

(2008) 03 GUJ CK 0034

In the Gujarat High Court

Case No : Special Civil Application No. 2159 of 2008

Dahiben Amaratbhai Patel

APPELLANT

Vs

Amar Arvindkumar Raval and Others

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 31, 31(1), 31(2), 7, 9
Bombay Prevention of Fragmentation and consolidation of Holdings, (Gujarat
Amendment) Act, 1978 — Section 9(2), 9(3)
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 70
Constitution of India, 1950 — Article 226

Citation : (2008) 03 GUJ CK 0034

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : PJ Vyas, for the Appellant; Ketty A. Mehta, for Respondents 1-2 and Pathik Acharya Assistant Government Pleader for Respondents 3-4, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—RULE. Mrs. Ketty A. Mehta, learned Counsel waives service of rule on behalf of the respondents Nos. 1 and 2 and Mr. Pathik Acharya, learned Assistant Government Pleader waives service of rule on behalf of the respondents Nos. 3 and 4. On the facts and in the circumstances of the case and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided today.

2. This petition, under Article 226 of the Constitution of India, has been filed with the following prayers.

(A) To issue a writ of certiorari or any other appropriate writ, order or directions, quashing and setting aside the order dated 13th December, 2007 in Revision Application No. SRD/CON/ST/ 7/2007 passed by the Principal Secretary [Appeals], Revenue Department, Government of Gujarat, at Ahmedabad and to

restore the order of the Deputy Collector, Choryasi Prant, Surat, dated 21st March, 2007 in Tukada Bhang Case No. 5 of 2005.

[B] to stay the implementation of the impugned order dated 13th December, 2007 in Revision Application No. SRD/CON/ST/7 of 2007 passed by the Principal Secretary [Appeals], pending hearing and final disposal of this petition.

[C] to order to maintain status-quo of the land Block No. 850 situated at village Bhatpor, Taluka Choryasi, by respondents Nos. 1 and 2, pending the hearing and final disposal of this petition.

[D] to allow this petition with costs; and

[E] to grant such other and further orders necessary in the interest of justice.

2. Briefly stated, the facts of the case as set out in the petition are that, Ramanbhai Ishwarbhai Patel, Jamnaben widow of Parmanand Ishwarbhai and Chanchalben widow of Chaturbhai Ishwarbhai, held agricultural land bearing Survey No. 154, comprising Block No. 850, admeasuring 1 Acre and 35 Gunthas, situated at Village Bhatpor, Taluka Choryasi, District Surat. The petitioner claims to be a tenant upon the land in question, carrying on agricultural activities thereupon. It is the case of the petitioner that Survey No. 154, Block No. 850 i.e. the land in question, has been shown as a "Fragment" in the concerned revenue records and there is no facility of irrigation on the said land in question. It is averred in the petition that the Consolidation Scheme under the Bombay Prevention Fragmentation and Consolidation of Holdings Act, 1947 [the "Act" for short] has come into effect from 19th May, 1980 and the Entry No. 2259 mentions the said Block as a "Fragment".

3. It is averred in the petition that the petitioner made an application to the Mamlatdar and ALT, u/s 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 which was registered as Tenancy Case No. 157 of 2001, to be declared as a tenant upon the land in question, which is still pending. During the pendency of the case, the landlords sold the said land comprising Survey No. 154, Block No. 850 admeasuring 75-88 sq.mtrs., to the respondents Nos. 1 and 2 herein, for a sale consideration of Rs. 2 lakh, vide registered Sale Deed dated 28th January, 2004. The mutation entry No. 1308 was entered into the revenue record in respect of the same. At the behest of the petitioner, proceedings were initiated before the Deputy Collector, Choryasi, to the effect that the transfer of land by way of sale to the respondents Nos. 1 and 2 was in violation of the provisions of Section 7 of the Act and, therefore, the sale should be held to be invalid. The appeal of the petitioner was accepted by the Deputy Collector vide order dated 21st March, 2007 and the sale of the land in question to the respondents Nos. 1 and 2 was held to be invalid. Against the order of Deputy Collector, dated 21st March, 2007, the respondents Nos. 1 and 2 filed a Revision Application before the State Government which has been allowed vide order dated 13th December, 2007. Being aggrieved by the order dated 13th December, 2007, of the State Government, the petitioner has approached this Court by filing the present

petition.

4. Mr. P.J. Vyas, learned Counsel for the petitioner has submitted that the impugned order dated 13th December, 2007 is a non-speaking order, inasmuch as the Special Secretary [Appeals] Revenue Department, has not given any reasons for the findings arrived at while allowing the Revision Application filed by the respondents Nos. 1 and 2. According to Mr. Vyas, the impugned order has been passed, placing reliance upon a Circular of the State Government dated 3rd May, 2003, which was not brought to the notice of the parties at the time of hearing and, therefore, the impugned order deserves to be quashed and set aside, as having been passed in violation of the principles of natural justice. According to Mr. Vyas, the petitioner is a tenant upon the land in question and the tenancy proceedings are still pending and, therefore, the impugned order could not have been passed till the final decision in the tenancy proceedings. It is further submitted by Mr. Vyas that the land in question is a fragment and the sale of the land to the respondents Nos. 1 and 2 is in violation of Section 7 of the Act and, therefore, the impugned order passed by the State Government dated 13th December, 2007, whereby it has been held that the sale of the land in question to the respondents Nos. 1 and 2 is not hit by the provisions of Section 9 of the Act, is wrong and contrary to the provisions of law. On the above premises, Mr. Vyas, has submitted that the petition be allowed and the impugned order dated 13th December, 2007 be quashed and set aside.

5. On the other hand, Mrs. Ketty A. Mehta, learned Counsel for the respondents Nos. 1 and 2, has submitted that even though at one point of time there was an entry in the revenue records regarding the land being a "Fragment", however, since the respondents Nos. 1 and 2 have purchased the entire holding of the land i.e. Block No. 850, the (Amended) provisions of Section 31(1) of the Act will not apply, but the provisions of Section 31(2) of the Act will be applicable, whereby it is not necessary to obtain the permission of the competent authority in cases where the entire holding of the land has been purchased and, therefore, the sale/transfer of the land in this case will not be hit by the provisions of Section 9 of the Act. Mrs. Ketty A. Mehta, learned Counsel for the respondents Nos. 1 and 2 has drawn attention to the decision of this Court rendered in the case of Mangalbhai Madhavdas Patel v. K.C. Sagar, Secy. [Appeals] Rev. Dept. and Ors. reported in 1997 (3)GCD 452 (Guj), whereby it has been held as under:

7. The revisional authority has not gone into the question whether the sale of land in dispute is protected u/s 31 of the Act as amended by the Gujarat Act, 9 of 1979.

8. Clause B of Sub-section 2 of Section 31 as amended provides that nothing in Sub-section 1 shall be deemed to have apply to the transfer of holding allowed under this Act, made after 19th February, 1969, but before the date of commencement of Bombay Prevention of Fragmentation and Consolidation of Holdings (Gujarat Amendment) Act, 1979 where such transfer was of an entire holding not involving any sub-division thereof and the transferred or his

successor-in-interest was occupying or was in possession of the holding so transferee immediately before the said date and had not been entitled for such holding before the said date in pursuance of the order of eviction passed by the Collector under Sub-section 3 of Section 9 and such transfer shall not be, and shall be deemed to have been void on the ground that it was contrary to the provisions of this Section.

9. So the matter has to be considered with reference to the aforesaid provision. The counsel for the petitioner contended that the transfer in the present case was of entire holding and not involving any sub-division.

6. Alternatively, it is submitted by the learned Counsel for the respondents Nos. 1 and 2 that the land in question is in the command area of the Irrigation Scheme known as Ukai-Kakrapar Canal, as is evident from the document at Annexure-C to the petition, and the respondents Nos. 1 and 2 are personally cultivating the same as it is irrigated land.

7. Mr. Pathik Acharya, learned Assistant Government Pleader, has supported the impugned order passed by the State Government and has submitted that the Circular dated 3rd May, 2003, is in consonance with the provisions of Section 31(2)(a)(b) of the Act and in the present case, the Circular will apply to the transfer of land in favour of the respondents Nos. 1 and 2 since the said respondents have purchased the entire Block No. 850 admeasuring 7588 sq.mtrs., from the original land owners and, therefore, there is no requirement of obtaining prior permission of the competent authority and the transfer is not invalid. It is urged by the learned Assistant Government Pleader that the writ petition may be dismissed.

8. I have heard Mr. P.J. Vyas, learned Counsel for the petitioner, Mrs. Ketty A. Mehta, learned Counsel for the respondents Nos. 1 and 2 and Mr. Pathik Acharya, learned Assistant Government Pleader for the State Government and have carefully considered the relevant provisions of law. It is evident from a perusal of the impugned order dated 13th December, 2007 that the respondents Nos. 1 and 2 have purchased the entire holding of the land in question comprising Block No. 850 admeasuring 7588 sq.mtrs. vide registered Sale Deed dated 28th January, 2004 from the original land owners. While allowing the Revision Application filed by the respondents Nos. 1 and 2, the Special Secretary [Appeals] has relied upon a Circular of the Revenue Department, State of Gujarat, dated 3rd May, 2003, which is in consonance with the provisions of Section 31(2)(a)(b) of the Act. Section 31 of the Act, reads as under:

Section 31 : Restrictions on alienation and sub-division of consolidated, holdings-
(1) Notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act, nor any part thereof, shall be -

(a) transferred, whether by way of sale (including sale in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue) or by way of gift, exchange, or lease or otherwise,

except in accordance with such conditions as may be prescribed;

(b) sub-divided (including sub-division by a decree or order of a Civil Court or any other competent authority) except with the permission in writing of the [xxx] [Collector]

(2) Nothing in Sub-section (1) -

(a) Shall apply to a transfer of a Holding allotted under this Act where the transfer is of the entire holding, not involving any sub-division thereof, or to a sub-division of a holding allotted under this Act where such sub-division is made to provide for the shares of Persons entitled thereto on the death of the owner, and does not create any Fragment; or

(b) shall be deemed over to have applied to a transfer of a holding allotted under this Act, made after the 19th February, 1969, but before the date of the commencement of the Bombay Prevention of Fragmentation and consolidation of Holdings, (Gujarat Amendment) Act, 1978 [hereinafter referred to as "the said date" where such transfer was of an entire holding not involving any sub-division thereof and the transferee or his successor-in-interest was occupying or was in possession of the holding so transferred immediately before the said date and had not been evicted from such holding before the said date in Pursuance of an order of eviction passed by the Collector under Sub-Section (3) of Section 9, and such transfer shall not be, and shall be deemed never to have been, void on the ground that it was contrary to the Provisions of this Section.

(3) Where in respect of any holding to which Clause (b) of Sub-section (2) applies an order for payment of Fine by the owner transferring such holding was made by the Collector under Sub-section (2) of Section 9, or an order for eviction was made under Sub-section (3) of Section 9 but such order was not given effect to, such order shall be deemed to have become ineffective on the said date and the Fine, if paid by the owner, shall be refunded to him. Any revision proceedings pending against any such order which becomes in effective under this sub-section shall abate.]

9. A perusal of Section 31(2)(a)(b) will make it clear that Section 31(2)(a)(b) is an exception to the restrictions on transfer of land contained in Section 31(1) of the Act. The provisions of Section 31(1) of the Act will not apply where the transfer of a holding allotted under the provisions of the Act is of the entire holding and does not involve any sub-division thereof. The provisions of Section 31(2) of the Act, squarely apply to the facts of the present case. The Circular dated 3rd May, 2003 is in consonance of the provisions of Section 31(2) of the Act and, therefore, the reliance placed upon it while passing the impugned order is, in my view, legal and proper.

10. It is evident from a reading of the impugned order as well as the contents of the registered Sale Deed dated 28th January, 2004, annexed as Annexure-B to the petition, that the respondents Nos. 1 and 2 have purchased the entire

holding of land comprising Block No. 850 without any sub-division. This fact is not disputed by Mr. P.J. Vyas, learned Counsel for the petitioner. In this view of the matter, since the provisions of Section 31(2)(a)(b) of the Act will squarely apply to the transfer of land in favour of the respondents Nos. 1 and 2, the said transfer has rightly been upheld by order dated 13th December, 2007 of the State Government. The principle of law enunciated in *Mangalbhai Madhavdas Patel v. K.C. Sagar, Secy. [Appeals] Rev. Dept. and Ors. (Supra)* in this regard is also applicable to the facts and circumstances of the present case.

11. Even otherwise, if the alternative argument advanced by the learned Counsel for the respondents Nos. 1 and 2 to the effect that the land in question is irrigated and the said respondents are personally cultivating the same is examined, it is seen that the very claim of the petitioner as a tenant who is cultivating the land in question lends support to the inference that the land is irrigated and cultivable. However, since the tenancy proceedings at the behest of the petitioner are pending before the Mamlatdar and ALT, this Court is not inclined to go into the issue touching the same.

12. In view of the reasons stated herein-above, I am of the considered opinion that the order dated 13th December, 2007 of the State Government is just and proper and in consonance with the relevant provisions of law mentioned herein-above. There is no reason for this Court to interfere with the same. The petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.