

(2009) 06 GUJ CK 0025

In the Gujarat High Court

Case No : Special Civil Application No. 6496 of 1993

Bhaichand Ramabhai and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 20, 21, 24, 35, 35(1)
Gujarat Agricultural Lands Ceilings Rules, 1961 — Rule 17, 18

Citation : (2009) 06 GUJ CK 0025

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : Ketty A. Mehta, for Petitioners 1-2, for the Appellant; Jirga Jhaveri, AGP for Respondents 1-2, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—This petition challenges judgment and order made by Gujarat Revenue Tribunal (GRT) in Revision Application No. TEN.B.S.167/90 dated 08.02.1993 in backdrop of the following facts and circumstances of the case.

2. The two petitioners are owners of lands bearing Survey Nos. 236/2, 233 and 231, situated at Village Karwasa, Taluka Choryasi, Dist. Surat. It is also the case of the petitioners that the said lands are ancestral properties belonging to Hindu Undivided Family. Proceedings under the Gujarat Agricultural Lands Ceiling Act, 1960 (the Act) were initiated by Mamlatdar & ALT (ALT). The claim of the petitioners that the petitioners were entitled to six units in light of their being four major sons as under:

-----	Name	Birth	Date
-----	1. Harilal	Bhaichand	20-08-33
-----	2. Ramabhai	Nanubhai	16-10-20
-----	3. Dansukhbhai	Nanubhai	05-09-47
-----	4. Natwarbhai	Nanubhai	02-12-56

was not accepted by the ALT and vide order dated 08.06.1981 surplus land under the Act was worked out. Deputy Collector initiated suo motu revisional proceedings u/s 37 of the Act and made an order on 10.12.1982 whereby the order made by ALT came to be confirmed by closing the proceedings.

0. The petitioners challenged the action of suo motu revision initiated by the Deputy Collector on the ground that the Deputy Collector had no jurisdiction to initiate such proceedings suo motu in a case where no appeal was filed within the period provided for filing such appeal. In Revision Application No. TEN.B.S.46/82, vide order dated 21.09.1982, GRT rejected the stand taken by the petitioners by stating that it was the duty of the petitioners to remain present on 08.06.1981 or thereafter inquire into the matter as to what has happened about the case which had already been heard on 25.05.1981 in presence of the petitioners.

1. On 27.09.1982 the petitioners preferred an appeal u/s 35 of the Act challenging the order of ALT. The said appeal was admitted and vide order dated 04.03.1983 the Deputy Collector quashed and set aside order dated 08.06.1981 directing the ALT to pass a de novo order after granting an opportunity of hearing as well as cross-examine the Canal Officer, who had issued certificates.

2. On 23.05.1986 ALT passed an order afresh declaring the same area of land to be surplus under the Act. The petitioners challenged the same before Deputy Collector, who vide order dated 31.12.1986 in Appeal No. 9 of 1986 remanded the matter to ALT to determine the units of the joint family in light of the High Court judgments.

Dated 29.06.2009

6. The ALT framed an order on 23.05.1988 holding that there was no land which could be treated to be surplus under the Act. The State Government challenged the order dated 23.05.1988 made by ALT by way of Ceiling Appeal No. 15 of 1989 by preferring an appeal u/s 35 of the Act. The appeal was preferred on the ground that the Deputy Collector had no powers u/s 35 of the Act to entertain an appeal in a case where the Deputy Collector had suo motu exercised revisional powers u/s 37 of the Act, which had been confirmed by the GRT. The Deputy Collector held that earlier orders made by the Deputy Collector were bad in law as appeals could not have been entertained u/s 35 of the Act and accordingly appeal filed by the State Government came to be allowed vide order dated 15.01.1990.

7. The petitioners carried the matter by way of Revision Application No. 167 of 1990 before the GRT. Though various submissions were made by the petitioners on merits of the matter, GRT rejected the second Revision Application on the ground that the appeal was filed beyond a period of six months from the date of the order of ALT, viz. 08.06.1981, because the Deputy Collector having passed an order on 10.12.1981 in exercise of revisional powers u/s 37 of the Act it could be held that no appeal had been filed within the period provided for appeal and suo motu revision u/s 37 of the Act was valid. The impugned order, therefore, came

to be made by the GRT on 08.02.1993 upholding the order made by the Assistant Collector.

8. On behalf of the petitioners it was submitted that GRT had failed to appreciate that in the earlier round of proceedings only as the period for filing an appeal had not expired, the revision could have been undertaken by the authority where no appeal has been filed within the period provided for filing an appeal. That GRT had wrongly come to the conclusion that merely because Deputy Collector had passed an order on 10.12.1981 vis-a-vis the order dated 08.02.1981 made by the ALT, the period for filing an appeal had expired and no appeal had been filed. The GRT failed to appreciate that the period of limitation for preferring an appeal, as required by Section 35 of the Act, is prescribed but at the same time u/s 35 of the Act the statute specifically requires that an appeal under Sub-section (1) of Section 35 of the Act shall be accompanied by a certified copy of the order which is appealed against, unless such production is dispensed with. That in absence of any order of dispensation GRT was required to examine as to when a certified copy of the order was made available to the petitioners to enable them to file appeal. Learned advocate, therefore, submitted that the entire approach of GRT and the respondent authorities was not warranted in law.

Dated 30.06.2009

On merits reliance was placed on the judgments of this High Court in the case of Sheth Chinubhai Chimanlal Vs. State of Gujarat and Another, and Nathekhan Sojalkhan Bihari Vs. Mamlatdar and Others, to submit that the units worked out by the ALT vide order dated 23.05.1988 were correct and no land was surplus in terms of the provisions of the Act.

9. On behalf of the respondents learned Assistant Government Pleader contended that GRT had rightly upheld the order dated 15.01.1990 made by the Deputy Collector holding that in earlier round appeals had wrongly been entertained by Deputy Collector considering the fact that revisional action had been taken u/s 37 of the Act vide order dated 10.12.1981, and the same had been confirmed by GRT vide order dated 21.09.1982.

1. Section 37 of the Act, as is relevant for the present, reads as under:

37. Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the State Government, at any time,-

(a) call for the record of any inquiry of the proceedings of any Mamlatdar or of the Tribunal other than the proceedings of an award for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal as the case may be, and

(b) pass such order thereon as he deems fit:

Provided that no such record shall be called for after the expiry of the year from the date of such order and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.

2. A plain reading of the provision indicates that the Collector is vested with discretionary powers to suo motu initiate revisional proceedings, or he may initiate revisional proceedings upon a reference being made by the State Government in this behalf. However, the said powers of the Collector and the State Government are circumscribed by the opening portion of Section 37 of the Act which stipulates that such powers can be exercised only where no appeal has been filed within the period provided for filing an appeal. In other words, before revisional action can be initiated by the authority, the provision requires that the authority satisfies itself that no appeal has been filed against an order made by the ALT and the period for filing an appeal, as provided by the Act and the Rules, has expired. Therefore, the authority will have to factually verify as to the point of time when the period for preferring an appeal commences and the point of time when the said period expires. After such verification, the authority is required to inquire and satisfy itself that no appeal has been filed by an aggrieved person against an order made by the ALT within such period. The period for filing an appeal will thus vary from case-to-case and hence, the authority will have to undertake an inquiry in relation to each order made by the ALT.

3. In the present case, unfortunately, no such inquiry appears to have been undertaken by the authority while exercising powers u/s 37 of the Act. In fact, in the first round, before GRT the petitioners had challenged the order dated 10.12.1981 made u/s 37 of the Act on this limited count, namely, the time for filing an appeal having not expired, the authority could not have initiated revisional action. When one goes through the order dated 21.09.1982 made by GRT in Revision Application No. TEN.B.S.46/82 it becomes clear that GRT has misdirected itself in law by wrongly placing the burden on the petitioners without appreciating the provisions of Section 37 of the Act and the challenge raised by the petitioners. The Court is conscious of the fact that the said order dated 21.09.1982 is not under challenge in the present proceedings but it becomes necessary to consider the correctness or otherwise of the said order in light of the fact that in the second order, which is impugned in the petition, made on 08.02.1983, GRT has merely relied upon the earlier order dated 21.09.1982 and committed the same error in law. GRT has proceeded on a wrong premise in law.

4. Section 35 of the Act, which grants a right to a person to file an appeal against any order of Mamlatdar or any order made by ALT, other than an award u/s 24 of the Act, also stipulates in Sub-section (2) of the said Section 35 that every memorandum of appeal under Sub-section (1) of Section 35 of the Act shall be accompanied by a certified copy of the order which is challenged, unless the production of such copy is dispensed with by the appellate authority. This would

indicate that the statute itself requires that a person, who is aggrieved by an order made by Mamlatdar and ALT, is in possession of a certified copy of the order against which appeal is to be filed.

5. In this context the scheme of the Act which unfolds up to Section 20 of the Act culminates in an order u/s 21 of the Act declaring the land which a person is entitled to hold and the area of land which is surplus. The relevant part of Section 21 of the Act, as is relevant for the present, reads as under:

21. (1) After taking into consideration the objections and suggestions, if any, received and the particulars if any, furnished u/s 20, and making such further inquiry, if any, [(including giving the holder of surplus lands an opportunity of being heard)] as it thinks fit, the Tribunal shall make in respect of such holder of surplus land an order declaring in particular-

- i. the total land held by him [** **],
 - ii. which land out of the total land is surplus land, and
 - iii. which land out of the total land he is entitled to hold,
- and shall communicate the order so made to such holder.

0. A plain reading indicates that the order which contains the three particulars in the form of a declaration shall be communicated to the holder of the land. The onus is thus on the ALT, who determines the total holding, the surplus land, and the land which a holder is entitled to hold, to convey/communicate the order so made to such holder. The Act does not prescribe the mode and manner of communication of the order.

1. The Gujarat Agricultural Lands Ceilings Rules, 1961 (the Rules) stipulate the Manner of Serving Notices in Rule 17 and Manner of Serving Notice on Respondent in Rule 18 of the Rules. Rule 17 of the Rules reads as under:

17. Manner of Serving Notices.- Unless otherwise provided in the Act or the Rules made thereunder all notices under the Act shall be served either by registered post or by tendering or delivering a copy thereof to the person on whom it is to be served or to his agent, if any, or by affixing a copy thereof to some conspicuous part of his usual residence or to some conspicuous place on the land, if any, to which such notice relates.

2. This indicates that in the first instance the service shall be either by Regd. Post A.D. or by tendering or delivering a copy thereof to the person on whom it is to be served, failing which, by affixing a copy thereof to some conspicuous part of his usual residence, or to some conspicuous place on the land, if any, to which such notice relates. Taking a cue from this provision one can say that an order also has to be communicated by any of the prescribed modes. In other words, the order made u/s 21 of the Act has to be either served personally on the holder of the land or sent by Regd. Post A.D., and in the alternative, affixed at a conspicuous place on the residence, or on the land, to which such order relates.

The communication of an order cannot be presumed once statute has mandated that the order shall be communicated to the holder. In the circumstances, the approach of GRT that as the matter had already been heard in May 1981 the petitioners were required to make inquiry on the next date of hearing as to what order had been made, and thus compute the period for filing the appeal, is not warranted by law.

3. GRT has not only misread and/or ignored the provisions of Section 37 of the Act but failed to consider the provisions of Section 35 of the Act which categorically provide that a memorandum of appeal has to be accompanied by a certified copy of the order appealed against. In absence of any communication of the order a person cannot be expected to file an appeal in contravention of provisions of Section 35(2) of the Act, even if one assumes that a person may make inquiry and is informed that an adverse order had been made. The approach of GRT, therefore, is contrary to provisions of the Act, more particularly Sections 37 and 35 read together.

4. The petitioners filed an appeal on 27.09.1982 which came to be entertained on merits by the Deputy Collector. A natural presumption in law can thus be drawn that the appeal was accompanied by a certified copy of the order which was under challenge and that the appeal had been preferred within the time prescribed. It is not the case of the respondent authority that the appeal had been filed belatedly, namely, after expiry of the period during which an appeal could be filed. The only case of the State Government is that the Deputy Collector having earlier exercised revisional powers could not have entertained the appeal on merits. This stand of the respondent authorities has been upheld by GRT without appreciating that unless and until a categorical finding is recorded by the revisional authority that the revisional powers are exercised after expiry of the period during which an appeal could be filed, or the facts indicate so in no uncertain terms, a presumption could not have been drawn by GRT that merely because the Deputy Collector had made an order after six months from the date of the order of ALT, the right to file an appeal and entertain the same had been lost.

5. The matter may be examined from a slightly different angle. If one reads both provisions of Sections 35 and 37 of the Act together it becomes apparent that u/s 37 of the Act the point of time when revisional powers can be exercised by the authorities is specified. However, neither Section 35 nor Section 37 of the Act stipulate that a statutory right, which is granted to an aggrieved person to prefer an appeal u/s 35 of the Act, is not available the moment a revisional authority exercises powers of revision. At the most, such an appeal may be belated, the period prescribed for preferring an appeal having expired, leaving it to the discretion of the appellate authority whether to condone the delay or not. But, at the cost of repetition, it is required to be stated that the right which is vested statutorily cannot be taken away by implication on reading of any provisions of the same statute. The right to file an appeal is granted by the Act and in absence

of a specific provision taking away such a right it is not possible to accept the stand of the respondent authority that merely because the revisional powers had been exercised u/s 37 of the Act the Deputy Collector was prevented from entertaining the appeal.

6. To put it differently, the two remedies under the Act are distinct and different. u/s 35 of the Act a right is vested in a person aggrieved by an order made by the Mamlatdar and ALT, whereas u/s 37 of the Act the revisional powers are vested in the Collector which may be exercised suo motu or on a reference made in this behalf by the State Government. The two are not in the alternative to each other and the respondent authorities as well as GRT have erred in law in so reading the provisions of Sections 35 and 37 of the Act. The ambit and scope of both the Sections is different.

7. Hence, it is not possible to uphold the impugned order dated 08.02.1993 made by GRT and, as a consequence, the order made by Deputy Collector on 15.01.1990 quashing and setting aside the order made by ALT on 23.05.1988, in light of what is stated hereinbefore. In the view that the Court has adopted it has not been found necessary to enter into the merits of the controversy.

8. The order dated 08.02.1993 made by GRT and order dated 15.01.1990 made by Deputy Collector are both quashed and set aside and the order dated 23.05.1988 made by ALT shall stand restored. The petition is allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs.