

(2013) 10 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 2472 of 1983

Dadubhai Najbhai Kachar

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0006

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : A.B. Munshi, for the Appellant; Rakesh R. Patel, AGP for the Respondent No. 1 and Purnanand and Co., Advocate for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—The petitioner, who happened to be the applicant in Revision Application No. TEN.B.A.915/81 in the Gujarat Revenue Tribunal, has approached this Court by way of this petition invoking Article 226 and 227 of the Constitution of India with following prayers.

(A) to allow this petition with costs after calling for the records and proceedings from the concerned authorities;

(B) to quash and set aside the order Annexure : A passed by the Mamlatdar and Agricultural Lands Tribunal, Chotila, Annexure; B passed by the Deputy Collector, Limbdi, and Annexure : C passed by the Gujarat Revenue Tribunal.

(C) to declare that the bid lands held by the petitioner could not have been taken into consideration by the ALT. Mamlatdar, for the purpose of finding out the surplus land in possession of the petitioner.

(D) in the alternative to direct the ALT. Mamlatdar, Ceiling, Chotila, to conduct the inquiry afresh and to pass appropriate orders after giving opportunity to the petitioner.

(E) to issue an interim injunction restraining the Mamlatdar and ALT. Ceiling Chotila, from enforcing and implementing the order dated 25th February, 1981, in Ceiling Case No. 78/76-77 and confirmed by the Deputy Collector, Limbdi, and the Gujarat Revenue Tribunal in Revision Application (Annexure : A, B and C);

(F) to pass such other and further orders as the nature and circumstances of the case may require;

Thus, what is essentially under challenge is the order passed by the Tribunal on 24th December, 1983 wherein the tribunal vide its order, dismissed the revision application for the reasons stated thereunder and confirmed the orders passed by the authorities in respect of the land in question. The facts leading to filing this petition as could be gathered from the memo of the petition and orders, deserve to be set-out as under in order to appreciate the real controversy and framing of challenge so as to invoke Articles 226 and 227 of Constitution of India.

2. The applicant through his mother filled-in Form No. 2 interalia contending that the land held by him comprised bid land, which was not cultivatable and excluding bid land, remaining holding would not attracting the ceiling limit. The concerned authority i.e. Mamlatdar & A.L.T. at the relevant time decided the matter, wherein grievances made qua not examining the applicant on oath and ultimately the order came to be passed on 25th February, 1981 declaring that the excess land was to the tune of 583 Acres and 14 Gunthas in village Rajapara. The said order was assailed into appeal being Ceiling Appeal No. 103 of 1981, which also came to be dismissed vide order dated 31st July, 1981 and by invoking Section - 38 of the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as "the Act" for the sake of convenience and brevity) the applicant filed Revision Application No. TEN.B.A.915/81, interalia containing the grounds for challenge viz. non-examining the applicant on oath and bid land being wrongfully including in the holding so as to reckon the ceiling limit of the land.

The Tribunal after elaborate discussion on this aspect, dismissed the said revision application vide order dated 24th December, 1982. Being aggrieved and dissatisfied with the order, the present petitioner preferred the present petition invoking Articles 226 and 227 of the Constitution of India as stated hereinabove.

3. Learned advocate for the petitioner has submitted that the Court has previously passed orders in the matters and therefore, this petition be also remanded by quashing the impugned orders. However, the learned advocate for the petitioner could not point-out any similarity in facts between the facts of those petitions wherein the orders are passed and the facts of this petition, as to how they are similar so as to persuade this Court to pass order on the same lines.

4. Learned advocate for the petitioner contended that the mother of the petitioner as well as grand mother of the petitioner were alive and yet their interest were not taken into consideration nor there was any notice issued by the authorities. The grounds of this nature have been infact taken in the memo of

the petition and they ought to have been therefore considered by the concerned authorities.

5. The Court specifically called upon the counsel for the petitioner as to indicate to which section of the Gujarat Agricultural Land Ceiling Act, 1960 would be invocable so as to succeed the petition. Learned counsel for the petitioner could not answer and pin-point in his specific submission. As per his submission, the interest of mother and grand mother could not have been overlooked, but he could not indicate as to under which provision the case of the petitioner would be said to have been covered the grounds, which is attempted to be made-out is clearly a ground not envisaged when the petition was cast, as the entire petition has constant thread running through-out is that of wrongful inclusion of bid land as that was the only ground available at the relevant time and when that ground has become nonest in view of the Supreme Court's judgments in case of Nagbhai Najbhai Khackar Vs. State of Gujarat, , and in case of State of Gujarat and Another Vs. Manoharsinhji Pradyumansinhji Jadeja, the attempt is made to indicate some grounds for ceiling the land in question.

6. Learned AGP also contended that, the bid land ground is not available in view of the judgment cited hereinabove and the facts of the case in these two petitions and two judgments i.e. Special Civil Application No. 1938 of 1984 and Special Civil Application No. 5113 of 1985 and allied matters, and the petition do not support the case of the petitioner in any manner, as in both these decisions, the Court has clearly observed that the order passed by the authority impugned in those petitions have been confirmed and only liberty is reserved to those petitioners to make-out appropriate ground, which may be available for seeking an additional unit on the basis of the facts pleaded and ground raised in the memo of the petition. In the instant case, such attempt is conspicuously lacking and therefore, this Court may not accept the submission of learned advocate for the petitioner that this petition is also required to be governed by the decision in these two judgments cited hereinabove.

7. This Court is of the considered view that this petition is required to be dismissed for the following reasons. (i) The petition though has been preferred under Articles 226 and 227 of the Constitution of India, looking to the cause title, the same cannot be treated as having filed under Article 226, as the Tribunal, whose order is under challenge is not made party, which would indicate that the petition under Article 226 of the Constitution of India cannot be entertained in light of the decision of full bench in case of (The) Bhagyodaya Co-operative Bank Limited Vs. Natvarlal K Patel and Another, . Therefore, now this petition is required to be treated as one filed only under Article 227 of the Constitution of India. Therefore, while examining the controversy and prayers and challenge, the Court needs to be mindful of the fact that Article 227 of the Constitution of India and its limited scope of challenge enuring under that article. Therefore, it is bounden duty cast upon the petitioner to make-out a case for inviting interference with the order impugned. The jurisdictional defect could not be

pointed-out anywhere by the counsel of the petitioner in the orders impugned, as it is stated hereinabove at the relevant point of time, number of petitions were required to be filed when the authorities had included bid land in the holding after the amendment in the Ceiling Act, but all these petitions are disposed of in light of the decision of the Apex Court in case of Nagbhai Najbhai Khackar Vs. State of Gujarat, . Therefore, whether bid land forming part of reckoning the holding is no more on point of res integra and therefore, this point need not deter the Court in passing the order of dismissal.

(ii) The ground raised at the bar in respect of additional unit by pleading presence of mother and grand mother is also of no avail to the petitioner, as much as the facts recorded in these two judgments give clear indication that in one matter the question was that of a miscalculation of the family and it had been brought on record that the family was consisting of more than 5 persons, as could be seen from the facts of the case as well as, provision of Section 6 of the Act. In the instant case, as could be seen from the orders impugned and the elaborate order of Tribunal, one can safely conclude that the person, who filled in form is mother on behalf of minor son and in absence of any specific pleadings qua units and entitlement under the law, there cannot be any adjudication therein. It is required to be noted that in the earlier matter also the Court while deciding the matter has left liberty to the applicants and petitioners thereunder to claim an additional unit only with appropriate application to be preferred within 30 days from the date of the order thereunder, but that was not to be treated as entitling the petitioner thereunder to retain the land. The land to be surrendered and thereafter only the claim was permitted to be raised, which in turn was to be adjudicated by the competent authority and only during the adjudication, the portion of additional unit claimed was not to be alienated by the State in favour of the third party.

(iii) In the present case, the Court is of the considered view that the question of family member and admissibility of unit by attracting Section either 6(b) or 6(c), would not be available as it was minor son's holding, which was being decided at the instance of mother and in absence of any pleadings, this Court is not justified in interfering with the orders impugned under Article 226 and 227 of the Constitution of India.

(iv) It is also required to be noted that at the relevant time, while admitting this matter, this Court passed the following order.

Rule to be heard with Special Civil application No. 1098/83. Ad interim relief in terms of para 9 (E).

The group along with Special Civil Application No. 1098/83 came to be disposed of by the Division Bench vide order dated 17th February, 2004. This matter is not decided therealong however, the Court perused the judgment of the group and it can be said that nothing contains in the judgment, which could be of any avail to the petitioner. The said judgment in case of Khachar Godadbhai Pithubhai and

Others Vs. The State of Gujarat .

In view of the aforesaid discussion, the petition being bereft of merits deserves rejection and is accordingly rejected. Rule discharged. Interim relief granted earlier, stands vacated.