1995 (1) G.L.H. 216
R. A. MEHTA, J.

Thakershi Popatbhai Patel ...Petitioner
Versus
State of Gujarat ...Respondent

Special Civil Application No. 2897 of 1993*

D/- 27-8-1993

*Petition under Article 226 of the Constitution of India challenging the order passed by the State Government dt. 31-3-1993.

Urban Land (Ceiling & Regulation) Act, 1976 - Ss. 34, 45 - Revisional powers - Second Revision or review - State Govt. found certain irregularity after having exercised powers u/S. 34 - Issued show-cause notice for review of its own order - Held, neither S. 34 nor S. 45 give power to the State Govt. to again revise or review its own order.

Even though S. 34 provides that the State Government may examine any order under the Act, that power is recognised and labeled by the Legislature itself as a power of revision and not of review. If the Legislature wanted any express power of review, it would have used that expression for enabling the Government to *review* own order and not *revision* of orders. S. 34 cannot be construed to confer any right of review. S. 45 is the power of correcting clerical error arithmetical *(sic.)* mistake or error arising out of slip of pen or omission. In the present case, there is no case of any such clerical or arithmetical *(sic.)* error or accidental mistake. Neither S. 34 or S. 45 give any power in taking the proceedings under S. 34 to revise its own order dated January 16, 1992, at Annexure-C to the petition. (Para 11)

Appearances :

Mr. K. S. Nanavati for the petitioner
Mr. R. M. Chhaya, AGP for the State

R. A. MEHTA, J. :-

1. This petition arises in peculiar facts and circumstances and smacks of a huge scandal in valuable urban land of crores. The question raised is a simple and legal one. By an order dated January 16, 1992 (Annexure-C to the petition) passed in revision under Section 34 of the Urban Land (Ceiling & Regulation) Act, (hereinafter referred to as 'the Act'), the Govt. revised the order of the Competent Authority declaring 31045 sq. mts. of land as surplus vacant land and the Govt. held that 24 individuals were entitled to hold 1500 sq. mts. each and, therefore, there was no surplus land. The order of the Competent Authority was passed on September 25, 1986 and the Govt. in the revision filed after about five years on February 25, 1991, passed the order of January 16, 1991. The Competent Authority had held that the land was held by these persons as an association of persons and were entitled to one unit. *[@page216]*

The form was also filed accordingly. An application under Section 21 for exemption and sanction of the scheme was also filed by these persons as an association of persons and was rejected. Later on, a case was put up that there was an unregistered partnership of 24 persons and it was dissolved before the commencement of the Act, by unregistered deed of dissolution and, therefore, each of such person was entitled to a separate unit. The Competent Authority rejected that claim and declared surplus 31035 sq. mts. of urban vacant land of Survey No. 146 in Rajkot urban agglomeration. An appeal against the said order was preferred to the Urban Land Ceiling Tribunal under the Act. The appeal also came to be dismissed and the findings of the Competent Authority were confirmed.

2. Special Civil Application No. 5397 of 1987 was preferred against the same. It was also dismissed at the admission stage by a speaking order dated October 27, 1989 which is at Annexure-A to the present petition. In that judgment, the learned single Judge summarised the findings of the Competent Authority and the Appellate Authority as follows :

"Thereafter the Tribunal considered the evidence which was there on the record and arrived at the conclusion that by a registered deed dated 15-11-1965, the land admeasuring 42392 sq. mts. of Section No. 146 of village Raiya was purchased by the petitioner and two other persons jointly. For that mutation Entry No. 944 dated 3-3-1966 was mutated. Thereafter, the said land is not transferred by any registered deed. The so-called deed of dissolution dated 15-12-1973 is a doubtful document. The stamp paper for the said deed is dated 31st October 1967 which is purchased from Bombay. As the document is executed on 15-12-1973, it seems that on a cancelled stamp paper the alleged deed is executed. The said deed is not registered. The Tribunal further considered that the alleged firm of M/s R. N. Construction Company was also not registered. Therefore, the alleged deed of dissolution of the said Company was void. The Tribunal further held that the petitioner has failed to prove that it was a bona fide transaction. Similarly, Amritlal Construction Company was also not registered. The dissolution deed is not registered and as the said dissolution deed was executed after 7-2-1975, the petitioner has failed to prove that it was a bona fide transaction. The Tribunal further took into consideration that even in the form filled in by petitioner, Ramanlal Nanalal Jasani, the said form is filled in as an association of individuals. In the said form, this land is shown to be vacant land. The Tribunal further considered the fact that the application filed under Section 21 of the Act was also rejected and the land was open land at the time when the Act came into force. It further considered the affidavit dated 1-8-1983 and arrived at the conclusion that when the Act came into force, the land was open land and *bogus partnerships and dissolution deeds were created* . The Tribunal, therefore, rejected the appeal filed by the appellant (petitioner) by the order dated 1-10-1987. That order is under challenge before this Court."
and the contentions regarding the partnership and dissolution were considered and rejected by observing as follows :

"The learned Advocate Mr. Bhatt further submitted that the Tribunal materially erred in holding that the dissolution deed and partnership deeds were bogus only because the deeds were not registered. He further submitted that the partnership deeds are not required to be registered. It is true that under the Partnership Act or Registration Act, partnership deeds are not required to be *[@page217]* registered, but at the same time, when there are no registered deeds and when dissolution deed is also not registered, if the fact finding authority arrives at the conclusion that the said deeds are not reliable, it cannot be said that there is any error apparent on the face of the record which calls for interference. Apart from this aspect, the Tribunal has rightly considered the fact that after the mutation entry dated 3-3-1966 in the record of rights, there is no further mutation. Not only that, but the stamp paper dated 3-10-1967 is used for the alleged dissolution deed dated 15-12-1973 and that too the stamp paper was purchased in Bombay. The Tribunal has also taken into consideration the fact that even in the form which is filled in by the petitioner when the Act came into force, it has been filled in by the petitioner as association of individuals on the basis that the land was purchased by Ramanlal Nanalal, Rameshchandra Vallabhji and Keshavlal Savdas and it has not been stated that the land was subsequently transferred by dissolution deeds. In my view, *these findings cannot be said to be in any way illegal or erroneous* which call for any interference by this Court in a petition under Article 226 or 227 of the Constitution. *Apparently it seems that the alleged transactions are bogus and created subsequent for defeating the provisions of the Act* .

Hence, this petition is rejected. Notice discharged."

3. Against this order of the learned single Judge, Letters Patent Appeal No. 72 of 1989 was preferred. The same was disposed of on March 27, 1991 by an order which is at Annexure-D to the petition. It is to be noted that the revision application was already filed on February 25,1991. This date mentioned in the order at Annexure-C is confirmed by looking to the original record. It is dated February 25, 1991 and it is received on that day and also inwarded on that day. It is, therefore, clear that when the statement was made to the Court on March 27, 1991 that the appellant desired to file a revision application before the State Government under Section 34 of the Act was not a correct statement and it was on that ground that he had sought permission to withdraw the appeal which was already disposed of by the Urban Land Ceiling Tribunal on merits and was confirmed by the

learned single Judge. The learned AGP did not raise any objection to the withdrawal of such disposed of appeal and thereby agreed to have the decision rendered by the appellate authority and the learned single Judge to become infructuous. It was only with the consent of parties that the Division Bench allowed the appellant to withdraw the appeal being Appeal No. 151 of 1986 filed by the appellant before the Urban Land Ceiling Tribunal.

4. In the Revision Application filed, after 5 years, the Government set aside the order of the Competent Authority and accepted the case that there was a partnership of 24 persons and dissolution of such partnership and each partner was entitled to a separate unit !

5. It appears that there was some hue and cry raised in the press about the said order and the press cuttings are produced at Annexures D and E of this petition.

6. The Government had, therefore, decided to reconsider the matter and issue an order on March 30, 1993. By that order, the Government observed that the land-holders had filled in Form No. 1 as a firm, but the subsequent representation of the parties for dissolution of the firm prior to the commencement of the Act was accepted in revision and no excess land was required to be declared and the *[@page218]* order of the Competent Authority declaring 31400 sq. mts. of land as surplus was set aside. The Government had come across certain press reports about the serious irregularities in the case and on preliminary examination, the order dated January 16, 1992 passed in revision under Section 34 appeared to be erroneous and, therefore, the Government had decided to take into consideration whether such order should be cancelled or not and, therefore, the order dated January 16, 1992 was directed to be stayed.

7. This is challenged by the present petition by one of the partners. It is submitted that there is no power in the Government to review its own order and that there was no material before the Government to review the order. On April 3, 1993, the High Court granted leave to amend and ordered notice to issue returnable on April 8, 1993 and *ad interim* relief was also granted. On April 8, 1993 an order was passed directing the petitioner as well as respondent to maintain status quo. Ultimately, on April 29, 1993, the petition was admitted and rule was made returnable on June 28, 1993. The learned single Judge, while issuing the rule, observed as follows :

"Under what provision and under what circumstances, the order has been passed has not been placed before this Court *in spite* of the notice being issued. It is the duty of the respondent to place material before the court when notice has been issued. On behalf of the petitioner, copy of the order has been placed on record. From it, it appears that relying on some newspaper report, it is decided to re-examine the matter.

It is known that whatever material is published in newspapers is nothing but hearsay. There is no strong material with the State Government to pass any orders, otherwise in reply to the notice, State Government would have come before the court indicating as to whether fraud has been committed or bogus orders have been obtained, etc.

Mr. Raval further states that their case is pertaining to irregularities and nothing more than that. In view of this, order dated 30th March 1993 is required to be suspended."

Thereafter, on 6th and 12th August 1993, I had passed the following orders :-

6th August 1993 :
"The respondent has waived service in April 1993. The Rule was returnable on 28-6-1993. Yet no affidavit-in-reply is filed. Mr. Champaneri, the learned AGP seeks time to file the affidavit-in-reply till next Thursday, i.e. 12-8-1993 and to serve its advance copy to the other side a day earlier. The respondent shall also keep the record of Competent Authority and the Government available at the hearings."

12th August 1993 :
"Mr. Champaneri states that the record of the Competent Authority and the State Government is received by him and will be kept available at the hearing and the record of the Appellate Authority will also be called for and kept available at the hearing. He further assures that the affidavit-in-reply will be filed in the court latest by

18-8-1993 without fail and copy thereof will be served to the other side by 17-8-1993. Since the matter is heard to a great extent, the respondents shall see that the hearing is over soon. S. O. to 19-8-1993."

Now the affidavit-in-reply has been filed running into five pages.

8. The main question that is raised by *[@page219]* the petitioner in this petition is whether the Government having passed an order in revision under Section 34 of the Act can again exercise the same power in respect of the same subject-matter and review its own order. Section 34 reads as follows :

"34. Revision by State Government :-
The State Government may, on its own motion, call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred under Section 12 or Section 30 or Section 33 for the purpose of satisfying itself as to the legality or propriety of such order or so as to the regularity of such procedure and pass such order with respect thereto as it may think fit :

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter."

9. The learned AGP submits that under this provision, the State Government has the power to examine any order under the Act and any order would mean and include the order passed by the Government also and it is not restricted to the orders of the lower authorities or the appealable orders. Reliance is also placed on Section 45 regarding correction of clerical errors and it is submitted that it there is any error or omission, that can be corrected under Section 45 of the Act.

10. The learned Advocate for the petitioner submits that the powers of the Government under Section 34 are quasi judicial powers and orders passed in such proceedings are quasi judicial proceedings are quasi judicial orders and they can be corrected only by taking further proceedings in accordance with law and the Government has no inherent power to review its quasi judicial order and it has no express power of review conferred by any Act.

11. Even though Section 34 provides that the State Government may examine any order under the Act, that power is recognised and labeled by the Legislature itself as a power of revision and not of review. If the Legislature wanted any express power of review, it would have used that expression for enabling the Government to *review* own order and not *revision* of orders. Section 34 cannot be construed to confer any right of review. Section 45 is the power of correcting clerical error, arithmetical *(sic.)* mistake or error arising out of slip of pen or omission. In the present case, there is no case of any such clerical or arithmetical *(sic.)* error or accidental mistake, Neither Section 34 or Section 45 give any power to the State Government to review its own order. The State Government is, therefore, lacking in the power in taking the proceedings under Section 34 to revise its own order dated January 16, 1992, at Annexure-C to the petition. Therefore, the petition deserves to be allowed by quashing and setting aside the order dated March 30, 1993 at page 37 of the paper book and restraining the Government from proceeding again under Section 34 of the Act. Therefore, rule is made absolute accordingly with no order as to costs.

12. However, the matter cannot be allowed to rest and the High Court must take *suo motu* cognizance of the situation. It is, therefore, directed that *suo motu* rule to issue to 24 persons mentioned in the order at Annexure-C, (page 32 of the paper book) and to the State Government which has passed the order at Annexure-C, to show cause as to why that order should not be quashed and set aside and the order of the Competent *[@page220]* Authority declaring 31045 sq. mts. of land as surplus vacant land should not be restored and why permission granted under Section 26 should not be set aside and why such other orders as the nature of the case may require, should not be passed. Such rule be made returnable on March 7, 1994.

13. In view of the fact that the matter is of importance and there is a question of effect of the order of the Division Bench passed in Letters Patent Appeal, it would be appropriate that the matter is heard by a Division Bench. The Division Bench may consider appointing a senior Advocate as an *amicus curiae* to assist the Court and to look into the record and to raise appropriate grounds. Since I have taken *suo motu* cognizance, it would

be appropriate that the matter should not be placed before me. In order that in such a matter, the respondents may show cause and have an effective opportunity to show cause, it is proper that some *prima facie* grounds are indicated. However, they may not be treated as final conclusion and this is done only with a view to enable the parties to show cause.

(1) Whether the Government order dated January 16, 1992 passed in the revision application which was filed before the appeal was withdrawn, was competent at all?

(2) Whether the Government order accepting the so called partnership of 24 persons and so called dissolution of such partnership by unregistered deed and allowing each of these 24 partners a separate unit is perverse, arbitrary and illegal?

(3) Whether the story of unregistered firm and unregistered dissolution was such that it could not have been accepted in view of the fact that when the form No. 1 was filed, no such case was put and it was also filed by the association of persons and it was also rejected and thereafter this story of unregistered firm and unregistered dissolution has come up. That also on some old papers and this had not seen the light of the day before any public authority and there is no entry in revenue record or any other public record.

(4) Whether the interest in immovable properly could have been created and effected in such manner?

(5) Whether the grounds & concurrent findings of cases and given by the Competent Authority and upheld by the Urban Land Ceiling Tribunal in appeal and by the learned single Judge of the High Court, were supported by evidence and reasons and there was no case whatsoever for exercise of power of revision under Section 34 of the Act, more so when the appeal was preferred; judgment was obtained which was again unsuccessfully challenged before the learned single Judge? That too, upto four years.

(6) Whether the withdrawal of the appeal to the Urban Land Ceiling Tribunal and the Special Civil Application and the Letters Patent Appeal could have any effect of obliterating the rationale and logic of the findings of the Appellate Authority and of the High Court?

(7) Whether the filing of revision application even before the order in Letters Patent Appeal and the consent of the Government to the nature of the order passed in the Letters Patent Appeal and the petitioner's move for revision before the Government under Section 34 of the Act, were suggestive of any collusiveness and pre-arrangement?

(8) Whether even after the dissolution *[@page221]* of the firm without actual division of land by metes and bunds *(sic.)* and identifying a particular piece of land as a share of a particular party, the association of persons or body of individuals would continue?

(9) Whether the order can be said to have passed for improper motives and extraneous considerations?

(10) Whether the appeal and the social Civil Application could have been withdrawn after they were disposed of by judgment on merits?

Notice to issue as to interim relief. *Ad interim* relief directing all the parties to maintain status quo.

The orders of the Competent Authority, Appellate Authority, of the single Judge, of the Division Bench and the Revisional Order of the Government to form part of the record. The Competent Authority, Appellate Authority and the Government are directed to produce all the record and proceedings in the High Court within 15 days of receipt of the writ. The record to be kept in safe custody.

(NAP) Petition allowed.