

(1990) 09 GUJ CK 0006

In the Gujarat High Court

Case No : Spl. Civil Application No. 802 of 1980

Bhaniben Makanbhai Tandel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 18-09-1990

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 84, 89

Citation : AIR 1991 Guj 184

Hon'ble Judges : B.S. Kapadia, J

Bench : Single Bench

Advocate : S.N. Shelat, for the Appellant; R.R. Tripathi, for the Respondent

Judgement

1. The present application is filed under Art. 227 of the Constitution of India challenging the orders passed by the A.L.T. and Mamlatdar Valsad in Tenancy Case No. 84/ C No. 1347/ 76 (sic). By the said order the land purchased by the petitioners by the registered document dated 12-9-86 for which the mutation entries were made in the name, being Entry No. 936 in the year 1969 certified on 13th June, 1969 were held to be illegal, particularly on the ground that the petitioners were not the agriculturists in respect of the land in the State of Gujarat and therefore, the transaction was hit under S. 63 of the Tenancy Act. By the said order they were ordered to hand over the possession back to the original vendor within 3 months failing which the sale was to be declared invalid and said land would vest in the State Government. The said order was passed on 29th of March 1986. Being aggrieved by the same, the present petitioner filed Tenancy Appeal No. 66/ 78 before the Deputy Collector, Valsad. The said appeal was dismissed by the order-dated 5-6-78. Being aggrieved by the said order, petitioner preferred Revision Application u/S. 76 of the Tenancy Act before G.R.T. Gujarat Revenue Tribunal by the order dated I 1- 1 -80 dismissed the application and hence, the present Writ petition.

2. It may be mentioned that the present petitioners are holding the land at village Kativid of Daman Tal: and the extract thereof is also produced in the

record that they are holding 0.34 gunthas of land as mentioned in the order of the Mamlatdar. Petitioners purchased the land of survey Nos.561/562/ 563 1, 564/2-4-606/2, 592 part 593, 594 part and also land at village Kunta bearing survey Nos. 389/1, 389/2, 388/1, 392 totally admeasuring 29 acres 27 prithas. Both aforesaid villages are situated in Tal. Pardi. They purchased the aforesaid land by the registered document dated 12th of Sept., 1962 and mutation entry in favour of the present petitioners were also certified being mutation entry No. 936 on 13th June, 1969, however, it appears that the proceedings under S. 84C of the Tenancy Act are initiated in 1975.

3. In this the petitioner has challenged the validity of the aforesid decision on the ground that there is unreasonable delay in initiating the proceedings u/ S. 84C. Looking to the fact that the sale deed has taken place in the year 1968 and proceedings are initiated in 1975, there is a delay of 7 years. It may also be mentioned that even the mutation entry was also certified in the year 1969 and therefore, the Revenue Officer also had the knowledge of that entry. Hence, even if it is considered from that day, there is a delay of 6 years.

4. Mr. S. N. Shelat has relied on the judgment of this Court in Spl. Civil Appln. No.2770 of 79 with Spl. Civil Appln. No.3353 to 3358 of 79, decided by Justice S. B. Majumdar on 1-3-90. Justice Majmudar has considered the similar question when the S. 84C proceedings were initiated in exercise of suo motu powers after the delay of 5 years from the date of the agreement and more than 2 years from the date of sale deed. Taking into consideration the ratio of the judgment of the Supreme Court in the case of The State of Gujarat Vs. Patil Raghav Natha and Others, and also the decision in the case of Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others, held that suo motu powers under S. 84 should be exercised within reasonable period and as the proceedings were initiated after 2 years from the date of the document, there is unreasonable delay on the part of the Mamlatdar.

5. Here, in the present case also the proceedings are initiated in 1975 and it is clear from the Tenancy Case Nos. 84/ C 1347 / 76 that after the show cause notice the case was initiated by the Mamlatdar-cum-A.L.T. In that view of the matter infact this case is worth on the point of delay than the aforesaid case before the Justice Majumdar, It may also be mentioned that the parties have invested much amount and that they are in possession of 29.27 acres of land since more than 22 years. Under these circumstances, the petition deserves to be allowed with the suo motu powers on the ground of (sic) when have been exercised after the delay of 7 years from the date of sale deed and accordingly all the orders passed by the Tenancy A. L. T. Mamlatdar in Case No. 84/c 1347/76 as well as the order passed by the Dy. Collector in Tenancy Appeal No. 66/ 78 and also in the case of T.N.B. S.5 of 79 by the Gujarat Revenue Tribunal are quashed and set aside. Accordingly, rule is made absolute. No order as to costs.

6. Petition allowed.