered, therefore, there is no illegality in the order, which would call for interference at the hands of this Hon'ble Court. It is, therefore, urged that the present petitions may be rejected.

13. Having heard learned advocates appearing for the parties and having considered the documents produced on record, it is found out that the dispute pertains to land bearing Survey No.231 (Old Survey No.224) situated in the sim of Village : Kandoli, Taluka : Jalalpor, District : Navsari and Entry No.760 mutated in the revenue record on 09.06.1984, which was mutated behind the back of the petitioner herein, that too, by misguiding the



revenue authorities and by mentioning incorrect facts on the basis of the forged power of attorney, which has resulted into initiation of revenue proceedings by the petitioner.

14. The land in question was originally belonging to the father of the petitioner herein, wherein one Mohammad Suleman Mangera, who is cousin brother of the father of the petitioner, was carrying out agricultural activities, however after completion of his graduation, he went to London for further study and did not return back to India and travelled in different countries and lastly, he settled in South Africa. The father of the petitioner passed away on 12.07.1977 in South Africa leaving behind mother of the petitioner, the petitioner, one brother and two sisters, who were also in South Africa and, thereafter, the mother of the petitioner also passed away on 05.02.1992 in South Africa. However when the father of the petitioner was abroad, the said Mohammad Suleman Mangera entered his name as tenant of the land in question and accordingly, Entry No.14 came to be mutated in the revenue record on 24.07.1958 and, thereafter, the name of the father of the petitioner was reflecting in the revenue record as owner of the land in question, whereas name of said Mohammad Suleman Mangera was reflecting as tenant over the land in question, however subsequently because of the fact that the owner and the tenant both were related to each





other, by an order dated 03.07.1959, the name of said Mohammad Suleman Mangera came to be deleted as tenant from the land and Entry No.37 came to be mutated in the revenue record on 31.08.1959. However subsequently in the year 1984, behind the back of the petitioner herein, despite the fact that the mother of the petitioner was alive, the said Mohammad Suleman Mangera had tried to grab the valuable land of the petitioner on the basis of forged power of attorney by suppressing material facts from the revenue authority as also by misguiding them and thereby they have applied for mutation of succession entry disclosing that the father of the petitioner passed away at Dabhel and thereby tried to enter into his name, nephews, sister-in-law and brothers though direct lineal descendants of the father of the petitioner were alive and accordingly, Entry No.760 came to be mutated in the revenue record on 09.06.1984 and their names were mutated and the said entry was also certified on 12.04.1985 without following due procedure of law as no notice under Section 135D of the Revenue Code was issued, thereafter on the basis of the same, the said Mohammad Suleman Mangera had instituted Tenancy Case No.3/2012 declaring some of them as tenants, however at that point of time, the petitioner came to India and came to know about mutation of such entry behind his back and initiation of tenancy proceedings, therefore, he gathered information and



documents and on the basis of which, he came to know about mutation of succession entry, therefore upon coming to know about the same, immediately RTS Appeal No.172/2013 came to be filed before the learned Assistant Collector, who dismissed the said Appeal by an order dated 16.08.2024 only on the ground of delay in challenging the said entry, against which, Revision Application No.158/2014 was preferred before the learned Collector, who after considering the facts of the case and appreciating the material available on record, allowed the said revision application by an order dated 28.01.2025 and thereby quashed and set aside the order of the learned Assistant Collector and also Entry No.760, against which, two different revision applications were preferred before the learned SSRD, who without proper consideration of the material, partly allowed those revision applications and remanded the matter back for fresh consideration, which has resulted into filing of aforesaid two writ petitions.

15. Thus having considered the facts of the present case, there is no dispute about the fact that Entry No.760 was mutated on 09.06.1984 i.e. after the death of the father of the petitioner, however at that relevant point of time, the mother of the petitioner was alive, who passed away on 05.02.1992 and taking advantage of the absenteeism of the petitioner and other family members, the private respondents have entered their name in the



revenue record by suppressing material facts and by declaring incorrect facts. It is also an admitted position of fact that the petitioners are the direct lineal descendants of Ahmed Ismail Minty and not the persons, whose names were mutated in the revenue record pursuant to Entry No.760. Not only that, the land in question was self-acquired property of the father of the petitioner, therefore, the petitioner and other legal heirs are the persons, who are having right, title and interest in the said land and as stated above, by executing Will, the father of the petitioner had given the land in question to the petitioner herein and even other siblings have relinquished their rights from the said land by giving declaration and on the basis of which, probate has been issued by the Hon'ble Bombay High Court in favour of the petitioner. Thus from this fact itself, it is clear that the private respondents have played fraud with the petitioners and by playing it, they have obtained orders in their favour. At this stage, I would like to refer to and rely upon the decision of the Hon'ble Supreme Court in case of **A.V. Papayya Sastry (supra)**, wherein the Hon'ble Supreme Court has held and observed that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. The Hon'ble Supreme Court has further held and observed that the judgment, decree or order obtained by playing a



fraud on the Court, Tribunal or authority, is a nullity and non est in the eyes of law, therefore, such a judgment, decree or order by the first Court or by the final Court, has to be treated as nullity by any Court, superior or inferior. Relevant observations made by the Hon'ble Supreme Court in the aforesaid decision, more particularly, Paragraphs Nos.21 to 26, read as under,

"21. Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;

"Fraud avoids all judicial acts, ecclesiastical or temporal".

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

23. In the leading case of Lazarus Estates Ltd. v. Beasley Lord Denning observed: (All ER p. 345 C),

"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."



24. In *Duchess of Kingstone*, Smith's Leading Cases, 13th Edn., p.644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be *res judicata* and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.
25. It has been said : fraud and justice never dwell together (*fraus et jus nunquam cohabitant*); or fraud and deceit ought to benefit none (*fraus et dolus nemini patrocinari debent*).
26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot



be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants."

16. Thus in view of the aforesaid decision of the Hon'ble Supreme Court, it is evident that whenever any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law and such judgment or order is a nullity and non est in the eye of law and it can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings and here in the present case, it is an admitted position of fact that the order by the private respondent from the learned Assistant Collector has been obtained by fraud as material facts have been suppressed and incorrect information were provided with regard to the place of death of the father of the petitioner, which is also evident from the facts of case and the documents produced on record.
17. Another facet of submission canvassed by learned advocate, Mr. Shah contending that the learned Assistant Collector had turned down request of the petitioner cancelling the impugned Entry No.760 on the ground of delay of 29 years is concerned, it is required to be noted that as can be seen from the facts as stated above, at the time of mutation of impugned entry, admittedly the petitioner was not present in India and, thereafter, when he returned back to India at the age of 65 years, he came to know about the mutation of such entry,



that too, behind their back by playing fraud with them, therefore, he immediately collected information and documents and filed RTS Appeal challenging the impugned entry and thus, when the petitioner had returned back to India in the year 2013, the said fact had come to his notice, therefore, the cause of action has arisen from the said date, therefore, it cannot be said that there is gross delay in challenging the said order as observed by the learned Assistant Collector in the order rejecting RST Appeal. Further if the averments made in the RTS Appeal can be seen, it appears that even if there was delay, it was properly explained by the petitioners, therefore, the authorities below ought not to have thrown out their case on the ground of delay. Not only that, the petitioner has categorically stated that the order of mutation of succession entry was passed behind their back without intimating them. At this stage, a useful reference can be made to the decision of the Hon'ble Supreme Court in case of in case of **Collector, Land Acquisition, Anantnag Vs. Mst. Katiji**, reported in **AIR 1987 SC 1353**, wherein the Hon'ble Supreme Court held that "Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties." It is also



observed in the said decision that "judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so." Therefore, it can be said that there was no delay on the part of the petitioner in challenging the impugned notice, therefore, the learned Assistant Collector has committed grave error in throwing out their case on the ground of delay and the said fact has not been properly considered by the learned SSRD while passing impugned order. At this stage, it is pertinent to note that by passing impugned order by the learned SSRD, the matter is remanded back to the learned Collector for deciding the issue afresh, however if the order of the learned Collector is carefully examined, in that event, it is found out that at the time of deciding the case of the petitioner, the learned Collector had taken into consideration all the facts of the case and, thereafter, passed the said order, therefore, there is no necessary to decide the issue afresh when it has already been decided properly.

18. One of the submissions canvassed by learned advocate, Mr. Shah with regard to the mutation of entry by the revenue authority without following due procedure of law is also required to be considered. Not only that, in various decisions of the Hon'ble Supreme Court as well as this Hon'ble Court, it is clearly observed that without





issuance of notice as required under Section 135D of the Revenue Code, entry can never be certified and here in the present case, it has been done so. The Hon'ble Supreme Court in a decision in case of **Swamy Atmanand Vs. Sri Ramakrishna Tapovanam**, reported in (2005) 10 SCC 51 has discussed about the cause of action as to when it arises. Relevant observations are as under,

"24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded"

19. Thus in view of the above observations, if the facts of the present case is examined, in that event, it is the specific case of the petitioner is that behind their back, impugned notice has been mutated, however before certifying it, no notice as required under Section 135D of the Revenue Code has been issued and if such notice would have been issued, in that event, they would have come to the notice of the fact and would have raised their objections. Further it is settled



proposition of law that the cause of action would start to be commenced from the date of knowledge and admittedly and it is only in the year 2013, when the petitioner returned back to India, he came to know about mutation of such notice and, thereafter, immediate steps have been taken, however as stated above, the case of the petitioner has been thrown only on the ground of delay but facts of the case clearly goes on to show that there is no delay in challenging the impugned entry. Section 135D of the Revenue Code reads as under,

**"135D Register of mutations and register of disputed cases.**

- (1) (a) The designated office shall enter, manually or electronically by the automated process, in a register of mutations, every report made to him under section 135C or any intimation of acquisition or transfer of any right on land made to him, either manually or electronically under section 135C from the Mamlatdar, or a court of law.
- b) (I) When a claim or document of right is produced before the designated office, he shall, through bio-metric ID or any other mode as may be prescribed, verify the identity and the lawful rights of the transferor and the transferee.
- (ii) Upon completion of verification, the necessary entries shall be made in the register of mutations in the manner as may be prescribed and the notice of the transaction



under section 135D shall be served to the persons interested therein.

- (2) Whenever a designated office makes an entry, either manually or electronically in the register of mutations, he shall at the same time intimate to all persons appearing from the record of rights or register of mutations to be interested in the mutation and to any other person whom he has reason to believe to be interested therein in the manner as may be prescribed.
- (3) It shall be the duty of the designated officer to enter the particulars of the objection if any received from any person either manually or electronically, in a register of disputed cases and to give written acknowledgment of the receipt of such objection to the person making it in the same manner.
- (4) Orders disposing of objections entered in the register of disputed cases shall be recorded, either manually or electronically, in the register of mutations, after disposing it within the period as may be prescribed for this purpose and the same may be intimated to the concerned person having interest in the said mutation.
- (5) Where no objection is raised by any person having interest in the transaction, either manually or electronically, within a period of thirty days, the mutation entry shall be certified electronically through an automated process or manually, as the case may be.
- (6) The transfer of entries from the register of



mutations to the record of rights shall be effected subject to such rules as may be made by the State Government in this behalf :

Provided that an entry in the register of mutations shall not be transferred to the record of right until such entry has been duly certified.

- (7) In the event, where the automated process of certification of entries has not been initiated, the entries in the register of mutations shall be verified and if found correct or after correction shall be certified in the Mutation Register, within a period as may be prescribed, by a Revenue Officer not below the rank of a Deputy Mamlatdar, and the same may be intimated to the concerned person having interest therein.
- (8) Where the certifying officer has a 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.
- (9) The provisions of this section shall apply in respect of perpetual tenancies and also in respect of any tenancies mentioned in a notification under sub-section (2) of section 135B but the provisions of this section shall not apply in respect of other tenancies, which shall be entered in a register of tenancies, in such manner and under such procedure as may be prescribed."

20. At this stage, it is required to be noted that the



notice under Section 135D of the Revenue Code is a crucial procedural step in the land revenue process. It is required to be issued whenever a report is made to the village accountant under Section 135C or any intimation of acquisition or transfer of rights is received from the Mamlatdar or a Court of Law. The notice must be posted in a conspicuous place in the chavdi and given written intimation to all interested parties. If any objections to the entry are made, they must be recorded in a register of disputed cases, and orders disposing of these objections are to be recorded in the register of mutations. Thus Section 135D of the Revenue Code contemplates verification of the report made to him under Section 135C of the Revenue Code . Further, various provisions of Section 135D of the Revenue Code envisage the procedure for verification and making of necessary entries in the register of mutations as well as certification thereof. Sub-section (2) provides for intimation to all persons appearing on the record of rights and who are interested in the mutation. The designated officer is required to intimate them and receive objections, if any, from such person. Sub-section (4) provides for orders disposing of the Appeals. Sub-section (5) provides that where no objection is raised within a prescribed period of 30 days, the mutation entry shall be certified. However admittedly in the present case on hand, no such



procedure as required under the law has been followed, therefore, the order of the learned Assistant Collector is non est and it was rightly quashed and set aside by the learned Collector.

21. Now the question which would fall for consideration of this Court is as to whether who can be said to be direct lineal descendants. In this regard, it is to be noted that a lineal descendant is a person in the direct line of descent from an ancestor, which includes anyone who can trace their lineage straight down the family tree from a specific individual. The most straightforward examples are a person's children, grandchildren, and great-grandchildren. Therefore if the application being RTS Appeal No.172/2013 preferred by the petitioner before the learned Assistant Collector is carefully examined, in that event, it is evident that while filing said application, the petitioner herein has clearly mentioned about the details of the heirs of his father by drawing pedigree therein and from which, it is clear that the private respondents are not the direct lineal descendants of Ahmed Ismail Minty and despite that, the learned Assistant Collector has turned down the appeal preferred by the petitioner. At this stage, it is required to be noted that the land in question is self-acquired land, which was purchased by the father of the petitioner and it is not ancestral land, therefore, the private respondents have no right



in the said land.

22. Thus in view of the above observations, the present petitions stand allowed. The impugned orders dated 19.07.2016 (posted on 25.07.2016) passed by the learned Special Secretary, Revenue Department in Revision Application No.MVV/HKP/NVS/23/2015 & Revision Application No.MVV/HKP/NVS/43/2015 are hereby quashed and set aside and thereby the order dated 28.01.2015 passed by the learned Collector, Navsari in Revision Application No.158/2014 is restored and accordingly, Entry No.760 is quashed and set aside. The revenue authority concerned is hereby directed to mutate the name of the petitioner herein on the basis of the documents, that may be supplied by him, in accordance with law after following due procedure of law.
23. Rule is made absolute to the aforesaid extent. Direct service is permitted.

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

Gautam