

(2010) 10 GUJ CK 0118

In the Gujarat High Court

Case No : Special Civil Application No. 11761 of 1994

Chandrakant C. Shah

APPELLANT

Vs

Madanben Chunilal Shah and Others

RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 2(6), 6(2), 6(3C)

Citation : (2010) 10 GUJ CK 0118

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : R.N. Shah and S.N. Shelat, for the Appellant; Government Pleader for Respondents 4-5, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of present petition, the Petitioners have inter alia prayed for quashing and setting aside the judgment and order dated 28th February 1994 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN. B.S. 189/93 confirming the judgment and order dated 30th June 1993 passed by the Deputy Collector, Valsad, whereby he had confirmed the judgment and order dated 28th January 1993 passed by the Mamlatdar and ALT (Ceiling), Pardi in Ceiling Case No. 5/92/Remand.

2. It is the case of the Petitioners that the Mamlatdar and ALT (Ceiling), Pardi passed an order dated 28th January 1993 in Ceiling Case No. 5/92/Remand, declaring 22 Acres 17 Gunthas of land as surplus in the proceedings initiated under the provisions of The Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as "the Act"). The Petitioners preferred an appeal being Appeal No. 13 of 1993 against the same before the Deputy Collector, Valsad, which came to be dismissed vide order dated 30th June 1993. Hence, the Petitioners preferred Revision Application before the Gujarat Revenue Tribunal being Revision Application No. TEN.B.S.189/93, which ultimately came to be dismissed vide order dated 28th February 1994. Thereafter, in the year 1994

itself the original Petitioner Chunilal expired and, therefore, present petition through his heirs and legal representatives.

3. Mr. R.N. Shah, learned advocate for the Petitioners, has submitted that the opinion of the District Agriculture Officer ought not to have been relied upon in absence of notification and formation of opinion by the State Government; that computation of the land belonging to the wife of the deceased, received by her by way of "Stridhan" or in succession from her father, cannot be a subject matter of computation u/s 6(2) of the Act as it is inconsistent with the provisions of the Hindu law and that the deceased Chunilal was entitled to the benefit u/s 6(3C) even though the joint family was disrupted. In view aforesaid submissions, it is prayed that the impugned orders may be quashed and set aside.

4. The learned Assistant Government Pleader appearing on behalf of the Respondent-State has, relying upon the affidavit-in-reply filed on behalf of the Respondent-State, submitted that the impugned orders passed by the authorities below are just and proper. There is no illegality much less perversity in the findings recorded by the authorities below. Hence, it is prayed that the impugned orders may be upheld and the present petition may be dismissed.

5. Having considered the rival contentions advanced by the learned Counsel for the respective parties, averments made in the petition, contents of the impugned orders and the documentary evidence produced on record, it transpires that the contention of the Petitioner that while computing the ceiling areas in holding of agriculturists, if the lands are to be treated as rice growing lands under explanation-1(d) to Section 2(6) of the Act, and opinion of the State Government was not produced on record of the case, the State Government is required to form an opinion that the lands are fit for cultivation of paddy, is not true and correct without any proof produced before the Respondent-authorities. As per the impugned judgment and order of the Tribunal, the opinion of the District Agriculture Officer was obtained and as per the said opinion, the land in question has been found of superior Jarayat land. It is pertinent to note that the very submission was made by the Petitioners while preferring earlier Revision Application No. TEN.B.S.65 of 1989, which was decided on 11th August 1989, however, the findings of the said decision have remained unchallenged till date.

5.1 It also transpires from record that the sons of the original applicant were separated from the Petitioner much earlier in all respects, including residence and estate. Therefore, the sons of the original applicant ceased to be the members of a joint family of the original applicant and as such the sons of the Petitioner now cannot claim a separate unit as major sons of the family. It is also required to be noted that as per the provisions of Section 6(2) of the Act, it is clear that wife's holding is required to be clubbed with the holding of her husband.

6. In view of aforesaid, I am of the opinion that the view taken by authorities below is just and proper. The authorities below have assigned cogent and

convincing reasons for arriving at the conclusion. Over and above the reasons assigned hereinabove, I adopt the reasons assigned by the authorities below and do not find any illegality much less any perversity in the findings recorded by the authorities below. I am in complete agreement with the findings recorded by the authorities below. No case is made out to interfere with the findings recorded by the said authorities. Hence, present petition deserves to be dismissed.

7. For the foregoing reasons, present petition fails and is, accordingly, dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.