

(1999) 10 GUJ CK 0089

In the Gujarat High Court

Case No : Special Civil Application No. 7286 of 1998

Bhikhabhai Maganbhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-10-1999

Acts Referred:

Bombay Tenancy and Agricultural Lands (B.R.T. Procedure) Rules, 1958 — Rule 34(A)

Citation : (1999) 10 GUJ CK 0089

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : A.J. Patel, for the Appellant; Umesh Trivedi, Id. AGP, for the Respondent

Judgement

M.R. Calla, J.—The petitioners claiming to be owners of the land bearing Survey No. 1626 admeasuring 63.03 sq. mtrs. at Mehsana, moved an application before the Collector, Mehsana in the year 1990 for the purpose of converting the said land from new tenure to old tenure land under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, which will be hereinafter referred to as "the Tenancy Act". The Mamlatdar and Agricultural Lands Tribunal at Mehsana required the petitioners to be present before him on 22nd July 1991 in the matter of inquiry required to be held by him to enable him to submit a report to the Collector for fixing the amount of premium in respect of the land in dispute. On the basis of the report made by the Mamlatdar and Agricultural Lands Tribunal, Mehsana, after holding the inquiry, the Collector, Mehsana, made an order on 13th January 1992 fixing the amount of Rs. 1,67,506.50 as the amount of premium (Nazrana) in respect of the land in question. The petitioners then made an application to the Collector, Mehsana pointing out to him that since a portion of the land is vacant for the purpose of widening Ahmedabad-Delhi Highway, the total area of the land of the petitioners stood reduced from 1 acre 22 gunthas to 5342 sq.mtRs. and therefore, the amount of premium fixed earlier by the Collector, Mehsana would stand reduced proportionately to that of Rs. 1,39,018/- only. The amount of premium was, therefore, required to be fixed

afresh. It is the further say of the petitioners that in view of this application, the Collector, Mehsana made an order dated 4.2.1992 directing the petitioners to deposit the amount of Rs. 1,39,018/- being the amount of premium (Nazrana) in respect of the land of the petitioners. The petitioners deposited amount of premium in the Government Treasury on 21.2.1992 by a challan and a true copy of this challan has been placed on record as Annexure. E. The petitioners" say is that on depositing the said amount, the title of the petitioners" land became clear and the land stood converted from new tenure to old tenure. After a lapse of about four years and one month, the Prant Officer, re-opened the chapter which was closed long back by issuing the notice dated 4th March 1996 calling upon the petitioners to remain present before him on 11th March 1996. This notice dated 11th March 1996 was followed by notices dated 25th March 1996 and 5th December 1996. The statement of the petitioner No. 1 was recorded by the Prant Officer, Mehsana on 9th December 1996 in the proceedings before him. Thereafter, nothing was heard either from the Prant Officer or the Collector with regard to these proceedings till 10th February 1997. The Collector, Mehsana, made an order dated 10th February 1997 cancelling the earlier order dated 21.2.1992 whereby the amount of premium of the land of the petitioners was fixed by the Collector and a copy of this order has been placed on record as Annexure. K. In this order, it has been observed that the petitioners were not ready and willing to pay the premium which may be fixed by the Collector on the basis of the present market value of the land. Aggrieved from this order dated 10th February 1997 passed by the Collector, Mehsana, the petitioners preferred Revision Application No. 55 of 1997 before the Secretary (Appeals), Revenue Department, Govt. of Gujarat, and the Secretary, by his communication dated 27th June 1997 returned the revision application to the petitioners for presentation before the proper forum on the ground that he had no jurisdiction to entertain such revision application and that the Gujarat Revenue Tribunal was the forum competent to entertain such revision application. A copy of this communication dated 27th June 1997 has been placed on record as Annexure. L with the petition. Thereafter, the petitioners filed Revision Application No. TEN/ B.A./341 of 1997 before the Gujarat Revenue Tribunal. The Tribunal by its order dated 5.1.1998 partly allowed the said revision application, set aside the order of the Collector, Mehsana, and has remanded the matter to the Collector, Mehsana for fresh decision in the light of the observations made in the order of the Tribunal. A copy of the judgment of the Tribunal has been annexed as Annexure. M with the petition. It was then stated by the petitioners that after the revision application was decided by the Tribunal, while the petitioners were waiting for the pronouncement of the judgment, they were not informed about the date fixed for pronouncement of the judgment and the petitioners did not know about the order passed by the Gujarat Revenue Tribunal till they received the intimation of the order dated 24th August 1998 passed by the Collector, Mehsana directing the petitioners to deposit an amount of Rs. 20,14,167/- by way of premium for the land of the petitioners. A copy of this order passed by the Collector, Mehsana dated 24th August 1998 has been placed on record as Annexure. N. The

enquiries made by the petitioners revealed that this order dated 24th August 1998 was passed on the basis of the Tribunal's order dated 5.1.1998. They applied for the certified copy of the judgment delivered by the Gujarat Revenue Tribunal which was made available to them on 1.9.1998. A grievance has been raised that though the Tribunal had pronounced the judgment and order on 5.1.1998, the same was not communicated to the petitioners as required under Rule 34(A) of the Bombay Tenancy and Agricultural Lands (B.R.T. Procedure) Rules, 1958. These averments in the body of the petition appear to have been made to explain the delay in filing this petition which was in fact filed in this Court on 4th September 1998, challenging the Gujarat Revenue Tribunal's order dated 5.1.1998.

2. The Rule was issued on 5th September 1998. On behalf of the respondent No. 2, i.e. Collector, Mehsana, an affidavit-in-reply has been filed. It has been stated that the petitioners' application of September 1990 was received on 24th October 1990 with respect to Survey No. 1626 admeasuring 1 acre 22 gunthas for the purpose of conversion of the said land from new tenure to old tenure for residential purpose. Entry No. 11563 dated 18th October 1980 with regard to the partition was effected when their father was living. The Mamlatdar and the Agricultural Lands Tribunal had called upon the petitioners on 17th July 1991 to inquire as to whether the said partition amounts to breach of condition and/or whether prior permission in that respect was obtained or not. It has also been stated that by an intimation dated 13th January 1992, an amount of Rs. 1,67,506.50 as the amount of premium in respect of the land in question was required to be deposited and it has also been stated that on an application being made by the petitioners to reduce the amount of premium as some portion of the land in question was acquired, the petitioners were also intimated by the office of the Collector vide order dated 4th February 1992 to deposit the amount of Rs. 1,39,018/and the same was deposited by the petitioners by way of challan of State Bank of India, Mehsana on 21.2.1992. In para 7 of this affidavit-in-reply, it has been stated that at the time when the amount was deposited on 21.2.1992, the rate per sq.mtr. was Rs. 38/as per the opinion of the Deputy Town Planner while the rate per sq.mtr. at the adjacent Survey No. 1667 was calculated at Rs. 125/- by the Deputy Town Planner and thus, the valuation pointed out by the Deputy Town Planner for Survey No. 1629 in comparison to the adjacent Survey No. 1667 was very low and hence an explanation regarding such large difference between the two adjacent Survey numbers was sought for from the Deputy Town Planner and the petitioners were also given an opportunity to be heard in the context of valuation vide letter dated 1.9.1992 and 15th September 1992. Thereafter, the Advocate of the petitioners filed the written reply and thus the question of conversion was kept pending and the Prant Officer was instructed to send his proposal after making inquiry so as to know about the readiness of the petitioners for depositing the premium according to the possible increased valuation as well as whether there is any construction over the land in question and the fact that such instruction was given to the Prant Officer was found to be

correct. The Prant Officer, afforded an opportunity to the petitioners by way of personal hearing on 4th March 1996, 11th March 1996, 21st March 1996, 18th April 1996 and 5th December 1996, but the petitioners did not come forward till 9th December 1996 and on 9th December 1996, the petitioners did not agree to pay the amount of difference of the premium and, therefore, the delay was on account of the indifference shown by the petitioners. It has been further stated in para 9 of this affidavit-in-reply that as per the statement of the petitioners dated 9th December 1996 made before the Prant Officer, the petitioners did not agree and were not willing to pay the premium on the basis of the present market value and, therefore, after scrutinising all the aspects, the order dated 10th February 1997 rejecting the application of the petitioners was passed. The revision application u/s 211 of the Bombay Land Revenue Code before the Secretary, Revenue Department was rightly not entertained as per the order dated 27th June 1997 passed by the Secretary (Appeals), directing the petitioners to approach the Gujarat Revenue Tribunal and the injunction order dated 24th April 1997 was rightly vacated. When the petitioners approached the Gujarat Revenue Tribunal through Revision Application No. TEN/B.A./341 of 1997, it was partly allowed on 5.1.1998 whereby the matter was remanded for deciding the case again after verifying all the factors effecting valuation of the land in question including the situation of the said land and the nearby lands and the data regarding past sale deeds of the nearby lands in accordance with law and standing instructions of the Government. In para 12 of this affidavit-in-reply, it has been stated that as per the Gujarat Revenue Tribunal's remand order, the valuation was to be decided by the Valuation Committee comprising of the Collector, DDO and the Senior Town Planner on the basis of the Government Resolution dated 15th January 1998 of the Revenue Department of the State of Gujarat. The Valuation Committee met on 11th August 1998 and after scrutinising all the aspects with respect to the valuation in respect of the land in question situated at Mehsana-Palanpur Highway on eastern side of which there is Ahmedabad-Abu Railway line, surrounded by agricultural lands while the lands in question is on the same highway which is near to Mehsana city and, therefore, the rate per sq.mtr. was fixed at Rs. 550/- and the petitioners were intimated on 24th August 1998 to pay a sum of Rs. 20,14,167/- as the amount of premium. 22nd Oct.1999

3. In the opinion of this Court the rate of Rs. 38/per sq.mtr. was certainly on lower side as compared to the rate of Rs. 125/- per sq.mtr. in respect of adjacent lands in 1992, but this Special Civil Application deserves to be partly allowed and the impugned order as has been passed also deserves to be quashed and set aside on the sole ground that after the decision of the Gujarat Revenue Tribunal on 5th January 1998 while taking up the exercise of valuation, the respondents have placed reliance on a Government Resolution dated 15th January 1998 as has been issued by the Revenue Department, Govt. of Gujarat, as per the pleadings contained in para 12 of the affidavit-in-reply dated 26th February 1999, the Valuation Committee has met after the Revenue Tribunal's order and

has taken up its exercise of valuation with reference to the Government Resolution dated 15th January 1998. Of course, either of the parties have not produced the copy of this Resolution dated 15th January 1998 while it was the duty of the respondents at least to place the same on record as they have placed reliance on it. In any case, if at all the Collector had felt subsequent to depositing the amount by the petitioners on 21st February 1992 through challan of the State Bank of India, Mehsana, that the valuation was on much lower side and the exercise of the valuation was taken up again, it should have been taken up so as to correspond to the position as in the year 1992 when the order with regard to the conversion of the land was passed. In the facts of this case, it is absolutely clear and admitted position that on the application of the petitioners dated 24th Oct.1990, the land was valued at Rs. 1,67,506.50 on 30th January 1992 and since some portion of the land had been acquired, it was further reduced to Rs. 1,39,018/- and that is the amount which has been deposited. This order was not challenged, but if it is found that the respondents had re-opened this matter on the ground that the valuation at the rate of Rs. 38/per sq.mtr. was on much lower side in comparison of Rs. 125/with the adjacent Survey No. 1667, the valuation has to be made as per the rates which were prevalent in the year 1992 and also keeping in view that the adjacent lands were found to carry the rate of Rs. 125/- per sq.mtr. i.e. at the relevant point of time when the land was converted and merely because after requiring the petitioner to deposit the amount as had been valued, the matter was kept open and now it is sought to be finally decided in 1998 after the order of the Tribunal does not mean that the respondents can apply their estimates of the valuation of the land as per the market rates obtaining now nor the respondents could make use of the Government Resolution dated 15th January 1998 as has been mentioned para 12 of the affidavit-in-reply. The respondents committed an error in placing reliance on Government Resolution dated 15th January 1998 issued by the Revenue Department before the Valuation Committee so as to fix the price at Rs. 550/- per sq.mtr. instead of a rate in proximity with Rs. 125/- per sq.mtr. from that of Rs. 38/- per sq.mtr. as was valued on much lower side in the year 1992 as if the Government Resolution dt.15th Jan.1998 was retrospectively applicable from 1992.

4. For the reasons as aforesaid, this Special Civil Application is partly allowed. The impugned order dated 24th August 1998 at Annexure.N passed by the Collector, Mehsana is hereby quashed and set aside and the respondents are directed to consider the question of valuation again as per the market rate which was prevailing in February 1992 with regard to the adjacent land and any other relevant factors as may have been obtaining in 1992. Rule is made absolute to the extent above. No order as to costs.