

(2011) 09 GUJ CK 0064
In the Gujarat High Court

Case No : Civil Application for Orders No. 1918 of 2011 in Special Civil
Application No. 14551 of 2005

Chandaben Thakorbhair Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 20, 21

Citation : (2011) 09 GUJ CK 0064

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : K.K. Trivedi, for the Appellant; Monali Bhatt, AGP, for the Respondent

Judgement

M.R. Shah, J.—Rule. Ms. Monali Bhatt, learned Assistant Government Pleader waives service of notice of Rule on behalf of the Respondents.

2. In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties, the present Civil Application is taken up for final hearing today.

3. The present application has been preferred by the applicants herein - original Petitioners to modify the order dated 03/02/2010 passed by this Court in Civil Application No. 13322 of 2009, by which, original Petitioners were permitted to dispose of/sell off the land bearing Revenue Survey No. 347 admeasuring 49 Acres and 4 Gunthas situated at Village: Kudsad, Taluka: Olpad, District: Surat treating as retainable land by the original land owners.

4. Facts leading to the present petition, in nutshell, are as under:

The applicants herein - original Petitioners were the owners of the agricultural land totalling to 150 acres and 19 gunthas (Jirayat land), the particulars of which are as under:

Survey Number

Area

195

10.12

66

2.08

338

39.02

347

49.04

159

2.05

778

48.28

Proceedings under the Gujarat Agricultural Lands Ceiling Act, 1960 was initiated and by order dated 18/08/1988, the Deputy Collector (Land Reforms), Surat passed an order declaring that the applicants - original land owners are entitled to retain only 48 acres and 28 gunthas of land and declared 101 acres and 31 gunthas (Jirayat land) as surplus land under the Gujarat Agricultural Lands Ceiling Act (hereinafter referred to as "the Act"). It appears that the applicants-original Petitioners preferred Revision Application before Gujarat Revenue Tribunal being Revision Application No. TEN/BS/330/88 challenging the order passed by Deputy Collector declaring the aforesaid land as surplus land under the provisions of the Gujarat Agricultural Lands Ceiling Act and Gujarat Revenue Tribunal by judgement and order dated 05/08/2002 has partly allowed the said Revision Application by holding that the applicants are entitled to hold 2 units + 1/5 unit as on 01/04/1976. Being aggrieved by and dissatisfied with the order passed by Gujarat Revenue Tribunal dated 05/08/2002 in Revision Application No. TEN/BS/330/88, the applicants-original Petitioners have preferred main petition being Special Civil Application No. 14551 of 2005 before this Court and the same has been admitted by this Court and by way of interim relief, the Respondents are directed to maintain status quo with respect to land in question. As the applicants herein - original Petitioners wanted to sell off the land bearing Revenue Survey No. 347 approximately admeasuring 49 Acres and 4 Gunthas situated at Village: Kudsad, Taluka: Olpad, District: Surat, the applicants preferred Civil Application No. 13322 of 2009 for permitting the applicants to sell off the land bearing Survey No. 347 admeasuring 49 Acres and 4 Gunthas submitting that even otherwise the applicants are entitled to retain 85 Acres and 8 Gunthas of total land and remaining 64 Acres and 29 Gunthas of land be

declared as Surplus land, even if the applicants loose in the main Special Civil Application. At the time of hearing of the aforesaid Civil Application, an undertaking was filed on behalf of the applicants, which reads as under:

2. Isay that the applicants are holding 150 acres and 19 gunthas of total converted dry crop lands. As per the impugned order dated 6-5-2003 passed by the Gujarat Revenue Tribunal, I was granted 2 units + 1/5 Units. As per the classification in the scheme of the Ceiling Act, 1 unit is admeasuring 39 acres. Therefore I am entitled to hold 85 acres and 8 gunthas of total land. Therefore if the aforesaid impugned order is confirmed, I will be able to retain 85 acres and 8 gunthas of total land and remaining 64 acres and 29 gunthas of land shall be declared surplus land. The table explaining the position is as below:

Acres/Gunthas

Total holding of lands of the Applicants

150.19

Less: Surplus land as per the Impugned order passed by GRT

64.39

Retainable land

85.8

Less: Land proposed to be sold of Survey No. 347

49.04

Land would still remain with the applicants

36.76

3. Therefore I undertake that the aforesaid calculation is correct and as per the scheme of the Ceiling Act and in the event of the impugned order passed by the Tribunal stands confirmed, I will be able to retain 36 Acres and 76 gunthas of land, even after disposing the land bearing survey No. 347 (49 acres.04 gunthas)

4. I further undertake and state that after the proposed disposal of the land bearing survey No. 347, it would mean that as if I have exercised the choice and the right as contemplated u/s 20 and 21 of the Gujarat Agricultural lands Ceiling Act, 1950, for selection of land.

5. At the time of hearing of the aforesaid Civil Application, it was submitted on behalf of the applicants that if the applicants are permitted to sell off land bearing Survey No. 347 admeasuring 49 Acres and 4 Gunthas of land to be treated as retainable land, it can be said that the applicants have exercised their choice option to retain the land as contemplated under Sections 20 and 21 of the Gujarat Agricultural Lands Ceiling Act and it was undertaken by the applicants that for rest of the land bearing Survey Nos. 195, 66, 338, 159 & 778, they will

maintain status quo and they will not sell off or alienate the aforesaid land in any manner whatsoever till final disposal of the main petition and in case, any land is returned to the State Government as Surplus land under the Gujarat Agricultural Ceiling Act, the land should be taken over from the aforesaid survey numbers of land. Considering the above, this Court allowed the said Civil Application and passed order especially in Para-8, as under:

8. In view of the above, the applicants can be permitted to sell off the land bearing Revenue Survey No. 347 admeasuring 49 acres and 4 gunthas, after following due procedure as required to be followed under the law and that land bearing Revenue Survey No. 347 admeasuring 49 Acres and 4 gunthas be treated as retainable land by the original land owners and the applicants have exercised the choice with respect to retainable land as available under Sections 20 and 21 of the Gujarat Agricultural Lands Ceiling Act and any surplus land on the final disposal of the main Special Civil Application, can be taken over by the State Government out of the aforesaid remaining land bearing Survey Nos. 195, 66, 338, 159 & 778 and the applicants shall not take any objection with respect to the same. Ad-interim relief granted by this Court vide order dated 22/02/2006 in Special Civil Application No. 14551 of 2005 is modified to the aforesaid extent. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

It is the case on behalf of the applicants that there was some miscommunication between the applicants and their advocates and through oversight, in the Undertaking there was a reference to Survey No. 338, however, the same was already disposed of earlier and, therefore, the present application has been preferred by the applicants for modification of the earlier order passed by this Court in aforesaid Civil Application by submitting that instead of land bearing Survey No. 338 situated at Village: Kudsad, Taluka: Olpad, District: Surat, the applicants have purchased the land bearing Block No. 520/B of Village: Desad, Taluka: Valia, District: Bharuch admeasuring 4900 sq.mtrs. (1 Acre and 8 Gunthas) N.A. land bearing registered sale deed No. 490 dated 25/07/2011 and land bearing Block No. 503 of Village: Desad, Taluka: Valia, District: Bharuch admeasuring 17900 sq.mtrs. (4 Acres and 16 Gunthas) N.A. land bearing registered sale deed No. 484 dated 22/07/2011 be considered.

6. Mr. K.K. Trivedi, learned advocate appearing on behalf of the applicants has submitted that till final disposal of the main Special Civil Application, they will not dispose of the land bearing Block No. 520/B of Village: Desad, Taluka: Valia, District: Bharuch admeasuring 4900 sq.mtrs. (1 Acre and 8 Gunthas) N.A. land and land bearing Block No. 503 of Village: Desad, Taluka: Valia, District: Bharuch admeasuring 17900 sq.mtrs. (4 Acres and 16 Gunthas) N.A. land also over and above the land bearing Survey Nos. 195, 66, 159 and 778 for which the order was already passed earlier. He has also stated at the bar that in case the applicants loose in the main Special Civil Application and they are required to return the land to the State Government under the Gujarat Agricultural Lands

Ceiling Act, the same be taken over from the land bearing Survey Nos. 195, 66, 159 and 778 of Village: Kudsad, Taluka: Olpad, District: Surat as well as land bearing Block No. 520/B and 503 of Village: Desad, Taluka: Valia, District: Bharuch, without any further order and without any further proceedings under the Gujarat Agricultural Land Ceiling Act. He has also stated at the bar that at that time, the applicants shall not take any plea that the land bearing Block Nos. 520/B and 503 N.A. Land of Village: Desad, Taluka: Valia, District: Bharuch, cannot be taken over by State Government under the provisions of the Gujarat Agricultural Land Ceiling Act. He has also stated under the instructions from the applicants that in such an eventuality, land bearing Block Nos. 520/B and 503 of Village: Desad, Taluka: Valia, District: Bharuch automatically be treated as surplus land under the provisions of the Gujarat Agricultural Land Ceiling Act. The applicants shall file fresh Undertaking to this effect before this Court at the earliest.

7. In view of the above and additional affidavit dated 05/09/2011 filed today, the order dated 03/02/2010 passed by this Court in Civil Application No. 13322 of 2009 is hereby modified to the extent that instead of land bearing Survey Nos. 195, 66, 338, 159 & 778 situated at Village: Kudsad, Taluka: Olpad, District: Surat, it should be read as Survey Nos. 195, 66, 159 & 778 situated at Village: Kudsad, Taluka: Olpad, District: Surat as well as land bearing Block No. 520/B admeasuring 4900 sq.mtrs. (1 Acre and 8 Gunthas) N.A. land and land bearing Block No. 503 admeasuring 17900 sq.mtrs. (4 Acres and 16 Gunthas) N.A. land of Village: Desad, Taluka: Valia, District: Bharuch and rest of the order be treated as it is. Therefore, it is ordered that in case the applicants loose in the main Special Civil Application and on final disposal of the main Special Civil Application any surplus land is to be taken over from the applicants -original land owners, the same shall be taken over by the State Government out of the aforesaid land bearing Survey Nos. 195, 66, 159 & 778 situated at Village: Kudsad, Taluka: Olpad, District: Surat as well as land bearing Block No. 520/B of admeasuring 4900 sq.mtrs. (1 Acre and 8 Gunthas) N.A. land and land bearing Block No. 503 admeasuring 17900 sq.mtrs. (4 Acres and 16 Gunthas) N.A. land of Village: Desad, Taluka: Valia, District: Bharuch and till final disposal of the main Special Civil Application, the applicants shall not deal with, transfer and/or alienate the aforesaid land bearing Survey Nos. 195, 66, 159 & 778 of Village: Kudsad, Taluka: Olpad, District: Surat as well as Block Nos. 520/B and 503 of Village: Desad, Taluka: Valia, District: Bharuch. A fresh Undertaking to the aforesaid effect shall be filed by the applicants within a period of two weeks from today. Rule is made absolute to the aforesaid extent. No costs.