

(2016) 06 GUJ CK 0086

In the Gujarat High Court

Case No : Special Civil Application No. 3188 of 2012.

**Ayeshabegam Shaikh and 2 - Petitioners @HASH State of Gujarat-
Through Secretary and 3**

Date of Decision : 29-06-2016

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211, Section 79A
Constitution of India, 1950 — Article 227

Citation : (2016) 4 GLR 3119

Hon'ble Judges : Ms. Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Ms. Sonal D. Vyas, Advocate, for the Petitioner Nos. 1 and 3; Ms. Jyoti Bhatt, A.G.P, for the Respondent No. 1; Rule Served, for the Respondent Nos. 1 and 4

Final Decision : Dismissed

Judgement

Ms. Bela M. Trivedi, J.(Oral) - The present petition filed under Article 227 of the Constitution of India, is directed against the order dated 25.01.2012 passed by the respondent No.4 in Revision Application No. 77 of 2006, whereby the respondent No.4 has dismissed the said revision application filed by the petitioners under Section 211 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the Revenue Act").

2. The short facts are that Major K.S. Mohammad Ali, husband of the petitioner No.1, and father of the petitioners Nos. 2 and 3, was serving in the Indian Army. The respondent No.1 had granted him the land bearing Survey No. 653 paiki, ad-measuring 10 acres at Village Rahij, Taluka Mangrol, District Junagadh on lease for 30 years for growing fruit trees as per the order dated 30.06.1965. According to the petitioners, the land being situated in coastal area, the same had become saline, and therefore, fruit trees raised by the petitioners got destroyed gradually. The petitioners, therefore, had made an application for converting the said land into old tenure. The respondent No.1 however fixed the price at Rs. 10,000/- for the said land, and granted it to the petitioners as per the order dated 23.05.1978 as new tenure land subject to the conditions mentioned

therein. Thereafter, the petitioners kept on making representations to the respondent No.1 for converting the land into old tenure, however, their representations were rejected. The respondent No.2, thereafter, issued the notice on 15.10.2006 calling upon the petitioners to show cause as to why the land in question should not be confiscated under Section 79-A of the Revenue Code for committing breach of conditions mentioned in the order dated 23.05.1978. The respondent No.2 thereafter proceeded further to the said proceedings, and vide the order dated 06.11.2006 (Annexure "J") directed that the land be vested in the Government under Section 79-A of the Revenue Act. Being aggrieved by the said order, the petitioners had preferred the revision petition before the respondent No.4, who dismissed the same vide the impugned order.

3. It is sought to be submitted by the learned advocate Ms. Vyas for the petitioners that since the land had developed salinity, the petitioners could not grow fruit trees thereon, and therefore, the petitioners time and again made representations for converting the said land from new tenure to old tenure as per the policy and the circulars issued by the Government from time to time, however, the respondents had not considered the same. According to her, the respondent No. 2 - Collector could not have issued the show-cause notice after so many years, and without giving sufficient opportunity of hearing to the petitioners, he had passed the order under Section 79- A of the Revenue Act, which was in violation of the principles of natural justice. She also submitted that the respondent No.4 without application of mind and without considering the submissions of the petitioners, had passed the impugned order, which deserves to be set aside.

4. However, the learned AGP appearing for the State drawing the attention of the Court to the application filed by the petitioners for selling the land to one Hardash Devshibhai Chandra, submitted that the petitioners had never cultivated the land in question nor had grown fruit trees thereon, and as per the report of Mamlatdar, the third party Mr. Chandra was found in possession. According to her, since the petitioners have committed breach of the conditions on which they were allotted the land in question, the representations for converting the land from new tenure to old tenure were rejected by the concerned authority.

5. In the instant case, it is not disputed by the petitioners that the petitioners were permanently staying at Gandhinagar, whereas the land in question was situated at Mangrol. It is also admitted that the land being not suitable for growing fruit trees, the petitioners had not grown the same since the last many years. It is also not disputed that the petitioners had parted with the possession of the said land with third party Mr. Chandra, and had also submitted an application seeking permission to sell the said land to said Mr. Chandra.

6. Under the circumstances, it clearly transpires that the petitioners had failed to achieve the purpose for which the land was allotted, and that the petitioners had also not cultivated the land in question themselves, and had also parted with the

possession of land with the third party. The petitioners, therefore, had committed clear breach of conditions of the order of grant, for which the Collector had issued the show-cause notice for taking action against the petitioners. Though it has been submitted by the learned counsel for the petitioners that the petitioners were not given opportunity of hearing, the Court does not find any substance in the same. Admittedly, the petitioners were served with show-cause notice issued by the respondent No.2, however they had chosen not to remain present at the time of hearing. As transpiring from the order of Collector, the third party Mr. Chandra had remained present posing himself to be the Power of Attorney Holder of the petitioners. The said fact also justifies the stand of the respondents that the petitioners had already parted with the possession of the land with the third party, and that they were not cultivating the land in question.

7. Under the circumstances, the Collector having considered the report of Talati-cum-Mantri to the effect that the petitioners were not staying in the village since many years, and were also not cultivating the land for growing fruit trees since last more than 15 years, and there being clear breach of conditions of grant, no fault could be found in the orders passed by the Collector or by the S.S.R.D. for vesting the land in the Government in view of Section 79-A of the Revenue Act.

8. In that view of the matter, the petition being devoid of merits, deserves to be dismissed and is accordingly dismissed. Interim relief, if any, stands vacated. Rule discharged.