(2002) 01 GUJ CK 0067

In the Gujarat High Court

Case No : Letters Patent Appeal No. 989 of 1996 in Special Civil Application No. 5570 of 1982

Bhavanisang Sardarsang APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Gujarat Agricultural Lands Ceiling Act, 1960 — Section 8, 8(1), 8(2)

Citation : (2002) 01 GUJ CK 0067

Hon'ble Judges : Jayant M. Patel, J;B.C. Patel, J

Bench : Division Bench

Advocate : Harin P. Raval, No. 1, for the Appellant; Manisha Lavkumar, Asst. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—The present Letters Patent Appeal arises against the judgment of the learned single judge dated 3.7.1996 whereby the petitioner has been dismissed.

2. The short facts of the present case are that the petitioner who is the agriculturist was holding total lands to the extent of 60 acres and 8 gunthas on 24.1.1971, but after 24.1.1971 and before 1.4.1976 he had sold four pieces of the land admeasuring 24 acres and 35 gunthas being different parcels of land to different persons by registered sale deeds. It is the case of the original petitioner that after the sale of said land during the period 1971 in exchange of said lands he has purchased in the year 1973 another land admeasuring 25 acres and 24 gunthas. The case of the original petitioner is that since the earlier four pieces of lands were situated at different places he has sold away the same and the land is purchased by him in the name of his wife in one block for the purpose of convenient cultivation. The competent authority had initially held that the transactions are bonafide and the certificate was issued. However, thereafter, the

State had preferred appeal against the decision of the Deputy Collector on the ground that the revenue authorities were not heard and therefore the matter was remanded to the Deputy Collector for consideration of the matter afresh. Thereafter, the said case was numbered as Case No. 120/77. The witnesses were examined and it had come on record that the original petitioner had purchased the land and it had also come on record that the land was purchased by him in the name of his wife. However, Assistant Collector exercising powers of the Deputy Collector held that the transactions can not be said to be bonafide because the contention of the petitioner herein is that the lands which are sold at a distant place but no evidence is coming forward and another contention regarding purchase of land in the name of his wife on the ground that when the original petitioner had re-married it was agreed by him that the lands will be purchased in the name of his wife, but the marriage has taken place in the year 1966 whereas the land is purchased in the year 1973 and therefore the said contention regarding the promise given to his second wife is unbelievable. Ultimately, the Assistant Collector passed the Order on 22.12.1981 whereby he found that the burden for showing that the transaction was bonafide and was not with a view to defeat the provisions of the Act is not discharged and therefore it was declared accordingly.

3. Against the said decision of the Assistant Collector revision came to be preferred by the original petitioner before the Gujarat Revenue Tribunal being Revision Application No. 90/81. The revisional authority ultimately, for the reasons recorded in the order, dismissed the revision and confirmed the Order passed by the Assistant Collector. Against the said decision of the tribunal it appears review application was also preferred which came to be dismissed at the preliminary hearing itself as per the Order dated 17.9.1982.

4. Thereafter, the Special Civil Application No. 5570/82 was preferred by the petitioner and in the said petition the learned single judge confirmed the Order passed by the lower authorities and dismissed the petition against which the present appeal is preferred.

5. We have heard Mr. H.P. Raval, learned advocate appearing for the appellant-original petitioner as well as the learned Asst. Government Pleader Ms. Manisha Lavkumar for respondents. We have also considered the provisions of the Gujarat Agricultural Land Ceiling Act, 1960 (hereinafter referred to as "the Act") more particularly Section 8(1) and 8(2) of the Act. It is not in dispute that the Act has come into force with effect from 1.4.76 and the transaction is for the period after 24.1.1971, i.e. before the Act came into force. If we see the provisions of Section 8 of the Act, it appears that the intention of the legislature was to see that those persons who are holding surplus land may not go outside the net of the ceiling limit and with the said purpose whenever any person sells the land after 24.1.1971 he will have to establish that the transaction was bonafide and was not with a view to defeat the purpose and object of the Act, and therefore, under the circumstances, the authority will have to decide as to whether the

transaction was with a view to defeat the object of the Act or not. In the case before us considering the record of the Special Civil Application and considering the submissions made by the learned Assistant Government Pleader, the following facts are not disputed:

(i) That the original petitioner was holding the land in excess of prescribed limit, i.e. total 60 acres of land whereas the prescribed ceiling limit for such holding was 51 acres only.

(ii) As per the scheme of the Act holding of the original petitioner and his wife are to be treated as one unit for the purpose of computing the ceiling limit.

(iii) The original petitioner has sold total area of 24 acres and 35 gunthas of land and which were situated in different survey numbers against the total consideration of Rs. 32,510/-, and on account of such sale in question the holding of the petitioner has been reduced by 24 acres and 35 gunthas.

(iv) The original petitioner has purchased the land admeasuring 25 acres and 24 gunthas in the year 1973, i.e. during the period prior to the Act came into force and of course it is not coming on the record but Mr. Raval has made a statement that the said land admeasuring 25 acres 24 gunthas which is purchased by the original petitioner in the name of his wife is against the consideration of Rs. 32,600/- and said aspect is reflected in the Revenue Entry No. 1450, dated 23.12.1973.

(v) On account of the purchase of land admeasuring 25 acres and 24 gunthas when the Act came into force the holding of the petitioner has increased by roughly more than 1 acre, than which he was holding prior to sale of land in question. When the Act came into force the total holding of the petitioner has increased and there is no reduction in the holding so far as the ceiling limit is concerned because the holding by his wife is to be included while considering one unit provided for considering the prescribed limit.

6. In view of the above facts, we have to examine whether the authority concerned is justified in holding that the burden is not discharged and that the transaction was not bonafide.

7. In the case of Brijendra Singh Vs. State of Uttar Pradesh and Others, the Honourable Supreme Court had occasion to consider as to which transaction can be said to be bonafide or in good faith. At paras 17 and 18 of the judgment the Apex Court has observed that "a transfer solely for the purpose of converting surplus land into cash without any kind of need (not to be confused with legal necessity) may also lack good faith". It is also observed that "if the transfer is with a view to divest himself of, all interests and rights in present in the transferred land but reserves some benefit in future for himself or other members of his family, then also the transfer will be not in a ''good faith''". It is worthwhile to note that the Apex Court made the aforesaid observations while considering the relevant provisions of U.P. Imposition of Ceiling on Land Holdings

Act. Whether the transaction was bonafide or not is required to be tested for the purpose of deciding that the transaction is not with a view to defeat the object and purpose of the Act.

8. It may be stated that the aforesaid decision of the Apex Court has been followed by the learned single judge of this Court (A.N. Divecha, as his Lordship then was) in the case of B.N. Khachar v. Deputy Collector, Rajkot reported in 1994(1) GLH 28 and it is further observed that "in Order to ascertain the bonafides and genuineness of a transaction any possibility of its being tainted with collusive or fraudulent arrangement or device or subterfuge or manipulation or maneuvering or camouflage has to be ruled out. Once the transaction is shown to be bonafide or genuine free from any of the aforesaid infirmities, it has to be accepted as not made with a view to defeating the object of the Act."

9. In the case of Parikh Kalabhai Badabhai v. State of Gujarat reported in 1995(1) GLR the learned single judge of this court (A.N. Divecha, J as his lordship then was) has taken the view that "on the material on record if the finding of the authority is perverse on the face of the record and if the conclusion arrived at by the authority is such which no prudent authority would draw such conclusion, then in that case it will be a fit case to exercise the power of this court under Articles 226 and 227 of the Constitution."

10. Keeping in mind the aforesaid analogy, if we examine the facts of the present case, it becomes clear that the petitioner has sold the land, but out of the sale consideration, same quantum of amount is used for purchasing the higher area of land and therefore on account of sale of land total holding is not reduced, but on the contrary, it is increased. Further more, land will be available for declaring as surplus. This itself is a ground to hold that the transactions are not entered into with a view to defeat the object of the Act. Though, such material was already on the record, the lower authorities have misdirected themselves and have held that the burden is not discharged for proving that the transaction is not with a view to defeat the object of the Act.

11. Considering the facts and circumstances of the case and, more particularly, in view of the aforesaid admitted position on the record, we find that the transactions were bonafide and genuine and certainly were not with a view to defeat the object of the Act. The conclusions therefore arrived at by the first authority as well as by the tribunal can not be sustained in law. The learned single judge has also committed error in not taking into consideration the aforesaid aspects of the case.

12. In the result, the Order of the lower authorities and of the learned single judge are quashed and set aside and the appeal is allowed by directing the Assistant Collector, Dhangadhra for reconsidering the matter in view of the aforesaid observations made by this court and to issue certificate in accordance with law. Appeal is accordingly allowed. There shall be no Order as to costs.

