

(2000) 11 GUJ CK 0069

In the Gujarat High Court

Case No : Special Civil Application No. 1335 of 1991

Arvindbhai N. Patel and Another

APPELLANT

Vs

Savitaben Patel and Others

RESPONDENT

Date of Decision : 17-11-2000

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 6(2), 7(2), 9(1)
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70
Constitution of India, 1950 — Article 227

Citation : (2001) 3 GLR 2744

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : A.J. Patel, for the Appellant; M.C. Shah, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Tripathi, J.—The present petition is filed under Article 227 of the Constitution of India, being aggrieved of the judgment and order dated 23-11-1990, passed by the Honourable Gujarat Revenue Tribunal in Revision Application No. TEN. C. A. 14 of 1988.

2. The facts leading to the present petition are as under :

That the petitioners had filed an application in the Court of the Mamlatdar & A.L.T., being Tenancy Case No. 400 of 1975 alleging that they were the tenants of suit Survey numbers (11 in all) and that they may be declared tenants of the suit survey numbers. Respondent No. 8, Shri Manibhai Prabhudas Patel had also filed an application seeking directions to declare him to be the tenant of the same Survey Nos. u/s 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948. The same was given Tenancy Case No. 153 of 1981. Said Manibhai had also filed Civil Suit No. 63 of 1975 in the Court of learned Civil Judge, who had referred the issue of tenancy to the Mamlatdar & A.L.T., Matar. In view of that the Mamlatdar & A.L.T., consolidated all the three cases and by his judgment

dated 19-11-1982 held that petitioner No. 1, Arvindbhai and Rajnikant cannot be declared tenants of the suit survey numbers as the same are fragments while he declared respondent No. 8, Manibhai as the tenant of four survey numbers.

3. The petitioners then filed Tenancy Appeal No. 4011 of 1982 and respondent No. 8 Manibhai Prabhudas Patel filed Tenancy Appeal No. 4053 of 1983 in the Court of the Deputy Collector, Kheda, who by his judgment dated 28-2-1983 dismissed the appeal filed by the petitioners while he set aside the judgment and order passed by the Mamlatdar & A.L.T., in favour of respondent No. 8, Manibhai and held that Manibhai was not the tenant of the suit survey numbers as ordered by the Mamlatdar.

4. The petitioners being aggrieved of that order filed a Revision Application, which came to be numbered as Revision Application No. 691 of 1983 before the Gujarat Revenue Tribunal. Both these revision applications before the Honourable Tribunal have been consolidated and heard together and decided by a common judgment dated 12-2-1998. As the revision applications were dismissed, the present petitioners filed Special Civil Application No. 1734 of 1988 before this Court, which came to be withdrawn by the applicants with the following order :

"Mr. A.J. Patel, learned Advocate for the petitioner states that he wants to raise the specific points before the Revenue Tribunal that there is no prohibition on transfer of the land in dispute being fragment because no notice under Sub-Section (2) of Section 6 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 was given, and therefore, he seeks permission to withdraw this petition. He has not raised any such point before the Tribunal at the time when the matter was argued and it appears that the Tribunal, has therefore, not specifically dealt with the same. With a view to enabling him to raise this point before the Tribunal by filing revision application permission to withdraw this petition is granted. Petition shall stand disposed of as withdrawn."

5. It was after the said withdrawal that the applicants again approached the Gujarat Revenue Tribunal by filing Review Application No. TEN. C. A. 14 of 1988, which came to be disposed of by judgment and order dated 23-11-1990, whereby the Tribunal has dismissed the review application holding that the applicants are not in a position to show that there is apparent mistake on the face of the record and that the question arising under Fragmentation Act is also fully discussed in the judgment along with the authorities cited by both the parties. The Tribunal has recorded that learned Advocate Shri A.J. Patel has not been able to show any shortcoming or error apparent on the face of the record from the observations made in the earlier judgment. Hence, the review application came to be dismissed.

6. It is against this judgment and order that the present Special Civil Application is filed wherein this Court issued rule on 20-4-1991, granting ad interim relief in terms of para 11(B). Today, when the matter came up for hearing, learned

Advocate appearing for the petitioners submitted that the Mamlatdar & A.L.T., went on a presumption that the lands are fragments and that the Mamlatdar committed an error in holding that the land being a fragment, no tenancy can be created. It is also submitted that the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 provides in Sub-section (2) of Section 7 as under :

"7. Transfer and lease of fragments -

(1)

(2) Notwithstanding anything contained in any law for the time- being in force or in any instrument or agreement, no such fragment shall be leased to any person other than a person cultivating any land which is contiguous to the fragment."

and in Sub-section (1) of Section 9, the said Act declares that,

"9. Penalty for transfer or partition contrary to provisions of Act.

(1) The transfer or partition of any land contrary to the provisions of this Act shall be void."

7. It is submitted that so far as leasing of any fragment is concerned, the same is not declared void like that of transfer or partition. The submission made by learned Advocate cannot be accepted for the simple reason that when Sub-Section (1) of Section 9 bars transfer, it includes creating lease also and even if creating lease is not declared void, the same cannot be treated to have created any right in favour of the petitioners.

8. Learned Advocate for the petitioners further submitted that entry in the revenue record declaring the lands in question to be a fragment is having presumptive value only. The revenue record is maintained for the purpose of collection of revenue. It does not have any other value. Therefore, Mamlatdar & A.L.T., could not have attached any significance to such entries and could not have denied declaration of tenancy on the basis of an entry made in the revenue record of the land in question.

9. Learned Advocate placed reliance on the order passed by the Mamlatdar & A.L.T., which is produced at Annexure "D" to the present petition, wherein details of lands in question are set out. It is submitted that as tenancy is created in all these lands, which are 7 in number and that though there are specific entries regarding these lands being fragment made in the revenue record in respect of each of these lands, the same ought not to have been taken into consideration. The Mamlatdar & A.L.T., ought to have held that the petitioners were holding the land which is contiguous to the fragment. This submission also made by the learned Advocate for the petitioners cannot be accepted. If the land which is fragment in itself and the possession of that is obtained by the petitioner contrary to law, he cannot derive right from that holding. The provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947

cannot be read and interpreted as suggested by learned Advocate.

10. Learned Advocate for the applicants sought reliance on the judgment dated 12-4-1985 of this Court in Special Civil Application No. 1380 of 1979 wherein it was held that if the lands have consecutive survey numbers, inference can be drawn that they are contiguous. Said authority has no application to the facts of the present case, as it is clear that the petitioners in this proceedings do not have any land of their own except the lands in question which are 7 in numbers and in the record of each of them there is an entry to the effect that they are fragments. Therefore, there is no question of getting any benefit of having a contiguous land.

11. Be that as it may. The position which now emerges from the record is that all the authorities right from the Mamlatdar & A.L.T., to Gujarat Revenue Tribunal and even on remand the Gujarat Revenue Tribunal held against the present petitioners and have held that the present petitioners are not the tenants of the land in question.

12. This Court does not deem it fit to explore any more that the findings recorded by all the authorities in all the successive matters are erroneous. Therefore, the present petition is dismissed. Rule is discharged. Ad interim relief is vacated. No order as to costs.

13. Petition dismissed.