

(2009) 02 GUJ CK 0063

In the Gujarat High Court

Case No : Letters Patent Appeal No. 2155 of 2007 in Special Civil Application No. 13576 of 1994 and Civil Application No. 14848 of 2007 in Letters Patent Appeal No. 2155 of 2007

Abdulbhai Daoodbhai Muman

APPELLANT

Vs

Dy. Collector and Another

RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 8, 9, 9(1)

Citation : (2009) 02 GUJ CK 0063

Hon'ble Judges : K.S. Radhakrishnan, C.J.; Akil Kureshi, J

Bench : Division Bench

Advocate : Sushma Shah and Sunil K. Shah, for the Appellant; Manisha Lavkumar Shah, AGP for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, C.J.—Special Civil Application was preferred by the petitioner-appellant herein for quashing the order of the

Secretary, Revenue Department dated 11.10.1994 confirming the order dated 27.08.1993 of the Deputy Collector, Palanpur, upholding that the

registered sale deeds dated 20.09.1978 and 18.03.1980 in respect of land bearing Survey No. 5/2, admeasuring 2 acres 23 gunthas, situated in

the sim of village Juni Sendhni, taluka Vadgam, were effected in breach of the provisions of Bombay Prevention of Fragmentation and

Consolidation of Holdings Act, 1947, (for short `the Fragmentation Act").

2. The heirs of deceased Jiva Bechar, i.e., Vala Jiva and others and the heirs of deceased Chamar Manji Bechar, i.e., Kalu Soma and others sold

land of 1 acre 13 gunthas, out of 2 acres 23 gunthas, by a registered sale deed

dated 20.09.1978 to Abdul Daudbhai Momin and the remaining 1

acre 13 gunthas was also purchased by the same person by another registered sale deed dated 18.03.1980, and an entry No. 163 was made to

that effect in the record of rights.

3. The Deputy Collector, Palanpur, noticing that the above transactions were in breach of Section 8 of the Fragmentation Act, issued notice dated

06.07.1993 to the petitioner-appellant to show cause why the above said transactions be not declared as invalid and consequently impose a fine.

Later, an order to that effect was passed by the Deputy Collector on 27.08.1993 holding that the transaction u/s 9(1) of the Fragmentation Act

was invalid and imposed a fine of Rs. 250/-. It was also ordered to restore the lands to the original occupier and to enter the name of the original

occupier in the record of rights.

4. Aggrieved by the above-mentioned order, petitioner-appellant preferred a revision before the Government, which came to be rejected by the

Government. Aggrieved by the same, he had approached this Court by filing Special Civil Application No. 13576 of 1994, which was dismissed

by learned Single Judge, against which this Appeal has been preferred.

5. Heard learned Counsel for the parties at length.

6. Learned counsel appearing for the appellant submitted that the Deputy Collector had issued notice dated 06.07.1993 to the petitioner-appellant

after a lapse of 13 years to show cause why the sale deed effected be not held invalid, as the same is in violation of the provisions of the

Fragmentation Act. It is further submitted that no notice as contemplated was issued to the petitioner-appellant at appropriate time, and power was

exercised by the Deputy Collector after a lapse of more than 13 years, and hence the entire action was illegal and void. Learned Counsel also

submitted that after purchasing the property in question, the petitioner-appellant had made many developmental activities in the land and hence

cancellation of the sale deeds in question is prejudicial to the interest of the petitioner-appellant.

7. Learned counsel appearing for the appellant placed reliance on a Division Bench decision of this Court in the case of Valjibhai Jagjivanbhai Vs.

State of Gujarat, . Learned Counsel submitted that Special Leave Petitions filed against the said judgment were dismissed by the Apex Court on

16.02.2005. Learned Counsel submitted that action u/s 9 had to be taken within a reasonable period by the authorities, and in the case of Valjibhai

(supra), notice issued u/s 9 after a lapse of 23 years was quashed on the ground of delay. Learned Counsel submitted that the facts in the case in

hand would clearly indicate that there was sufficient scope for the revenue authorities of the State to know about the illegal transaction, which can

be termed void u/s 9(1) of the Fragmentation Act, and inspite of that, the said void transaction is allowed to go for years together, therefore, it is

difficult for the competent authority to declare such transaction void and a nullity.

8. Learned counsel further submitted that the facts of Valjibhai (supra) case, being similar to the case in hand, the revenue authorities as well as the

learned Single Judge are not justified in declaring the sale deeds illegal on the ground that the sale deeds in question were executed in violation of

the provisions of the Fragmentation Act. Reference was also made to the judgment of the Apex Court in Pune Municipal Corporation Vs. State of

Maharashtra and Others, and submitted that delay is a crucial factor even to set aside an order which is null and void.

9. Learned Assistant Government Pleader for the respondent-State submitted that the principles laid down by the above mentioned judgments

would not apply to the facts of this case and each case has to be decided depending upon the facts and circumstances of that particular case.

10. From the record, and in particular affidavit filed by 3rd respondent before the learned Single Judge, it would appear that the Regular Civil Suit

No. 163 of 1976 was filed by Late Bechar and heirs of Sama Bechar against Muman Abdul Daudbhai Manchhalia, i.e., the petitioner, contending

that the entire field was in their possession and the petitioner-appellant should not enter the field. That Suit was withdrawn. Later, another Regular

Civil Suit No. 31 of 1979 was filed in the Court of Civil Judge (S.D.), Palanpur, by Lala Bechar against the petitioner-appellant - Muman Abdul

Daudbhai Manchhalia, praying for permanent injunction restraining the defendants from entering into the field/land bearing Survey No. 5

admeasuring 2 acres 23 gunthas, which was the subject matter of both the sale deeds. In the said Suit, in paragraph No. 3 of the Written

Statement it was stated that Lala Bechar was of unsound mind. Further, the 3rd respondent had also taken up a stand that even though sale deeds

were executed, since the year 1978 he was in possession of the land and that even record of rights would indicate that the land was cultivated by him.

11. Counter affidavit filed by the 3rd respondent would indicate the above mentioned facts. Revisional authority also noticed the fact that 3rd respondent was a poor person belonging to weaker section of the society. Further, it was also noticed that the first sale of half land was made on 20.09.1978, thereby committing breach of Section 8 of the Fragmentation Act. The purchaser was aware of that breach and with a view to save from another violation of the Act, the purchaser got executed the second sale deed for the remaining half-portion on 18.03.1980. Since the first sale deed of the disputed land made in violation of the provisions of the Fragmentation Act, the second sale would also be in violation of the Fragmentation Act. Further, facts also would indicate that the legal heirs of the original owners were in actual possession and were cultivating the property. No evidence was produced by the appellant-petitioner, i.e., the purchaser, to show that he was irrigating the land or was taking crops from his agricultural operations. Further, the purchaser was not in possession of the land adjoining to the lands covered by both the sale deeds. All these facts and the circumstances make it clear that both the transactions were hit by the provisions of the Fragmentation Act.

12. Facts of the present case are, therefore, entirely different from the facts that we get from the case of Valjibhai (supra). That was a case of transaction, which was annulled after a lapse of 23 years. By that time the purchaser had invested about Rs. 28,24,000/- for development and land was also included in the Town Planning Scheme and 40% of the land was taken over by Town Planning Authority and the balance land was allotted to the petitioners therein as Final Plot No. 79. Further, due to intervention of Town Planning Scheme, purpose of the land was also changed from agriculture to residential as per the provisions of the Gujarat Town Planning and Urban Development Act. Therefore, the principle laid down in the above mentioned case cannot be applied to the facts of the present case. In Pune Municipal Corporation case (supra) also the Apex Court was dealing with a limited different situation and altogether a different legislation, that is Urban Land (Ceiling and Regulation) Act,

1976, where the provisions are not para materia.

13. The object and reasons of the Fragmentation Act clearly denote that agriculture suffers seriously from the evils of excessive fragmentation and

sub-division of holdings. Land in this case continued to be agricultural and is with the heirs of the original owner, and there is nothing to show that

the subsequent purchaser was irrigating the land in question nor the appellant had invested any money for the development of the land to claim

equity. The fact that the 3rd respondent was a poor person belonging to the weaker section of the society was also weighed with the fact finding

authority.

14. That being the factual situation, we find it unnecessary to interfere with the decision of the fact finding authorities, which was confirmed by the

learned Single Judge.

15. The Appeal, therefore, lacks merit and the same is dismissed.

16. Consequently, Civil Application also stands rejected.