

(2011) 06 GUJ CK 0020
In the Gujarat High Court

Case No : Special Civil Application No. 5788 of 1999 with Special Civil Application No. 5792 of 1999 with Special Civil Application No. 6003 of 1999 with Special Civil Application No. 5789 of 1999 with Special Civil Application No. 6004 of 1999 with Special Civil A

Dahiben and Others	Vs	APPELLANT
State of Gujarat and 1		RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 135J
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114, 35, 74, 90
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20

Citation : (2011) 06 GUJ CK 0020

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : Y.N. Oza with Mr. Rajesh K. Savjani for Petitioners 1 - 9, for the Appellant; L.R. Pujari, AGP for Respondent(s) 1 - 2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice M.D. Shah

1. All these petitions involved determination of common questions of facts and law. They have been argued together by the learned counsel for the parties. Therefore, this Court proposes to dispose of all the petitions by this common judgment treating Special Civil Application No.5788 of 1999 as the lead case.
2. Before deciding the issues involved in the petitions, it may be relevant to notice the facts of Special Civil Application No.5788 of 1999 as emerging from the record.
3. The petitioner Nos.1 to 8 are claimed to be linear descendants of one common ancestor namely, Kala Pana, who, according to them, was owner of land bearing Survey No.204/2 of Village Ranip, Taluka and City Ahmedabad. Petitioner-Vijay

Bhikhaji claimed to be power of attorney holders of one Shri Prabhudas Karsandas Mistry. It may be mentioned that the petitioner Nos. 1 to 8 as power of attorney holder of Shri Prabhudas Karsandas Mistry moved an application on 10th February, 1999 to the City Deputy Collector, Gheekantha, Ahmedabad, making a grievance that the land in question was wrongly recorded as new tenure land in the note of Village Form 7x12 and, therefore, the said entry should be treated as old tenure land. Thus, this basically is a litigation being fought by power of attorney holders of the original owner.

4. The petitioners have stated in the petition that land in question is non-alienated land and has not been granted by the Government and, therefore, though there is no basis on which the entry indicating the land of new tenure could have been on record, yet in the revenue record, the land is shown to be of "new tenure land". The petitioners have averred that in the Prati Book, holder of the land was shown to be Kala Rana and to substantiate this, they have produced an entry dated 26th April, 1887 appearing on page 18 of the said book at Annexure-A of the petition. The case of the petitioners is that they were in financial difficulties and, therefore, they wanted to transfer the land and had obtained copy of 7/12 abstract from which the petitioners learnt that the land was designated as "new tenure land". According to the petitioners, they approached the City Deputy Collector by addressing a letter dated 10th February, 1999 and requested him to designate the land as "old tenure land" in 7/12 abstract. Copy of the said application is produced at Annexure-B to the petition. The grievance of the petitioners is that application submitted by the petitioners to treat the land as old tenure land came to be rejected by the City Deputy Collector, Ahmedabad, vide order dated 11-3-1999, copy of which is produced at Annexure-E to the petition. The petitioners' claim was that land in question was old tenure land which is received by them from their ancestors and concept of new tenure land having been introduced in the Bombay Land Revenue Code with effect from 1913, the entry could not have been treated as "new tenure land". The petitioners had mentioned that the land records do not show that alienation within the meaning of Sec.19 of the Code took place nor the land was granted by the Government and, therefore, the entry is an "old tenure land". The petitioners appeared to have relied upon certain decisions rendered by the learned Single Judges of this Court in para 8 of the petition in support of the claim made in the petitions. By filing the petitions under Article 226 of the Constitution, the petitioners have prayed to set aside the order dated 11-3-1999 passed by the City Deputy Collector rejecting the prayer to cancel the entry indicating that the land as "new tenure land" and have further prayed to declare the land in question as "old tenure land".

5. On service of notice, Mr. S.R.Bhavsar, Deputy Collector, Ahmedabad, filed reply controverting the averments made in the petitions. In the reply, it is mentioned that land of survey No.198 which is situated at Ranip, Taluka City, is a new tenure land. What is mentioned in the reply is that if the petitioners want to transfer the land, they will have to pay high premium to the State Government

because the prices of land have escalated. It is further averred that the present petitions are barred by delay and laches. It is further stated in the reply that from the year 1940-41, the land in question has been shown to be "new tenure land" in revenue record for which, no immediate steps to designate the land as old tenure land were taken by the petitioners and, therefore, the petitions should be dismissed on the ground of delay and laches. The reply further points out that the impugned order reserves an appeal under Sec.203 of the Bombay Land Revenue Code and thereafter revision under Rule 108(6A) is available and therefore, the petition should not be entertained. It is also mentioned in the reply that the prior to 1940, the land was shown as "new tenure land" in the Record of Rights but at no point of time, the petitioners had raised any objections for a period of over 50 years and, therefore also, the petition should be dismissed.

6. The records do not indicate that any rejoinder is filed by the petitioners to the reply affidavit of Mr. Bhavsar.

7. The records show that one Mr. Ashok B. Patel, City Deputy Collector has filed additional affidavit on 4- 2-2011 for placing certain documents on record to enable the Court to decide the question involved in the petitions. In the said reply, it is mentioned that copy of page 18 of prati book dated 26-4-1887 itself shows that the land in question is under Government management which means that at that point of time, land was Government land. It is stated in the additional affidavit that the copy of the Succession Register of the year 1936 produced at Annexure-B to the petition mentioned list of deceased occupiers of land which was of Government ownership and this fact is stated in Village Form 7x12 abstract. What are stated in the additional affidavit are the above mentioned facts which make it clear that the ownership of the land in question was and is of the Government and it was a granted land. It is stated in the additional affidavit that except bald assertion on oath that the land in question is an old tenure land, no evidence nor any documents is produced by the petitioners to substantiate the said claims and, therefore, after drawing adverse inference against them as provided in Sec.114 of Indian Evidence Act, the petitions should be dismissed. It is further mentioned in the additional affidavit that the assertion of the petitioners that the land is an "old tenure land" is not correct because condition under Sec.68 of the Code was inserted on occupants right in the year 1901 much prior to the year 1913. After verification of 7x12 form of Record of Rights, it is stated that on pages 60/61 of the records, it is unequivocally mentioned that the land is of "new tenure land" when Bapu Kala was shown to be the occupant of the land. A copy of the said form No.6 is produced at Annexure-I to the additional affidavit. It is further stated in the additional affidavit that in Village form No.7x12, it is clearly mentioned that land in question is "new tenure land" and to substantiate this, copy of 7x12 form is reproduced at Annexure-II to the said affidavit. Plain reading of Government circular dated 21-9-1955, it is mentioned in the additional affidavit that in the note in village form No.7x12, the land is held on new tenure is good evidence to

show that the land is not old tenure land. What is averred in additional affidavit is that in light of Government Circular dated 21-9-1955, new entry No.1000 in respect of all new tenure land was made in Village Form No.7x12 wherein it is revealed that such lands are inalienable, impartible and cannot be mortgaged, sold or gifted to any one. Therefore, the petitioner should not be granted any relief. It is stated in the additional affidavit that even prior to 1916-17, the land was shown to be new tenure land to which at no point of time, any objection was raised by the petitioner. In the affidavit, it is pointed out that after coming into force of Urban Land Ceiling Act, 1976, exemption was granted to the land owner under Sec.20 of the said Act on the basis that the land was new tenure land and if the land had been old tenure land used only for the purpose of agriculture, such an exemption should not have been granted which also show that land in question is new tenure land. The deponent of the additional affidavit had stated that as per entry No.3254 dated 14-5-1999, land in question was sold by the present petitioners and others to one Shri Divyang Vyas, Shri Ketan Bhavanidas, Shri Nimesh Manmohandas and Shri Hemang Manmohandas by registered sale deed No.1680 dated 14-5-1999 and names of purchasers have been entered in the revenue records which fact is suppressed by the petitioners. In the additional affidavit, a further reference is made to entry No.4422 dated 29-7-2009 indicating that Divyang Vyas and others had sold land to Alpesh D. Patel and Pravin K. Patel by registered sale deed dated 9-9-2008 which fact is also suppressed by the petitioners. By filing additional affidavit, Mr. Patel, City Deputy Collector has submitted that the petition should be dismissed with exemplary costs.

8. The records do not indicate that any reply is filed by the petitioners to the additional affidavit filed by Mr. Ashok Patel, City Deputy Collector on 4-2-1011.

9. This Court has heard the learned Senior Counsel, Mr. Y.N. Oza with Mr. Rajesh K. Savjani, learned advocate for the petitioners and learned AGP, Mr. L.R. Pujari for the respondents in all these petitions.

10. Learned Senior Counsel, Mr. Oza has relied on following decisions:

- 1) Special Civil Application No.7878 of 1996 decided by this Court on 4-2-1997;
- 2) Special Civil Application No.1848 of 1999 rendered by this Court on 3-8-1998;
- 3) Letters Patent Appeal No.626 of 1997 decided on 24-8-2000 by this Court;
- 4) Civil Appeal No.2323 of 2003 decided by the Hon''ble Apex Court on 8-4-2009;
- 5) 2001(1) G.L.H. (UJ) 5
- 6) Chhotabhai Dahyabhai Thakore Vs. State of Gujarat and Others,
- 7) 1983 GLH 273 in the case of Somabhai Mathurbhai Patel v. New Shorrock Mills;
- 8) Official Liquidator Vs. Dayanand and Others,

and

9) Kumbhar Yakub Jusab Vs. Bhuj Municipality and Others,

11. Learned AGP, Mr. Pujari, has relied on following decisions:

1) Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others,

2) Avadh Kishore Das Vs. Ram Gopal and Others,

3) State of Himachal Pradesh Vs. Keshav Ram and others,

4) Karewwa and Others Vs. Hussensab Khansaheb Wajantri and Others,

12. This Court has considered the documents produced by the parties together with the written statements placed on record and also the decisions cited at the bar for the guidance of the Court.

13. As mentioned earlier, the averments made in the additional affidavit filed by Mr. Ashok Patel, City Deputy Collector, on 4-2-2011 have remained uncontroverted. Therefore, they are to be treated as admitted by the petitioners. As pointed out in the additional affidavit, as per entry No.3254 dated 14-5-1999, the land in question was sold by the present petitioners and others to one Shri Divyang Vyas, Shri Ketan Bhavanidas, Shri Nimesh Manmohandas and Shri Hemang Manmohandas by registered sale deed No.1680 dated 14-5-1999. As per entry No.4222 dated 29-7-2009 Divyang Vyas and others had sold land to Alpesh D. Patel and Pravin K. Patel by registered sale deed dated 9-9-2008. Once the petitioners have sold the land in question and purchasers have sold the land to others, this Court fails to understand as to which right, title or interest, the petitioners are claiming in the disputed land. In fact, the petitioners had filed the petitions on 22-4-1999 and circulated the petitions on 19-5-1999 for admission hearing but have failed to point out to the Court that they have transferred the land by execution of registered sale deed on 14-5-1999 to Divyang Vyas and others. This Court has no doubt that intentionally facts were suppressed by the petitioners when matters were placed for preliminary hearing of the Court on 5-8-1999. On that day, the petitioners have no right, title or interest over the land in question. They have no locus to file the petitions. The petitioners having not approached the Court with clean hands are not entitled to get any claimed relief under Article 226 of the Constitution of India. They having no subsisting right, title or interest in the land, no relief can be granted to them. Therefore, the petitions are liable to be dismissed on that ground namely, (1) suppression of material facts and (2) petitioners have no subsisting right, title or interest in the land in question. Even if it is assumed for the sake of arguments that the petitioners have not suppressed the material facts and they have subsisting right, title and interest in the land in question, no relief can be granted to them for the following reasons:

Except making a bald statement on oath that since inception the land is old tenure land, no cogent evidence and trustworthy evidence could be produced by the petitioners to substantiate their claim. Admittedly, in the documents produced by the petitioners themselves, the land has been shown to be under

the Government and the common ancestors of the petitioners Kala Pana was shown to be occupant of the land. Even in Annexure-B which is a list of deceased occupiers of land, it is mentioned in first line itself that the land is of Government ownership. This is neither disputed nor any plausible explanation has been given as to how in the documents produced by the petitioners themselves, the land was shown to be of Government ownership. Further, as pointed out in the additional affidavit, if, in fact, the land is old tenure land and was used for agricultural purpose, the petitioners would not have filed exemption under Sec.20 of the Urban Land Ceiling Act, 1976 nor such a permission would have been granted by the competent authority. It hardly needs to be pointed out that the Land Ceiling Act of 1976 applies to the land and therefore, facts of making application under the said Act itself clears the case of petitioners. If this land has been "old tenure land" used only for the purpose of agriculture, the petitioners could have produced relevant evidence regarding crop grown as on date, sale of crops etc. But no evidence is produced at all as indicated in the additional affidavit that even prior to 1916-17, the land has been shown as new tenure land. As provided u/s 135J of the Bombay Land Revenue Code, an entry in the record of rights, and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore. Therefore, presumption under Sec.135J of the Bombay Land Revenue Code will have to be raised and it shall have to be presumed that because no contrary evidence was brought on record by the petitioners that land was old tenure land. Reliance is placed on a decisions of the Hon"ble Apex Court rendered in the cases of Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others, ; Shri Kasturchand and Another Vs. Shri Harbilash and Ors, ; Karewwa and Others Vs. Hussensab Khansaheb Wajantri and Others, and Sudhangshu Mohan Deb (Dead) by Lrs. Vs. Niroda Sundari Debidhup and Others,

14. As per paragraph No.3.2 of the petitions, the petitioners have stated that they learnt for the first time that land was designed as new tenure land only when they obtained 7x12 forms as they wanted to transfer the land because of their poor financial condition. The averments in para 3.2 are vague as anything could be. The petitioners could not inform the Court as to when applications for obtaining 7x12 forms were made and when those forms were made available to them. There is no manner of doubt that to avoid to make payment of premium to Government because of rise of price of land and in order to show that the petitions were filed within reasonable time, the petitioners moved applications on 10th February, 1999 to cancel the entry showing land as "new tenure land" and filed petitions after receipt of reply. However, there is no manner of doubt that the petitioners filed the petitions after more than 50 years with an oblique motive and after thought. Above referred entries were made in the public records by public servants in discharge of their official duty enjoined by the law of the country in which the record is kept, it is relevant public document as provided under Sections 35 and 74 of the Indian Evidence Act, 1872, and hence, this Court may presume as provided under Sec.90 of the Indian Evidence Act that the

entries made in the revenue record are true, correct, legal and proper. Reliance is placed on the ratio laid down by the Hon''ble Apex Court in the case of Avadh Kishore Das Vs. Ram Gopal and Others,

15. The petitions are filed after getting reply for which, no explanation has been offered by the petitioners. Therefore, the petitions are liable to be dismissed on the ground of delay and laches.

16. As far as the decision cited at the bar by learned Senior Counsel, Mr. Oza, rendered in Special Civil Application No.7878 of 1996 by this Court on 4-2-1997 for the guidance of the Court is concerned, it is pertinent to note that in last paragraph of the judgment, it was specifically held that the said entry was quashed qua the land bearing survey No.69 alone and it was limited to the facts and circumstance of the said petition only and would not have a binding precedent. As far as the decision of Special Civil Application No.1848 of 1999 rendered on 3-8-1998 is concerned, it was specifically observed by this Court that inspite of specific order fixing the petition for early hearing, no affidavit-in-reply was filed and, therefore, the Court was constrained to pass the order relying upon the earlier decision rendered in Special Civil Application No.7878 of 1996(supra). Therefore, the aforesaid decisions cannot have a binding precedent to the facts of the present cases since in all the present petitions, affidavit-in-replies were filed by the respondent authorities pointing out the facts and circumstances for recording of those entries and also legal provisions applicable to the facts. As far as the judgment dated 24-8-2000 delivered by this Court in Letters Patent Appeal No.626 of 1997 and allied matters are concerned, it was observed in paragraph No.3 that during the course of hearing the appeals, learned AGP was called upon to substantiate as to what was the source or the authority for making said note in "Kayam Kharada" and subsequent mutation entry. Therefore, this Court held that there was nothing on records to show that lands of survey numbers were registered as new tenure lands. Therefore, the appeals filed by the State were dismissed. Moreover, the Court also took into consideration the facts that the land in question in that case was purchased by the employees of AMC and they live there by constructing houses and hence, they were bona fide purchasers of those lands. Since the Court felt that undue hardship would be faced by the employees, appeals filed by the State were dismissed. Said decision cannot have a binding precedent to the facts of the present cases wherein sufficient materials have been placed on record to justify the legality, validity and propriety of the entries made in the revenue records showing the land as "new tenure lands". The Hon''ble Apex Court in Civil Appeal No.2323 of 2003 decided on 8-4-2009 dismissed the appeal without entering into merits and without giving any reasoning and none of the issues were decided by the Hon''ble Apex Court. Same also cannot have any binding precedent to the facts of the present cases. As far as decision of the Hon''ble Apex Court in the case of Official Liquidator Vs. Dayanand and Others, relied upon by learned Senior Counsel, Mr. Oza is concerned, in view of the recent decision of the Hon''ble Apex Court reported in State of U.P. and Others Vs. Rekha Rani, in the

case of State of U.P. and Ors. v. Rekha Rani, if there is no discussion on the merits of the case, the decision in that case does not amount to a precedent. It has been observed by the Hon"ble Apex Court in para 10 as under:

10. We have perused the order of this Court dated 19.2.1996 passed in the SLP filed against the judgment and order of the High Court in Writ Petition No.4886 of 1990 and we find that there is no discussion on the merits of the case. Thus, the aforesaid decision of this Court does not amount to a precedent and the respondent can take no benefit from the same.

17. Therefore, benefit of decision cited by learned Senior, Mr. Oza, cannot also be given to the petitioners. As far as other decisions cited by the learned Senior Counsel are concerned, the facts mentioned therein and the facts here in the petitions are quite different and hence, same are not reproduced herein. Therefore, no benefit can be given on the basis of the cited decisions.

18. For the reasons narrated above, this Court does not find substance in any of the petitions. Therefore, they are dismissed. Rule issued in each petition is discharged.

19. Office is directed to place a copy of the judgment in each petition.