
(2005) 04 GUJ CK 0068

In the Gujarat High Court

Case No : Special Civil Application No. 3314 of 1995

Darabsha Sorabji

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 20(2), 35, 37, 38

Citation : (2005) 2 GLR 1409

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : Dhirendra Mehta, for the Appellant; Siraj Gori, A.G.P. for Respondent Nos. 1-3, for the Respondent

Judgement

B.J. Shethna, J.—Additional Mamlatdar & ALT (Ceiling), Bardoli, by his order dated 12.5.1986, passed in Ceiling Case No. 23/76, held that the petitioner was not having excess land. Therefore, in exercise of his powers u/s 20(2) of the Gujarat Agricultural Land Ceiling Act, 1960 (for short "the Act"), he ordered to withdrew the Notice issued to the petitioner. However, the Government was not satisfied with the said order, therefore, decided to take the matter in suo-motu revision u/s 37 of the Act, under which the Collector is empowered to take up the matter in its suo-motu powers. Accordingly, Notice dated 6.4.1987 was issued to the petitioner calling upon him to remain personally present on 24.4.1987 at Bardoli. After hearing the petitioner the learned Dy. Collector, by his order dated 4.5.1987 (Annexure : B) set aside the order dated 12.5.1986 passed by the Mamlatdar & ALT and remanded the case to him for his fresh decision, in accordance with law. However, once again, the Mamlatdar & ALT (Ceiling), Bardoli, by his order dated 7.2.1992 (Annexure : C) held that the petitioner was not holding any excess land. Therefore, he discharged the Notice and closed the proceeding which was initiated against the petitioner in Ceiling Case No.23/76. This time again the State Government took up the matter in Review u/s 37 of the Act and accordingly the Dy. Collector, Vyara, in exercise of his suo-motu powers,

issued Notice to the petitioner and after hearing him, he dismissed the Revision Application and confirmed the Judgment and order (Annexure : C) passed by the Mamlatdar & ALT, by his Judgment and order dated 31.7.1993.

2. Surprisingly, this time, the Dy.Mamlatdar (Revenue) filed Revision Application No.13/94 u/s 38 of the Act before the Gujarat Revenue Tribunal, Ahmedabad (for short "the Tribunal"). Though it was barred by period of limitation of 60 days, without filing any Application in it for condoning the said delay, the Tribunal condoned the delay.

3. Before the learned Tribunal it was contended by the petitioner that such a revision, against the order of Dy. Collector, would not be maintainable and even if it is maintainable then also it should not be entertained as it was time barred and there was no Application filed for condoning the delay. Alternatively, it was submitted that on previous two occasion the matter was taken up in suo motu Revision and ultimately even on remand the Mamlatdar & ALT and the Dy. Collector both, concurrently held in favour of the petitioner that he was not holding any excess land. Therefore, such orders passed by the Authority below could not have been interfered by the Tribunal in its revisional jurisdiction as the scope of revision Application was very narrow and limited. However, the learned Tribunal while condoning the delay of 60 days, entertained the Revision Application and without dealing with the reasons assigned by the Mamlatdar & ALT and Dy. Collector in their orders set aside the same and once again remanded the matter to the Mamlatdar & ALT for deciding the same in accordance with law and the observation made by the Tribunal by order dated 30.11.1994 (Annexure:E), which is challenged in this petition under Articles 226 & 227 of the Constitution of India.

4. Learned AGP Shri Gori, appearing for the respondents, submitted that though the petition is labelled as petition under Article 226 & 227 both, but strictly speaking, it is a petition under Article 227 of the Constitution and when the learned Tribunal thought it fit to exercise its revisional jurisdiction and simply remanded the matter back to the Mamlatdar & ALT for its fresh decision in accordance with law as per the observation made by the Tribunal in its order dated 30.11.1994 then this Court should not interfere with the order passed by the Tribunal. It is true that the scope of Article 227 of the Constitution is very narrow and limited, even error of facts or even error of question of law committed by the Tribunal cannot be corrected by this Court in its jurisdiction under Article 227 of the Constitution as held by the Hon"ble Supreme Court in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, However, in the instant case, the learned Tribunal, in my considered opinion, committed jurisdictional error. Therefore, the impugned order is required to be interfered by this Court in its writ jurisdiction under Article 227 of the Constitution.

5. As stated earlier, initially, a case being Ceiling Case No.23/76 was registered against the petitioner on the ground that the petitioner was having excess vacant land. However, after a period of 10 years i.e. on 12.5.1986, for the first time, the

Mamlatdar & ALT, Bardoli, held that the petitioner was not holding any excess vacant land and, therefore, he decided to withdraw the Notice in exercise of his powers u/s 20(2) of the Act. The said order was appealable u/s 35 of the Act, but surprisingly the learned Dy. Collector decided to take up the matter in Revision in his suo-motu powers u/s 37 of the Act and in Revision Application No. 240/87 he set aside the order dated 12.5.1986 passed by the Mamlatdar & ALT, Bardoli, and remanded the matter to the Mamlatdar for his fresh decision in accordance with law. After remand the Mamlatdar heard the matter afresh and after hearing the petitioner and the representative of the respondents once again the Mamlatdar & ALT (Ceiling), Bardoli, by his Judgment and order dated 7.2.1992 dismissed the Ceiling Case No.23/76 and discharged the Notice issued against the petitioner. As stated earlier, the said order was, though appealable, the State Government decided to take up the matter once again in its revisional jurisdiction u/s 37 of the Act and accordingly the Dy. Collector, Vyara, issued Notice to the petitioner and, after hearing the parties, dismissed the Revision Application No.3 of 1993 by his Judgment and order dated 31.7.1993 (Annexure : D) and confirmed the Judgment and order passed by the Mamlatdar & ALT, Bardoli. Once the matter was taken up in review or revision by the Collector then the order passed by him would be revisable u/s 38 of the Act only on three grounds, viz. (i) that the order of the collector was contrary to law; (ii) that the Collector failed to determine some material issue of law; or (iii) that there was a substantial defects in following the procedure provided by this act, which has resulted into miscarriage of justice. However, the Revision Application No.13/94, filed by the Deputy Mamlatdar (Revenue) against the impugned order passed by the Mamlatdar & ALT, confirmed in Revision by the Dy. Collector, was time barred, but without any application for condonation of delay the learned Tribunal entertained the same by condoning the delay and once again remanded the matter to the Mamlatdar & ALT, Bardoli, for his decision in accordance with law. In my opinion, unless there was Application for condonation of delay in filing the Revision late, the delay could not have been condoned by the learned Tribunal. Thus, on this ground alone the petition was required to be allowed. Even if the Revision was within the period of limitation then also this Court would have interfered with the same because on earlier occasion twice the matter was remanded to the Mamlatdar & ALT, Bardoli and on 2nd occasion the Dy. Collector himself dismissed the Revision Application which was taken up in Review at the instance of the State Government, in its suo-motu powers u/s 37 of the Act. Having carefully gone through the impugned Judgment and order passed by the learned Tribunal allowing the Revision Application against the order passed by the Dy. Collector, Vyara, it is clear that neither the order of the Mamlatdar & ALT nor the order passed by the Dy. Collector are contrary to law and the Dy. Collector failed to determine some material issue of law while dismissing the Revision Application and while dismissing the Revision Application no substantial defect in following the procedure provided by this Act was committed, which resulted into miscarriage of justice.

Only on these three contingencies the Tribunal could have exercised its jurisdiction. When all the three contingencies were absent then the learned Tribunal could not have allowed the Revision Application and remanded the matter back to the Mamlatdar & ALT.

Initially, Notice was issued by the authority to the petitioner way back in 1976 i.e. almost 30 years back in Ceiling Case No.23/76 and in between once the matter was remanded to the Mamlatdar & ALT by the Collector and this time once again the Tribunal remanded the matter to the Mamlatdar & ALT by quashing and setting aside his order and order passed in suo-motu revision by the Dy. Collector, resulting into the miscarriage of justice.

Under the circumstances, we are of the considered opinion that when the order of the Tribunal found to be without justification then certainly this Court must exercise its jurisdiction under Article 227 of the Constitution, otherwise gross injustice be caused to the petitioner.

It may be stated that this petition was straightway admitted on 1.5.1995 by the learned Single Judge of this Court with an Ad.interim Relief granted in favour of the petitioner which has continued till today.

In view of the above, order dated 30.11.1994 passed by the learned Tribunal (Annexure : E) is hereby quashed and set aside and the impugned Judgment and orders dated 7.2.1992 passed by the Mamlatdar & ALT (Ceiling), Bardoli at Annexure : C and the order dated 31.7.1993 passed by the Dy. Collector, Vyara, in Ceiling Case No.23/93 (Ann-"D") are restored. Petition allowed accordingly. Rule made absolute accordingly with no order as to costs.