(1993) 09 GUJ CK 0011

In the Gujarat High Court

Bhanabhai Morarbhai Solanki APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 22-09-1993

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63, 63, 84C
Constitution of India, 1950 — Article 227

Citation : (1994) 1 GLR 822

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The order passed by the Dy. Collector at Valsad (the first authority for convenience) on 12th September, 1984 in R.T.S. Revision No. 17 of 1984 as affirmed in appeal by the Collector at Valsad on 28th May, 1985 in R.T.S. Appeal No. 7 of 1984 as affirmed in revision by the Special Secretary, Revenue Department at Ahmedabad on 27th April, 1989 in Revision Application No. 302 of 1985 is under challenge in this petition under Article 227 of the Constitution of India. By the impugned order, the Dy. Collector at Valsad declared the sale in respect of the land bearing Survey No. 81 admeasuring 9 Acres 12 Gunthas situated in village Tanachhia, taluka Dharampur. district Valsad (the disputed land for convenience) entered into between the petitioner and respondent No. 1 to be illegal and invalid.

2. The facts giving rise to this petition are not many and not much in dispute. The disputed land originally belonged to respondent No. 1. The petitioner purchased it from him by a registered sale deed executed on 15th May, 1978. The necessary mutation entry in the revenue records with respect thereto was posted on 15th September, 1978 and was certified by the competent officer on 17th August, 1979. It appears that more than five years thereafter respondent No. 1 made one application to the first authority for cancellation of the said mutation entry made in favour of the present petitioner in the revenue records pertaining to the disputed land. Thereupon the first authority undertook an inquiry in that regard. The proceedings came to be registered as R.T.S. Revision

No. 17 of 1984. Thereupon the necessary show cause notice was issued some time in June or July, 1984. la the course of inquiry, the first authority found the sale transaction between the petitioner and respondent No. 1 with respect to the disputed land to be in contravention of Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (''the Act'' for brief). In that view of the matter, by his order passed on 12th September, 1984 in R.T.S. Revision No. 17 of 1984, the first authority ordered cancellation of the said mutation entry. Its copy is at Annexure ''C to this petition. The aggrieved petitioner carried the matter in appeal before the Collector at Valsad. His appeal came to be registered as R.T.S. Appeal No. 7 of 1984. After hearing the parties, by his order passed on 28th May, 1985 in R.T.S. Appeal No. 7 of 1984, the Collector at Valsad dismissed it. Its copy is at Aanexure ''D'' to this petition. The aggrieved petitioner thereupon invoked the revisional jurisdiction of the State Government u/s 211 of the Bombay Lands Revenue Code, 1879 (''the Code'' for brief) through the Special Secretary, Revenue Department at Ahmedabad. His revisional application came to be registered as Revision Application No. 302 of 1985. After hearing the parties, by his order passed on 27th April, 1989, the revisional authority rejected it. Its copy is at Annexure ''E'' to this petition. The aggrieved petitioner has thereupon invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India for questioning the legality of the impugned order at Annexure ''A'' to this petition as affirmed in appeal and in revision by the impugned orders at Annexures ''D'' and ''E'' respectively to this petition.

3. The aforesaid narration of facts makes it clear that the transaction between the parties was entered into on 15th May, 1978 and it was mutated in the revenue records in the petitioner''s name on 15th July, 1978 and that entry was certified by the competent officer on 17th August, 1979. The proceedings for its cancellation were initiated more than five years thereafter some time in 1984. It appears that the powers exercised by the first authority were suo motu revisional powers for cancellation of the entry though at the instance of respondent No. 1.

4. It is a settled principle of law that suo motu revisional powers have to be exercised within reasonable time in view of the binding ruling of the Supreme Court in the case of State of Gujarat v. Patel Raghav Natha reported in (1969) 10 GLR 992. Following the aforesaid ruling of the Supreme Court in the case of Patel Raghav Natha (supra), the Division Bench of this Court in its ruling in the case of Bhagwanji Bawanji Patel v. State of Gujarat reported in (1971) 12 GLR 156 held that such revisional powers have to be exercised within a period of one year from the date of the impugned order. It is true that both the aforesaid rulings were pertaining to Section 211 of the Code. The principle therein will have to be held applicable to exercise of revisional powers for cancellation of any mutation entry on the ground that the sate transaction reflected therein was in contravention of any provision of the Act or any other enactment.

5. Besides, sale of a parcel or agricultural land if made in contravention of any provision of the Act can be declared invalid in view of Section 83A of the Act and

the necessary proceedings can be initiated u/s 84C thereof. In its ruling in the case of Bhaniben Makanbhai Tandel Vs. State of Gujarat and Another, , this Court has held that the initiation of the proceedings u/s 84C of the Act has to be made within reasonable time and if such proceedings are taken after five years or so they cannot be said to be taken within reasonable time. In that case, the proceedings u/s 84C of the Act were found to have been initiated after lapse of more than five years from the date the entry in the revenue records with respect thereto was certified. If initiation of the proceedings u/s 84C of the Act cannot be taken beyond any reasonable time, by analogy the proceedings for cancellation of any mutation entry cannot be taken beyond any reasonable time.

5.1 In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure ''C to this petition as affirmed in appeal and in revision by the impugned orders at Aanexures ''D'' and ''E'' respectively to this petition cannot be sustained in law. It has to be quashed and set aside.

6. In the result, this petition is accepted. The impugned order passed by the Dy. Collector at Valsad at Annexure ''C to this petition as affirmed in appeal by the appellate order passed by the Collector at Valsad on 28th May, 1985 at Annexure ''D'' to this petition as further affirmed in revision by the impugned order passed on 27th April, 1989 at Annexure ''E'' to this pstitioa is quashed and set aside. Rule is accordingly raids absolute with no order as to costs.

