(2005) 02 GUJ CK 0057

In the Gujarat High Court

Case No : Special Civil Application No. 596 of 1991

Chandrakant D. Nimavat APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Saurashtra Ghadkhed Tenancy Settlement Agricultural Land Rules, 1949 — Rule 18
Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance Act, 1949 — Section 54

Citation : (2005) 02 GUJ CK 0057

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : A.R. Thacker, for the Appellant; H.D. Dave, Asst Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—By filing this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order passed by the District Collector, Jamnagar in Revision Application No.487 of 1989 which was confirmed by the Secretary, Revenue Department (Appeals), State of Gujarat in Revision Application No: SRD/1/1990. The petitioner is a resident of village Mota-Kalavad. At the relevant time, the petitioner was carrying on occupation of "Vaidhya" in the aforesaid village. The petitioner wanted to purchase the piece of agricultural land. He, accordingly, entered into an agreement to purchase the piece of land bearing Survey No.231/2 admeasuring Acres 8-04 Gunthas. Since the petitioner was not an agriculturist, he applied for permission to purchase the aforesaid agricultural land. The aforesaid application was made as per the provisions contained in Saurashtra Ghadkhed Tenancy Settlement Agricultural Land Ordinance, 1949 [hereinafter referred to as the "Act" for short]. As per the provisions contained in the said Act and Rules, if a person who is not an agriculturist, intending to purchase an agricultural land, he is required to make an appropriate application before the Revenue Authority and one of the requirements is that the income of that person should be less that Rs.5,000/- per annum. The Deputy Collector, by his order dated 16.12.1986, came to the conclusion that income of the petitioner is less than Rs.5,000/- per annum and accordingly, he granted permission as required under the aforesaid Act, and more particularly, as per Section 54 and Rule 18 of the aforesaid Act. Before passing the aforesaid order, the Deputy Collector has considered the report submitted by the Mamlatdar by way of spot inspection. The Deputy Collector found that the petitioner is having agricultural equipments and is having experience of agricultural activities. Accordingly, the petitioner was granted such permission for the purpose of purchase of the aforesaid agricultural land and on the basis of the said permission, a registered sale deed was executed in favour of the petitioner by the transferor, by which, the petitioner has purchased the said land and document of sale dated 22nd December, 1986 executed between the parties is annexed to the petition at Annexure-B in the compilation. On the basis of the said permission, the petitioner started agricultural activities and even in the revenue records produced on record of the petition, the name of the petitioner is shown as occupier and cultivator of the land in question and accordingly, the petitioner commenced the agricultural activities from the year 1986 onwards. The Collector, Jamnagar, thereafter, initiated suo motu proceedings for cancelling the aforesaid order of the Deputy Collector by issuing notice to the petitioner dated 18.8.1989 asking the petitioner to show cause as to why such order should not be cancelled by taking the same in suo motu revision proceedings. Subsequently, the Collector after hearing the petitioner came to the conclusion that considering the fact that the petitioner is in a profession of "Vaidhya (giving some domestic medicines to the patients), it can be easily inferred against the petitioner that his income must be more than Rs.5,000/per annum as he must be getting Rs.15-20 per day. The Collector found that there is no reliable evidence to show that the petitioner''s income is less than Rs.5,0000/- as no evidence is produced by the petitioner to substantiate his say that his income is less than Rs.5,000/- per annum. The Collector came to the conclusion that logically it is not possible to believe that the income of the petitioner is less than Rs.5,000/-. The Collector also found that as per the statement of the petitioner before the Circle Officer dated 24.10.1986, the petitioner is also doing agricultural activities from which also he must be earning and the petitioner has not produced any other evidence for such income. On the aforesaid reasoning, the Collector set aside the order of Deputy Collector while exercising the suo motu revisional powers. The Collector also found that even though permission was sought for on 7.12.1986 for the purpose of purchasing the aforesaid agricultural land, an agreement of sale had already taken place on 7.4.1986. In other words, it was inferred that the permission for purchase of the aforesaid land was sought for later on after purchasing the land in question. This was the additional ground which weighed with the Collector for interfering with the order passed by the Deputy Collector in the aforesaid suo motu revision proceedings. The aforesaid order of the Collector was also confirmed by the Secretary, Revenue Department (Appeals), State of Gujarat in revision application filed by the present petitioner. The Secretary, Revenue Department (Appeals) accordingly dismissed the said revision by order dated 20.11.1990 which is at Annexure-E to the petition. It is the aforesaid orders of Collector, Jamnagar and Secretary, Revenue Department (Appeals) respectively which are impugned in this petition at the instance of the present petitioner.

2. Mr. J.R. Nanavati, learned advocate appearing with Mr. A.R. Thakkar vehemently submitted that the Collector while exercising the suo motu revisional powers has allowed the said revision application merely on conjunctures. He has submitted that reasoning of the Collector is not sustainable as he decided the matter on his own personal thinking and on his personal views. He further submitted that even suo motu powers are exercised by the Collector after a considerable delay of more than two and a half years and in view of the settled legal position, such powers are required to be exercised within a reasonable period. It is also submitted by Mr. Nanavati that the Collector has committed an error of law and of jurisdiction by interfering with the finding of fact recorded by the Deputy Collector, which finding was recorded after considering the spot inspection carried out by the Mamlatdar. It is also further submitted that the Collector has decided the Revision Application merely on conjectures and surmises. It is also submitted that after getting the sale deed executed, the petitioner applied for permission and there is nothing in law to prevent the petitioner from entering into an agreement to sell first and thereafter to apply for permission before executing the sale deed.

3. Mr. H.D. Dave, learned AGP for the respondent authorities, on the other hand, submitted that the Collector was justified in drawing an inference that the petitioner''s income must have been more than Rs.5,000/as normally, a person who is doing profession of "Vaidhya" would be earning more than Rs.5,000/- per annum. He submitted that the Collector, was justified in drawing a logical inference. Mr. Dave also submitted that when it is found that the petitioner is also having other income from the other agricultural sources, it is but natural to infer that his income must be more than Rs.5,000/- per annum. He also submitted that if permission and / or certificate is wrongly granted by the Deputy Collector, the Collector can exercise such suo motu powers within a reasonable period. It is submitted by the learned AGP Mr. Dave that the Mamlatdar came to know about such transaction on 18.12.1987 during his accidental visit of the place.

4. I have heard both the learned advocates for the parties in detail. It is required to be noted that at the time of granting such permission to the petitioner, a report of the Mamlatdar was called for by the Deputy Collector, and the Mamlatdar submitted such report by visiting the place personally by way of spot inspection. It was found that the petitioner was also having experience in the agricultural activities and the said fact is mentioned by the Deputy Collector in his order which is at page.15. After considering the statements of some Panchas,

the Deputy Collector found that his income is less than Rs.5,000/- per annum. The Collector, while exercising the suo motu powers has set aside the order on the ground that a person doing profession of "Vaidhya" must be earning more than Rs.15-20 per day. This part of the reasoning of the Collector, in my view, is based merely on conjectures and surmises. When the order of the Deputy Collector is based on the report of the Mamlatdar as well as on the basis of the statements of some Panchas, the finding which can be said to be a finding of fact, should not have been upset by the Collector in revision proceedings. It was open to the Collector to remand the matter to the Deputy Collector for further inquiry as to verification of income of the petitioner. The revisional authority is not required to disturb the finding of fact by imparting personal views or personal knowledge. As stated above, it was open to the Collector to remand the matter for further inquiry. Instead, at the time of deciding the Revision Application, he set aside the order of the Deputy Collector and gave finding which is purely based on surmises and conjectures, and on that basis he cancelled the permission granted by the Deputy Collector. It is required to be noted that the Collector has also made an incidental observation in the order to the effect that the petitioner must have other income by way of agricultural activities. If the petitioner is having experience in agricultural activities, then naturally as an agriculturist, he can purchase agricultural land without taking prior permission from the revenue authorities. It is an admitted fact that before entering into the sale transaction, by getting the sale deed executed, the petitioner has already applied for such permission and the sale deed came to be executed after the order of the Deputy Collector. Under the aforesaid circumstances, the order of Collector is not sustainable in law. There is one additional factor for allowing this petition. There is a delay in exercising suo motu powers. It is not in dispute that suo motu revisional powers are exercised after a period of more than two and half years.

5. In the matter of Thakkar Shantilal Mohanlal v. State of Gujarat 2004 (1) G.L.H. 724, learned Single Judge has observed as under in paragraph-7 :-

"7. Even otherwise, there was no warrant for initiating such suo motu proceedings after the lapse of one year and four months from the date of the grant of the permission on the basis of which the petitioner purchased the land and had invested a considerable amount in sinking a well in it. The learned counsel, therefore, rightly relied upon the decision of the Supreme Court in the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, in which, in the context of the sale of land which took place in December, 1972 and a suo motu inquiry was started in September, 1973, it was held that the suo motu revisional powers were not exercised in reasonable time."

6. In the instant case, it is not disputed that such suo motu revisional powers are exercised after two years and eight months. In the mean while, the petitioner has invested considerable amount in improving the land in question. As per the averments made in the petition and even as per the revenue records produced at

page.21 of the petition, the petitioner availed loans from the State Bank of Saurashtra and Bank of India and has also invested considerable amount for sinking of a well in a land in question. The averments made in the petition are not controverted by even filing of any reply-affidavit. Under these circumstances, exercise of suo motu revisional powers after aforesaid period of two years and eight months, is also not at all justified. Mr. Dave, the learned AGP after taking instructions from Officer from the office of the Collector, Jamnagar who is present before this Court today, has also pointed out that even at present also, agricultural activities are being carried out by the petitioner. Under the circumstances, even otherwise, it would not just and proper for this Court to send the matter back to the revenue authorities for further inquiry in order to find out whether the inference drawn by the Collector about the income of the petitioner was justified. Even otherwise, the present petition is required to be allowed on the ground of delay in exercising suo moto revisional powers.

7. In view of the discussion aforesaid, the petition succeeds and the same is allowed accordingly. The impugned orders passed by the Collector, Jamnagar and the order passed by the Secretary, Revenue Department (Appeals) at Annexure-D and E are hereby quashed and set aside and consequently, the order passed by the Deputy Collector at Annexure-A is restored.

Rule is made absolute with no order as to costs.

