(2019) 08 GUJ CK 0056

In the Gujarat High Court

Case No : R/Special Civil Application No. 12016 Of 2019

Bai Karshan APPELLANT

Vs

State Of Gujarat RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 227
Gujarat Land Revenue Code, 1879 — Section 203

Citation : (2019) 08 GUJ CK 0056

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

Bench : Single Bench

Advocate : Mehul Sharad Shah, Vinod M. Gamara, K.M. Antani

Final Decision : Disposed Of

Judgement

A.J. Desai, J

1. Rule. Learned Assistant Government Pleader waives service of notice of Rule on behalf of respondents.

2. By way of present petition filed under Articles 14, 19 and 226 of the Constitution of India, the petitioner has prayed as under:

"[B] Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of mandamus, or any other appropriate writ, order or direction for quashing and setting aside the impugned order passed by respondent No. 1 - SSRD in Revision No. MVV/JMN/AMD/62/2017 in the interest of justice and be further pleased to direct the Collector to decide the RTS Appeal being No. 108/2018 pending before him in accordance with law.

[C] Hon'ble Court be pleased to pending the hearing and final disposal of this petition, stay the implementation, operation and execution of the impugned order passed by respondent No. 1 - SSRD in Revision No. MVV/JMN/AMD/62/2017 dated 22.04.2019 in the interest of justice;

[D] Hon'ble Court be pleased to pending the hearing and final disposal of this petition, direct the Collector, Gandhinagar to decide the RTS Appeal No. 108/2018 pending before him irrespective of and without being influence by the order dated 22.04.2019 passed in Revision No. MVV/JMN/AMD/62/2017 in the interest of justice:

3. It is the case of the petitioner that Revision Application No. 62 of 2017, which has been rejected by the Special Secretary, Revenue Department, was never filed at the instance of present petitioner. It is also the case of the petitioner that an order of the Deputy Collector, which was directly challenged by before the Special Secretary by way of filing Revision Application No. 62 of 2017, was already been challenged by the present petitioner by way of filing RTS Appeal No. 108 of 2018 before the District Collector, Gandhinagar, who has jurisdiction to decide such appeal under Section 203 of the Gujarat Land Revenue Code. Since there was delay in filing the appeal, an application to condone the delay was filed and accordingly delay was condoned on 03.04.2019. Now, the appeal is pending before the District Collector, Gandhinagar for order. Hence, this petition.

4. Mr. Mehul Sharad Shah, learned Advocate assisted by Mr. Vinod Gamara learned advocate appearing for the petitioner, would submit that the petitioner has never preferred any Revision Application No. 62 of 2017 before the Special Secretary, Revenue Department (Dispute). He would further submit that the revision application has been filed in the name of the petitioner was sent by the post from the address of Mehsana whereas, the petitioner is residing at Ahmedabad. The said revision application was received by the office of Special Secretary, Revenue Department on 18.12.2017. The said revision application was fixed for hearing on 01.01.2019 and ultimately, the same was rejected by passing the impugned order. He would further submit that he has collected information under the Rights to Information Act from the office of Special Secretary, Revenue Department, which suggests that the said revision application was accompanied by vakalatnama of an advocate namely Mr. Rajnikant Patel. However, there was another advocate namely Mr. S.R. Desai, when the matter was decided. He would further submit that the petitioner had never engaged the said lawyers to argue the matter before the Special Secretary, Revenue Department since the appeal filed by the petitioner is pending before the District Collector, Gandhinagar. Therefore, appropriate order may be passed.

5. On the other hand, Mr. K.M. Antani, learned Assistant Government Pleader was directed by this Court to produce the original file of proceedings being Revision Application No. 62 of 2017 before this Court and accordingly, the same is produced. This Court has perused the same. It appears that the revision application was sent by post and vakalatnama of an advocate namely Rajnikant Patel was attached with the revision application. However, on the date of hearing i.e. 01.01.2019, another advocate Mr. S.R. Desai appeared, who had argued the matter. It is specific case of the petitioner that she had already challenged the order passed by the Deputy Collector before the District Collector, Gandhinagar

by filing RTS Appeal No. 108 of 2018 whereas, the impugned order passed by the Special Secretary, Revenue Department in Revision Application No. 62 of 2017, which revision was sent to the Special Secretary, Revenue Department by the post by some unknown person and therefore, the impugned order dated 22.04.2019 is required to be quashed and set aside and particularly, when the RTS Appeal No. 108 of 2018 filed by the present petitioner is pending before the District Collector, Gandhinagar.

Hence, I am of the opinion that the following order is passed.

[i] The impugned order dated 22.04.2019 passed by the Special Secretary, Revenue Department in Revision Application No. 62 of 2017 is hereby quashed and set aside.

[ii] The District Collector, Gandhingar is hereby directed to decide RTS Appeal No. 108 of 2018 as early as possible and on its own merits.

6. It is hereby made clear that this Court has not gone into the merits of the case.

7. Rule made absolute to the aforesaid extent. Direct service is permitted.

