

(1999) 03 GUJ CK 0017
In the Gujarat High Court

Case No : Special Civil Application No. 6329 of 1986

Chimanbhai G.Patel

APPELLANT

Vs

D.Y. Collector

RESPONDENT

Date of Decision : 18-03-1999

Acts Referred:

Citation : (1999) 03 GUJ CK 0017

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Advocate : R.N. Shah, for the Appellant; K.C. Shah, AGP for Respondent No. 1 and B.J. Jadeja, for the Respondent

Judgement

1. The petitioners have challenged the orders at Annexure "A" and "B" to the petition, cancelling the entry No.979 from the record of rights. The order cancelling the entry No. 979, which is at Annexure "B" to the petition was passed by the Deputy Collector, Baroda and the same was confirmed in appeal by the State Government by the impugned order at Annexure "A" to the petition.

2. According to the petitioners, they had purchased 2 acres 20 gunthas of land from Survey No. 244/8 paiki by registered sale deed dtd 17.10.1981 from the respondent No.2 and entry No. 979 was made in respect thereof in the revenue records. That entry was certified by the Additional Mamlatdar, Baroda, by order dated 4.12.1981. After a lapse of about 2 years, the respondent No.1 Deputy Collector, Baroda, initiated suo-moto proceedings under sub-rule (6) of Rule 108 of the Gujarat Land Revenue Rules. The petitioners, in response to the show cause notice dated 24.10.1983 issued by the respondent No.1 for cancellation of the entry, took up a contention that the said authority was not empowered to exercise suo-moto revisional powers under Rule 108(6) of the Gujarat Land Revenue Rules. It was also pointed out that the petitioners were agriculturists and were cultivating the land in question personally and therefore, there was no question of breach of any tenancy law. The Deputy Collector, Baroda, though there was no dispute raised by the respondent No.2, passed the impugned order

dated 28.8.1985 at Annexure "B" to the petition, deleting the said entry No. 979 from the revenue record. That order came to be confirmed by the State Government.

3. The learned Counsel appearing for the petitioners" contended that the Deputy Collector was not empowered to exercise suo-moto revisional powers under sub-rule (6) of Rule 108 of the said Rules. Reliance was placed on a circular dated 22.7.1992, by which the Government itself had clarified this position. Reliance was also placed on the decision of the Supreme Court in *Sankalchand Jaychandbhai Patel Vs. Vithalbhai Jaychandbhai Patel*, reported in (1996) 6 Supreme Court Cases 433, in which it was held that mutation entries were made only to enable the State to collect revenues from the persons in possession and enjoyment of the property and the right, title and interest as to the property should be established dehors the entries. It was observed that the entries were only one of the modes of proof of the enjoyment of the property and such mutation entries do not create any title or interest therein. Reliance was also placed by the petitioners on the decision of this Court in *Desai Navinkant Kesarlal & ors. Vs. Prabhat Kabhai and ors.*, reported in 9 G.L.R 694, in which it was held that the Code does provide a complete machinery at the preparatory stage and also after the record of rights are prepared to seek mutations or to object to mutations and have the entry altered or transferred, and also that rule making authorities intend that the entries made in the record of rights for the purposes of the Code shall have finality at the particular stage. The remedy of the aggrieved party in no way is taken away, to have the right or status or character of the right as entered in the entry decided by a competent Court.

4. Rule 108(6) of the said Rules provides that the Commissioner may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 and sub-rules (1) to (5) of this rule for the purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings and in any case, if it shall appear to him that any proceedings so called for or any decision or order made in such proceedings should be modified, annulled or reversed, he shall pass such order thereon as he deems fit.

It will thus, be seen that there is no reference to Deputy Collector exercising any suo-moto powers under sub-rule (6) of Rule 108 of the Rules. This aspect appears to have come up before the Government for its clarification and the Government, by its resolution dated 22nd July, 1992, have clarified that a Deputy Collector or an Assistant Collector, cannot exercise suo-moto revisional powers under Rule 108(6) of the Rules. This resolution was based on the opinion of the Legal Department of the Government, which had opined that no officer inferior in rank to the officer named in Rule 108(6) could exercise suo-moto revisional powers under that provision. Thus, even on the Government's own stand as reflected in the said resolution dated 22.7.1992, the Deputy Collector, Baroda could not have made an order by exercising suo-moto revisional powers

under Rule 108(6) of the said Rules. The impugned order dated 28.8.1985 passed by the Deputy Collector is therefore, without jurisdiction and the order of the Government at Annexure "A" to the petition confirming that order would also fall to the ground. The impugned orders at Annexure "A" and "B" are therefore, set aside. Rule is made absolute accordingly with no order as to costs.