
(2010) 07 GUJ CK 0117

In the Gujarat High Court

Case No : Special Civil Application No. 6581 of 2010

Ajitray Keshavlal Jani and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 07 GUJ CK 0117

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : N.V. Gandhi, for the Appellant; M.R. Mengdey, AGP for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Shah, J.—By way of this petition under Article 227 of the Constitution of India the petitioners have prayed for an appropriate writ, order or direction quashing and setting aside the impugned judgement and order dated 13/08/2009 passed by the learned Gujarat Revenue Tribunal in Revision Application No. TEN.BA 140/1993 by which the learned tribunal has dismissed the Revision Application confirming the order passed by the Deputy Collector (Land Reforms), Gandhinagar dated 19/01/1992 in Tenancy Appeal No. 18/1989.

2. The dispute is with respect to the land bearing Survey No. 208/2 admeasuring 1 Acre and 28 Gunthas of land situated at village Dolarana, Vasna, Taluka and District Gandhinagar. At the relevant time, Shri Harivallabh Manilal and Shri Ashwinkumar Ramniklal were the occupants and landlords of the land in question. Respondent No. 2 claimed to be the tenant (ganotia) of the disputed land in question and his name came to be entered in the revenue record as tenant. Since the landlord was minor, the purchase was postponed with respect to the suit land considering the provisions of the Bombay Tenancy Act. Thereafter, respondent No. 2-tenant made an application to the Mamlatdar & ALT, Gandhinagar showing his willingness purchase the suit land u/s 32F of the

Bombay Tenancy Act, which was registered as Tenancy Case No. 957/1976. Vide order dated 18/12/1976, the Mamlatdar & ALT allowed the application and passed an order to take action u/s 84 of the Bombay Tenancy Act for getting possession of the land in question and to inform accordingly so that the purchase price can be fixed u/s 32G of the Bombay Tenancy Act in favour of the tenant since the tenant was cultivating the suit land. It appears that the original landlord, Shri Ashwinkumar Ramniklal, in whose name the land in question was mutated in the revenue record as landlord, did not challenge the said order. It appears that after the order passed by the Mamlatdar & ALT, Gandhinagar came to be passed, the land in question came in the share of the father of the petitioners i.e Keshavlal Jani and his name was mutated in the revenue record vide mutation entry No. 1228 dated 03/10/1977. The said Shri Keshavlal Jani died on 15/08/1987 and during his life time the said Shri Keshavlal Jani did not challenge the order passed by the Mamlatdar & ALT dated 18/12/1976 in Tenancy Case No. 957/1976 and in the meantime, order came to be passed u/s 32P of the Bombay Tenancy Act. Thereafter, the petitioners challenged the order passed by the Mamlatdar & ALT dated 18/12/1976 in Tenancy Case No. 957/1976 after a period of twelve years before the Deputy Collector, being Tenancy Appeal No. 19/1989 and the Deputy Collector (Land Reforms), Gandhinagar vide order dated 19/01/1992 dismissed the said appeal on the ground of limitation. Being aggrieved and dissatisfied with the order passed by the Deputy Collector (Land Reforms), Gandhinagar dated 19/01/1992 in Tenancy Appeal No. 18/1989 the petitioners preferred Revision Application No. TEN.B.A. 140/1993 before the learned Gujarat Revenue Tribunal, Ahmedabad and the learned Gujarat Revenue Tribunal vide impugned judgement and order dated 13/08/2009 dismissed the said Revision Application confirming the order passed by the Deputy Collector. Hence, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri N.V. Gandhi, learned advocate appearing on behalf of the petitioners has vehemently submitted that the learned Gujarat Revenue Tribunal as well as the Deputy Collector (Land Reforms), Gandhinagar have materially erred in dismissing the appeal preferred by the petitioners on the ground of delay. It is submitted that as the petitioners were prosecuting the proceedings u/s 32P of the Bombay Tenancy Act before the State Government, the petitioners could not prefer an appeal before the Deputy Collector and considering the above the learned tribunal ought to have entertained the application and ought to have decided the same on merits. Shri Gandhi, learned advocate appearing on behalf of the petitioners has submitted that the order passed by the Mamlatdar & ALT dated 18/12/1976 in Tenancy Case No. 957/1976 is a nullity and non-est as the Mamlatdar & ALT could not have passed the order u/s 32F of the Bombay Tenancy Act as the said application u/s 32F of the Act was not preferred within the period of one year when the original landlord attained the age of majority, and, therefore, it is submitted that the authorities below ought to have considered the appeal preferred by the petitioners on merits. It is submitted that

even otherwise in view of the subsequent order passed u/s 32P of the Bombay Tenancy Act and u/s 70(b) of the Bombay Tenancy Act, the order passed by the Mamlatdar & ALT dated 18/12/1976 in Tenancy Case No. 957/1976 deserves to be quashed and set aside. By making the above submissions, it is requested to admit/allow the present Special Civil Application.

4. At the outset, it is required to be noted that the order came to be passed by the Mamlatdar & ALT u/s 32F of the Bombay Tenancy Act in favour of respondent No. 2-tenant as far back as in the year 1976 and the said order was not challenged by Shri Ashwinkumar Ramniklal, who was the landlord at the relevant time and in whose name the land in question was mutated. At the relevant time, it is only Shri Ashwinkumar Ramniklal-original landlord, who could have challenged the order passed by the Mamlatdar & ALT u/s 32F of the Bombay Tenancy Act. It is also required to be noted that even thereafter when Shri Keshavlal Jani, father of the petitioners got the land in partition and his name was mutated in the revenue record in the year 1977, during his life time, he did not challenge the order passed by the Mamlatdar & ALT u/s 32F of the Bombay Tenancy Act and he died in the year 1987. Only thereafter, the third generation i.e. the petitioners challenged the order passed by the Mamlatdar & ALT after a period of twelve years, which was never challenged earlier by the landlord and the appeal preferred by the petitioners came to be dismissed by the Deputy Collector on the ground of delay of approximately twelve years.

5. The submissions of Shri Gandhi, learned advocate appearing on behalf of the petitioners that as the petitioners were prosecuting the proceedings u/s 32P of the Bombay Tenancy Act before the State Government, the petitioners could not prefer an appeal before the Deputy Collector and thereafter when the appeal was preferred, the Deputy Collector ought to have considered the appeal on merits, however, the aforesaid cannot be accepted. As the order u/s 32P was passed in the year 1988 and the petitioners challenged the order u/s 32P of the Bombay Tenancy Act in the year 1989 and the order passed by the Mamlatdar & ALT was passed in the year 1976, there is no explanation for the delay between 1976 and 1988. The learned advocate appearing on behalf of the petitioners is not in a position to explain the delay of twelve years between 1976 and 1988. Considering the above huge delay and more particularly when the original landlord did not challenge the order passed by the Mamlatdar & ALT dated 18/12/1976 in Tenancy Case No. 957/1976, the Deputy Collector has rightly dismissed the appeal preferred by the petitioners on the ground of delay, which is rightly confirmed by the Gujarat Revenue Tribunal vide impugned order dated 13/08/2009.

6. The submission that in view of the subsequent order passed by the Mamlatdar & ALT u/s 70(b) of the Bombay Tenancy Act, the order passed by the Mamlatdar & ALT dated 18/12/1976 in Tenancy Case No. 957/1976 shall not survive and/or the same deserves to be quashed and set aside, cannot be accepted. It is to be noted that the order passed u/s 32F of the Bombay Tenancy Act has been passed

in the year 1976 and the order u/s 70(b) of the Bombay Tenancy Act has been passed in the year 1987. The subsequent order cannot nullify the earlier order passed by the Mamlatdar & ALT u/s 32F of the Bombay Tenancy Act.

7. Now so far as the contention on behalf of the petitioners that the order passed by the Mamlatdar & ALT dated 18/12/1976 in Tenancy Case No. 957/1976 was a nullity and/or non-est is concerned, at the outset, it is required to be noted and as stated hereinabove, the said order was never challenged by the earlier landlord and even by the father of the petitioners during his life time. Even a non-est order and/or the order, which according to the petitioners, is a nullity is required to be challenged within the period of limitation and within the reasonable time. Under the circumstances, the aforesaid submissions on behalf of the petitioners cannot be accepted.

8. In view of the above and for the reasons stated hereinabove, no illegality has been committed by the learned Gujarat Revenue Tribunal in dismissing the Revision Application and confirming the order passed by the Deputy Collector (Land Reforms), Gandhinagar, which calls for interference of this Court in exercise of powers under Article 227 of the Constitution of India.

9. Under the circumstances, the present petition deserves to be dismissed and is accordingly dismissed.