

(2019) 07 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 10384 Of 2018

Ashokkumar Maneklal Patel

APPELLANT

Vs

State Of Gujarat And Ors

RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

Bombay Tenancy And Agricultural Lands Act, 1948 — Section 57
Gujarat Tenancy And Agricultural Lands Act, 1948 — Section 43

Citation : (2019) 07 GUJ CK 0001

Hon'ble Judges : A.J. Desai, J

Bench : Single Bench

Advocate : Mehulsharad Shah, Kanua Antani

Final Decision : Allowed

Judgement

A.J. Desai, J

1 . Rule. Learned Assistant Government Pleader waives service of rule on behalf of respondents. With the consent of learned advocates appearing for the respective parties, the matter is taken up for final disposal today itself.

2. By way of the present petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 18.5.2018 passed by Secretary, Revenue Department (Appeals), Ahmedabad in Revision Application No. 6 of 2018, order dated 30. 10.2017 passed by the District Collector, Ahmedabad in Revision Case No. 559 of 2016, order dated 24.6.2016 passed by the Deputy Collector, Sanand Prant, Sanand as well as order dated 14.8.2015 passed by the Mamlatdar & ALT, Sanand. The petitioner has also prayed for a direction to the revenue authorities to certify Revenue Entry No. 27994.

3. The brief facts arise from the record are as under:-

4. That one Laxmiben wd/o. Mangaldas Sakabhai was holding a piece of agricultural land bearing Revenue Survey No. 717/1 at village Sanand

(hereinafter referred to as 'the land in question'). The said Mangaldas and Laxmiben were not having any children and upon death of Mangaldas, Laxmiben executed a Will in favour of the petitioner and bequeathed the land in question to the petitioner. The said Will was registered with the consent of parties.

5 . Subsequent to death of Laxmiben, in the year 2015, the petitioner requested the revenue authorities to mutate his name in the revenue record. A pencil entry No. 27994 was posted in the revenue record on 12.6.2015. However, by order dated 14.8.2015, the Mamlatdar, Sanand rejected the said Entry on two grounds, namely,

(i) that the land in question is restricted tenure land and, therefore, there would be prohibition under Section 43 of the Gujarat Tenancy and Agricultural Lands Act, 1948

(ii) the person in whose favour the land is transferred i.e. the petitioner herein has not produced any evidence regarding his status of agriculturist.

6 . The said order of the Mamlatdar was challenged by the petitioners before the higher authorities i.e. Deputy Collector, Collector and SSRD. In the said proceedings, the petitioner was able to establish by producing necessary documents that he is an agriculturist and the same was accepted by the authorities, however, did not certify entry on the sole ground that the land in question has been transferred by executing a Will which is hit by Section 43 of the Tenancy Act.

7. Hence the present petition.

8. Mr. Mehulsharad Shah, learned advocate appearing for the petitioner would submit that devolution of a property by way of a Will does not amount to transfer as defined under Section 43 of the Tenancy Act. He would further submit that the authorities below have committed error in rejecting the application of the petitioner to certify the entry on the basis of a Will. By relying upon the decision of the Hon'ble Supreme Court in the case of Mahadeo (Dead through Legal Representatives) v. Shakuntalabai, (2017) 13 SCC 756, he would submit that it has been held by the Hon'ble Supreme Court in similar provisions of Bombay Tenancy and Agricultural Lands Act (as applicable to Vidarbha Region) that devolution of a property by way of a Will does not amount to transfer under Section 57 and does not fall within restriction under Section 57. He would further submit that there is no restriction on transfer of agricultural land by executing a Will and, therefore, the present petition may be allowed.

9. On the other hand, learned Assistant Government Pleader would submit that even if the devolution of a property by way of a Will does not amount to transfer as held by the Hon'ble Supreme Court, then the petitioner would get the same status of land which the deceased Laxmiben was holding i.e. agricultural land. He, therefore, would submit that appropriate order may be passed in this regard.

10. I have heard learned advocates appearing for the respective parties and

perused the impugned orders. It is an undisputed fact that the State Authorities themselves have accepted the status of the petitioner being an agriculturist and, therefore the question to be dealt with in the present petition is only with regard to applicability of Tenancy Act. Section 43 of the Tenancy Act reads as under:-

""43. Restriction on transfers of land purchased or sold under this Act:-

(1) No land or any interest therein purchased by a tenant under Section 17B, 32, 32F, 32-I, 32-O, 32U, 43-ID or 88E or sold to any person under Section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, there shall be partitioned without the previous sanction of the Collector.

[Provided that no previous sanction of the Collector shall be required, if the partition of the land is among the members of the family who have direct blood relation or among the legal heirs of the tenant;

Provided further that the partition of the land as aforesaid shall not be valid if it is made in contravention of the provisions of any other law for the time being in force;

Provided also that such members of the family or the legal heirs shall hold the land, after the partition, on the same terms, conditions and restrictions as were applicable to such land or interest therein purchased by the tenant or the person.]

(1A)

(1B)

(1C)

(2) "

11. Now, if the provisions of Section 57 of the Bombay Tenancy and Agricultural Lands Act (as applicable to Vidarbha Region) is concerned, similar provisions are made with regard to the said region. The Hon'ble Supreme Court in the case of Mahadeo (Dead through Legal Representatives) v. Shakuntalabai (Supra) has categorically held that the Will cannot be treated as a transfer as defined under Section 57 of the said Act.

12. I have gone through Section 43 of the Tenancy Act as well as Section 57 of the Bombay Tenancy and Agricultural Lands Act (as applicable to Vidarbha Region) and I find that both the provisions are *pari materia* and, therefore, the principles laid down by the Hon'ble Supreme Court in the case of Mahadeo (Dead through Legal Representatives) v. Shakuntalabai (Supra) would be applicable in the present case. Hence, the present petition requires consideration and hence,

the same is allowed. The order dated 18.5.2018 passed by Secretary, Revenue Department (Appeals), Ahmedabad in Revision Application No. 6 of 2018, order dated 30.10.2017 passed by the District Collector, Ahmedabad in Revision Case No. 559 of 2016, order dated 24. 6.2016 passed by the Deputy Collector, Sanand Prant, Sanand as well as order dated 14.8.2015 passed by the Mamlatdar & ALT, Sanand are hereby quashed and set aside. Rule is made absolute. The Mamlatdar, Sanand shall take appropriate action in the matter.

13. It is also pertinent to note here that the submission made by learned Assistant Government Pleader is required to be accepted about the status of the land in question and the land in question shall remain as a new tenure land and it shall be treated as a restricted one. It is needless to state that it would be open for the petitioner to file an appropriate application for change of status of the land, if he desires.

Direct service is permitted.