
(2005) 03 GUJ CK 0095

In the Gujarat High Court

Case No : Special Civil Application No. 8381 of 1992

Bhikhubhai K. Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-03-2005

Acts Referred:

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 37

Citation : (2005) 03 GUJ CK 0095

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : M.A. Kharadi, for the Appellant; Patel Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The short facts of the case are that the petitioner was holding various lands. The Mamlatdar and ALT considered the matter under the Gujarat Agriculture Lands Ceiling Act, 1960 (hereinafter referred to as the "Act") and found that the number of members in the family are three and, therefore, the petitioner is entitled to one unit. So far as mother and daughter are concerned, no separate additional units were given and in the family husband, wife, minor two sons were only considered. It was found by the Mamlatdar and ALT that the actual land held by the petitioner is admeasuring 20 acres and 33 gunthas and after conversion appropriately it would be 29 acres and 27 gunthas and 08 va, whereas the ceiling limit provided is 30 acres and as there is no surplus land held by the petitioner, the notice was withdrawn and the proceedings were dropped as per the order dated 11.7.1986. It appears that the Dy. Collector (Land Reforms) took up the matter in revision u/s 37 of the Act and concurred with the view taken by the Mamlatdar and ALT on permissibility of one unit, however, on the point of calculation and conversion of the land, it was found by the Dy. Collector that the land admeasuring 9.24 gunthas bearing Block No.661 is in the command area, showing the cultivation of sugar cane and the land is in command area on 1.4.1976 and there is irrigation facility provided for the land in question. It was

also considered by the Dy. Collector that another land admeasuring 19.73 gunthas bearing Block No.663 is also in the command area and there is cultivation of sugar cane. The Dy. Collector, therefore, accordingly made the conversion of the land held by the petitioner as admeasuring 46 acres and 05 gunthas, out of which as the retainable land was 30 acres and, therefore, he declared that the land admeasuring 16 acres and 19 gunthas deserves to be declared as surplus land, but as the option was to be given to the petitioner before declaring the land as surplus land, for surrendering, the matter was remanded to the Mamlatdar only for that purpose as per the order dated 8th October, 1987 passed by the Dy. Collector. It appears that the petitioner carried the matter before the Revenue Tribunal by preferring revision application No.237/1988. The said revision came to be considered by the Tribunal and it was found by the Tribunal that one-fifth of the additional land would be more retainable in view of the number of members of the family are exceeding five namely; mother and daughter and to that extent, the Tribunal held in favour of the petitioner by allowing the petition to hold the additional land of 6 acres, totaling 36 acres. However, so far as the conversion made by the Dy. Collector on the basis of the irrigation facility of perennially irrigated land and seasonally irrigated land, the Tribunal found that the calculation is correct and no interference is required to that extent and, therefore, the Tribunal partly allowed the revision as per order dated 10.4.1992. It appears that the petitioner preferred review application being No.6/92 before the Tribunal contending that the reliance placed by the Dy. Collector and the Tribunal on the basis of canal certificate is not correct and it was submitted that the land was in the command area without irrigation as water did not reach upto the land and, therefore, there was no irrigation and assured water supply and, therefore, the said land of Block No.661 and others could not be considered as perennially irrigated land. The Tribunal considered the Review Application and found that the said aspect is already dealt with in the earlier order and, therefore, the review application was dismissed. It is under these circumstances, the petitioner has approached this Court by preferring this petition.

2. Heard Mr. Karadi, learned Counsel for the petitioner and Mr. Prachchhak, learned AGP appearing for the respondent authorities.

3. Mr. Karadi, learned Counsel appearing for the petitioner raised contention that the matter was required to be considered by the Dy. Collector even for conversion by treating the land as perennially irrigated land on the position prevailing on 4.4.1976, whereas as per the contention of the petitioner the land was irrigated for the first time in December, 1976 and, therefore, it was contended that the error is committed by the Dy. Collector while making the conversion of the land in question. Mr. Karadi, learned Counsel also submitted that such contention was raised before the Tribunal, more particularly in the Review Application, however, the said aspect is not considered. He submitted that if the land of Block No.661 is considered as nonperennially irrigated land, it would fall under the category of seasonally irrigated land and, therefore, there

will not be any surplus land as one-fifth (1/5) of the unit is already ordered as additional unit by the Tribunal and, therefore, he submitted that the order passed by the Dy. Collector as well as Tribunal are illegal and deserve to be quashed and set aside.

4. The perusal of the orders passed by both the Authorities shows that no such contention is raised on the ground that there was no irrigation facility as on 1.4.1976, even if the land was in a command area of canal. The perusal of the order passed by the Tribunal, more particularly at para 6, shows that there were two canal certificates at page No.98 and No.103 in the compilation before the Tribunal. The Dy. Collector appreciated both the certificates and placed reliance upon the certificate which provided for the irrigation facility to the land in question. The Tribunal considered the matter in revision and concurred, on the reappraisal of the documents on record of canal certificate, with the view taken by the Dy. Collector and it has been recorded that there is no reason to disassociate from the conversion as the Dy. Collector has relied upon the canal certificate. In absence of any such contention having been raised before the lower authority that there was no irrigation facility available on 1.4.1976, but was made available in December, 1976, the petitioner cannot be allowed to raise such contention for the first time in a petition under Article 227 of the Constitution, more particularly when it is a mixed question of law and fact. Further, upon appreciation of the evidence by both the authorities, out of the two certificates, one certificate of Canal Officer showing that the irrigation facility was provided to the land bearing Block No.661 is relied upon. The aforesaid is coupled with the aspects that as per the revenue record, there was cultivation of sugar cane over the land in question. Therefore, even if the contention of the petitioner is to be examined on the aspects that the canal certificate upon which the reliance is placed by the Dy. Collector ought not to have been considered and the another certificate should have been relied upon, the same results into reappraisal of evidence which normally would not be undertaken by this Court while exercising power under Article 227 of the Constitution of India.

5. Mr. Karadi, learned Advocate for the petitioner relied upon the decision of this court in the matter of Amratlal Bhikhabhai Patel Vs. State of Gujarat and Another, for contending that even the Canal Officer before issuance of certificate ought to have given opportunity of hearing to the petitioner and therefore he submitted that the certificate issued by the Canal Officer could not have been relied upon by the authority. The aforesaid contention of Mr. Karadi can not be accepted for the simple reason that no such contention was raised on such aspects by the petitioner before the tribunal or by the Dy. Collector. Had such contention been raised by the petitioner before the Dy. Collector, possibly the matter could have been considered. As the petitioner himself relied upon one of the certificates issued by the Canal Officer merely because upon reappraisal the finding of the authority is otherwise, the petitioner can not be allowed to raise such contention and therefore the reliance placed upon the aforesaid decision is of no help to the petitioner.

6. As per the settled legal position, unless it is demonstrated that the jurisdictional error is committed or serious error apparent at the face of record committed or finding is perverse to the record, this Court under Article 227 of the Constitution would not normally upset the order passed by the Authority when it is passed after appreciation and reappreciation of evidence on record. In any event, no jurisdictional error has been committed by the Dy. Collector or Tribunal while considering the matter.

7. In the above circumstances, the petition fails. Hence, the same is dismissed. Rule discharged. Considering the facts and circumstances, there shall be no order as to costs.

8. After pronouncement of the judgment Mr. Karadi, Learned Advocate for the petitioner requested for continuation of the interim relief so as to enable his client to approach higher forum. Considering the facts and circumstances of the case, the status-quo qua the land in question shall be maintained for a period of 8 weeks from today.