

(1997) 01 GUJ CK 0017
In the Gujarat High Court

Chhaganbhai B. Patel

APPELLANT

Vs

Sitaben J. Bhanabhai Rathod and Another

RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 73AA, 73AA
Constitution of India, 1950 — Article 226

Citation : (1998) 1 GLR 59

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

Bench : Single Bench

Judgement

S.K. Keshote, J.—Heard learned Counsel for the petitioner and perused the Special Civil Application. Challenge is made by the petitioner to the order of the Deputy Collector, dated 3-9-19X4 under which the sale of the land in dispute, made in favour of the petitioner by Jivabhai Bhanabhai was held to be in breach of the provisions of Section 73AA of the Bombay Land Revenue Code (hereinafter referred to as the Code) and same has been ordered to be cancelled and further order has been made for vesting of the land in dispute in the Government free from all encumbrances, and the order of the Secretary, Revenue Department dated 12th April, 1985 under which the aforesaid order of the Deputy Collector was confirmed in the revisional powers.

2. The Counsel for the petitioner contended that the provisions of Section 73AA of the Code were enacted from 1-2-1981 whereas the Banakhat was entered into between the parties on 8-12-1980 and the part-payment of consideration of the sale Rs. 4,000/- has been paid. It has next been contended that the application for grant of permission for the sale has been submitted on 8th December, 1980, but it is different matter that the Prant Officer has taken the long time in deciding the said application and passed the order on 13th February, 1981. The petitioner is not at fault and for the inaction, omission or slackness on part of Prant Officer, the petitioner should not have been penalised.

3. Shri Mukesh Patel, A.G.P. who is present in the Court was called upon to make

his submissions on behalf of the respondent-State, but he made a statement that no officer of the Government has given the papers of the case nor any instruction in the matter to appear.

4. I have given my thoughtful consideration to the submissions made by the learned Counsel for the petitioner and perused the Special Civil Application and the orders of the Deputy Collector and the Revenue Secretary. It is not in dispute that the sale deed was executed on 27th February, 1981, i.e., after 1st February, 1981. It is also not in dispute that the premission for sale of the land has been grated by the Prant Officer on 13th February, 1981, i.e., after coming into force of the provision of Section 73AA of the Code. It is true that the application has been made by the petitioner on 8-12-1980, but it is equally true that the sale deed has been executed after 1st February, 1981, i.e., on 27th February, 1981. The sale of the land of the Scheduled Tribe to a non-Scheduled Tribe was void ab-initio and ineffective under the provisions of Section 73AA of the Code. Merely because the officer was ignorant of the law as enacted on 1st February, 1981 and he made an order, it will not confer any benefit to the petitioner. The petitioner though may be a bona fide person, who had entered into deal of the sale of the land in dispute with the holder of the land, but the fact remains that the sale was void ab-initio and it cannot be allowed to be maintained on this ground. Moreover, the authority has taken due care of the fact that the petitioner was a person who acted bona fidely and this is the reason that no penalty has been imposed, otherwise as per the provisions of Section 73AA of the Code, the penalty for violation thereof could have been imposed three times of the Tykate consideration.

5. The agreement to sale is of no consequence as it does not create any right, title or interest in favour of the petitioner. The right, title and interest has been created only under the sale deed date 27th February, 1981 which was admittedly made after 1st February, 1981

6. Taking into consideration the totality of the facts of the case, I do not find any illegality or any error apparent on the lace of the orders of both the authorities, which call for interference of this Court sitting under An. 226 of the Constitution of India.

7. In the result, this Special Civil Application fails and the same is dismissed. Rune discharged. Interim relief passed by this Court stands cavated.