
(1994) 01 GUJ CK 0022
In the Gujarat High Court

Bhil Ragnathsinh Vajesinh (Since Decd.) through his heirs and Lrs. APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 10-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Gujarat Agricultural Lands Ceiling Act, 1960 — Section 18, 21, 6(2), 6(3C)

Citation : (1995) 1 GLR 61

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The order passed by the Mamlatdar and Agricultural Lands Tribunal (Ceiling) at Kheda (the first authority for convenience) on 23rd April, 1981 in Ceiling Case No. 11 of 1976 (Kapadwanj) as substantially affirmed in appeal by the order passed by the Deputy Collector at Nadiad (the appellate authority for convenience) on 29th July, 1981 in Ceiling Appeal No. 23 of 1981 as further affirmed in revision by the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad (the Tribunal for convenience) on 14th February, 1984 in Revision Application No. TEN. B.A. 1081 of 1982 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, the first authority came to the conclusion that the holding of the petitioners herein was 83 acres 32 gunthas and it was in excess of the ceiling area by 11 acres 32 gunthas and declared in all 13 acres 16 gunthas to be surplus vesting in the State Government free from all encumbrances in view of the relevant provisions contained in Section 18 of the Gujarat Agricultural Lands Ceiling Act, 1960 (the Act for brief)—The appellate authority, however, came to the conclusion that the holding of the petitioners was to the tune of 83 acres 13 gunthas and declared in all 11 acres 21 gunthas to be surplus vesting in the State Government free from all encumbrances.

2. The facts giving rise to this petition move in a narrow compass. Deceased petitioner No. 1 was found holding 41 acres 32 gunthas and petitioner No. 2 42

acres of agricultural lands in village Antisar, taluka Kapadwanj, district Kheda. The ceiling area fixed for that local area under the Act is 36 acres. Thereupon the first authority undertook the necessary inquiry u/s 21 thereof. It came to be registered as Ceiling Case No. 11 of 1976 (Kapadwanj). After recording evidence and hearing the parties, by his order passed on 23rd April, 1981 in the aforesaid proceedings, the first authority came to the conclusion that the holding of the petitioner was to the tune of 83 acres 32 gunthas, and since petitioner No. 2 was a major son in the family being entitled to a separate unit u/s 6(3-C) of the Act, the petitioners were entitled to hold 72 acres of land and declared the holding of the family to be in excess of the ceiling area by 11 acres 32 gunthas and declared in all 13 acres 16 gunthas to be surplus vesting in the State Government free from all encumbrances in view of the relevant provisions contained in Section 18 of the Act. Its copy is at Annexure-A to this petition. The aggrieved petitioners carried the matter in appeal before the appellate authority by means of their Ceiling Appeal No. 23 of 1981. By his order passed on 29th July, 1981 in the aforesaid appeal, the appellate authority partly accepted the appeal and came to the conclusion that the holding of the petitioners was to the tune of 83 acres 13 gunthas as against 83 acres 32 gunthas found by the first authority and declared in all 11 acres 21 gunthas to be surplus vesting in the State Government free from all encumbrances in view of the relevant provisions contained in Section 18 of the Act. Its copy is at Annexure-B to this petition. The aggrieved petitioners thereupon invoked the revisional jurisdiction of the Tribunal by means of their Revision Application No. TEN. B.A. 1081 of 1982. By its decision rendered on 14th February, 1984 in the aforesaid revisional application, the Tribunal rejected it. Its copy at Annexure-C to this petition. The aggrieved petitioners have thereupon moved this Court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the impugned order at Annexure-A to this petition as substantially affirmed in appeal by the impugned order at Annexure-B to this petition as affirmed in revision by the impugned decision at Annexure-C to this petition.

3. The grievance voiced by and on behalf of the petitioners is to the effect that no joint inquiry ought to have been held by the first authority with respect to separate holdings of the petitioners, more particularly when both the petitioners filled in separate forms with respect to their separate holdings. Besides, another grievance voiced by Shri Parikh for the petitioners is to the effect that petitioner No. 2 was not made a party to the proceedings before the first authority. As against this, Shri Thakkar for the contesting respondents has urged that these points were not urged before the lower authorities, and as such they were not rightly considered by the Deputy Collector and the Tribunal in the impugned order and the impugned decision at Annexures-B and C respectively to this petition. Shri Thakkar for the contesting respondents has further urged that even otherwise no prejudice is shown to have been caused by or on behalf of the petitioners against the joint inquiry. According to Shri Thakkar for the contesting respondents, petitioner No. 2 was in fact examined as a witness in the

proceeding before the first authority, and as such he cannot be heard to make any grievance that he was prejudiced on account of his being not made a party to the proceeding before the first authority. It has also been urged by Shri Thakkar for the contesting respondents that substantial justice has been done in the present case, and as such this Court need not exercise its discretionary powers even if some irregularity or even illegality is made by the lower authorities or any of them.

4. Shri Thakkar for the contesting respondents has stated before me that he has been in custody of the record of the case for resisting this petition. He has fairly shown the record to me. It transpires therefrom that both the petitioners filled in separate forms with respect to their separate holdings. It is not in dispute that petitioner No. 1 is the father and petitioner No. 2 his major son. The fact-situation emerging from the record also goes to show that the holding of both the petitioners is clubbed into a single holding as if belonging to petitioner No. 1.

5. In this connection, a reference deserves to be made to the relevant provisions contained in Sees. 6(2) and 6(3-C) of the Act. They read as under:

Section 6(2) Where an individual, who holds lands, is a member of a family, not being a joint family which consists of the individual and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters, irrespective of whether the family also includes any major son and land is also separately held by such individual's spouse or minor children, then the land held by the individual and the said members of the individual's family excluding major sons, if any, shall be grouped together for the purpose of this Act and the provisions of this Act shall apply to the total land so grouped together as if such land has been held by one person." (Emphasis Supplied) "Section 6(3-C) Where a family or a joint family irrespective of the number of members includes a major son, then each major son shall be deemed to be a separate person for the purposes of Sub-section (1).

The combined reading of the aforesaid two provisions would go to show that a separate holding of a major son cannot be clubbed with the holding of the family for the purposes of the Act. In that view of the matter, the first authority was clearly in error in clubbing the holding of petitioner No. 2 with the holding of petitioner No. 1 for the purposes of the Act. The first authority in that regard can be said to have travelled beyond his jurisdictional limits.

6. It transpires from the record that petitioner No. 2 was not made a party to the proceeding before the first authority culminating into his order at Annexure-A to this petition though his holding was separate from that of his father, that is, petitioner No. 1 herein. This was contrary to the principle of law enunciated by this Court in its binding Division Bench ruling in the case of Kashiben v. State of Gujarat reported in (1971) 21 GLR 540. Non-making of petitioner No. 2 as a party to the proceeding has obviously deprived him of a reasonable opportunity of hearing. That is certainly contrary to the right of hearing given to the party u/s

21 of the Act.

7. It cannot be gainsaid that the status of a party to the proceeding is different from that as a witness therein. A party has a right of hearing as well as right to be a witness in the proceeding. A witness has no right to be heard in the proceeding. Besides, a party can approach the higher forum in appeal or in revision if the proceeding is decided against him. A witness cannot carry the matter higher-up even if he is adversely affected by it without being a party thereof. In that view of the matter, I find no force or substance in the submission urged before me by Shri Thakkar for the contesting respondents to the effect that it would not be open to petitioner No. 2 to make any grievance against his not being made a party to the proceeding before the first authority when he was examined as a witness therein.

8. It transpires from the impugned decision of the Tribunal at Annexure-C to this petition that the grievance about the joint inquiry held against both the petitioners was not raised before the Tribunal in the memo of revision or before the appellate authority. Shri Parikh for the petitioners states at the Bar that a grievance was raised by and on behalf of the petitioners in the memo of appeal before the appellate authority. The appellate order at Annexure-B to this petition, however, shows, that such grievance was not raised in appeal at the time of its hearing. It is an admitted position on record that the petitioners were represented by an Advocate before the appellate authority. As rightly submitted by Shri Thakkar for the contesting respondents, it is, therefore, reasonable to presume that the Advocate for the petitioners might have given up that contention though might have taken in the memo of appeal.

9. Absence of such contention, however, should not come in the way of the petitioners for the simple reason that the petitioners could not present their case effectively in the joint inquiry. It transpires from the record that one parcel of land bearing Survey No. 1229 admeasuring 1 acre 31 gunthas was shown to be belonging to the petitioner No. 1 as well as his another son Bhavansing in the deposition of the Talati though in the revenue records it was shown to be belonging to the petitioner No. 1's son Bhavansing. In his evidence at page 107 on the record of the case, petitioner No. 1 clearly stated that the said parcel of land did not belong to him and it belonged to his son Bhavansing. Despite this position on record, the evidence of the Talati at page 455 on the record of the case was relied on for the purpose of including the parcel of land in the holding of petitioner No. 2. If the joint inquiry was not held against both the petitioners, the Talati might not have created such confusion in the proceeding before the first authority. It is true that petitioner No. 1 was a party in the proceeding before the first authority. It is, however, an admitted position on the record that, he was not represented by an Advocate. Besides, as transpiring from his signature on the Vakalatnama, he is literate enough only to put his signature and nothing more. He can safely be styled as illiterate except for the purpose of putting his signature. It is too much to expect from such illiterate person residing in some

rural area to know what is what in the matter before a Revenue Officer. In that view of the matter, the absence of such contention should not come in the way of the petitioners on account of lack of articulation on the part of petitioner No. 1.

10. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-A to this petition as substantially affirmed in appeal by the impugned order at Annexure-B to this petition as further affirmed in revision by the impugned decision at Annexure-C to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to the first authority for holding a fresh inquiry but separately against each petitioner according to law. It is obvious that the first authority will not be influenced by the judgment of mine with respect to any observation on the merits of the case.

11. In the result, the petition is accepted. The order passed by the Mamlatdar and Agricultural Lands Tribunal (Ceiling) at Kheda on 23rd April, 1981 in Ceiling Case No. 11 of 1976 (Kapadwanj) at Annexure-A to this petition as substantially affirmed in appeal by the appellate order passed by the Deputy Collector at Nadiad on 29th July, 1981 in Ceiling Appeal No. 23 of 1981 at Annexure-B to this petition as further affirmed in revision by the impugned decision rendered by the Gujarat Revenue Tribunal at Ahmedabad on 14th February, 1984 in Revision Application No. TEN. B.A. 1081 of 1982 at Annexure-C to this petition is quashed and set aside.

12. The matter is remanded to the Mamlatdar and Agricultural Lands Tribunal (Ceilings) at Kheda for holding separate inquiries against both the petitioners u/s 21 of the Act and to decide them according to law in the light of this judgment of mine uninfluenced by observations, if any, made therein with respect to the merits of the case. Since the matters are very old, he should decide the fresh proceedings as expeditiously as possible. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.