
(2016) 09 GUJ CK 0036

In the Gujarat High Court

Case No : Special Civil Application No. 2936 of 1995

Deceased Madhavsinh Kalyansinh

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 2(1), Section 2(17), Section 2(6), Section 5, Section 8

Citation : (2017) 2 GLR 982

Hon'ble Judges : Ms. Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Mr. D.D. Vyas, Senior Advocate with Mr. Dhaval D. Vyas, Advocate, for the Petitioners No. 1 - 1.2.2; Deceased Litigant, Advocate, for the Respondent No. 7; Divyesh D. Bais, Advocate, for the Respondent No. 7.1; Mr. Venugopal Patel, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Ms. Bela M. Trivedi, J.(Oral) - The petitioners, who are the legal heirs of the deceased Madhavsinh Kalyansinh, have filed the present petition challenging the order dated 21.02.1995 passed by the Gujarat Revenue Tribunal in Revision Application TEN BA No. 762 of 1994, so far as it held that the original holder Madhavsinh Kalyansinh held 58 Acres 5 Gunthas of land as surplus land under the provision contained in Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as "the Act").

2. The brief facts leading to the present petition are that the deceased Madhavsinh Kalyansinh was holding 166 Acres 26 Gunthas of dry crop land. He had filled in the form under the provisions contained in the said Act declaring his holdings. Initially the Mamlatdar and ALT vide his order dated 07.05.1981 held that the deceased was holding 4 acres 20 gunthas as an excess vacant land. The said order was also confirmed by the Deputy Collector in his order dated 31.12.1981. However, the State having filed a revision application before the

Gujarat Revenue Tribunal, the case was remanded to the Mamlatdar for rehearing and deciding the same afresh. It appears that thereafter again the Mamlatdar passed the order, and the Deputy Collector having taken the matter in revision, remanded the same to the Mamlatdar. Ultimately, the Mamlatdar and ALT vide his judgment and order dated 20.09.1993 held that the deceased Madhavsinh was holding 166 acres 26 gunthas dry crop land as the excess vacant land, out of which he was entitled to hold one unit of 54 acres, and therefore, he was holding the land admeasuring 112 acres 26 gunthas as an excess vacant land. Against the said order, the present petitioners had filed an appeal being No. 6 of 199394 before the Deputy Collector, Limdi, who vide the judgment and order dated 20.09.1993 dismissed the appeal. The aggrieved petitioners had filed the revision application before the Gujarat Revenue Tribunal, who vide the impugned order dated 21.02.1995 partly allowed the revision application, and held that the deceased Madhavsinh was entitled to one unit equal to 54 acres, out of his total land of 166 acres 26 gunthas dry crop land, however, since the said deceased Madhavsinh had executed a sale deed in respect of the land at Dhara Dungari admeasuring 54 acres 21 gunthas as per the sale deed dated 28.04.1972, the said land was also required to be deducted from the holdings of said Madhavsinh, and therefore, the said Madhavsinh was holding 58 acres 5 gunthas only as excess vacant land. Being aggrieved by the part of the said order, so far as it was against the petitioner, the present petition was filed.

3. The learned Senior Advocate Mr. D.D. Vyas for the petitioners pressing into service the judgment of Supreme Court in the case of *State of Gujarat and Another v. Manoharsinhji Pradyumansinhji Jadeja* reported in (2013) 2 SCC 300, vehemently submitted that Act of 2/74, which came into force w.e.f. 01.04.1976 was no longer a good law, and as per the Act of 1960, the deceased was entitled to the unit equivalent to 120 acres. He drew the attention of the Court to the various paragraphs of the said judgment to buttress his submissions. While conceding that the vires of the Act of 2 of 1974 were upheld by the Division Bench of this Court in the case of *Khachar Godadbhai Pithubhai and Others v. The State of Gujarat* reported in 2004 (2) GLH 589, and also conceding that the Supreme Court in the case of *Nagbhai Najbhai Khackar v. State of Gujarat* reported in (2010) 10 SCC 594, had held that the bid lands and even the dry crop lands were in within the definition of agriculture, he submitted that the Court should consider the observations made by the Supreme Court in the latest decision in the case of *State of Gujarat and Another v. Manoharsinhji Pradyumansinhji Jadeja* (supra), to hold that the Amendment Act of 2/74, was no longer a good law, and was impliedly overruled by the Supreme Court. In another limb of his arguments, he submitted that the Tribunal had committed an error in deducting the area of only 54 acres 21 gunthas in respect of the sale made by the deceased under the sale deed executed on 28.04.1972, inasmuch as the deceased had in all sold out the land admeasuring 71 acres 4 gunthas and not 54 acres 21 gunthas.

4. So far as the submission of learned Senior Advocate Mr. Vyas with regard to the Amendment Act 2 of 1974, being not a good law in view of the judgment of Supreme Court in the case of State of Gujarat and Another v. Manoharsinhji Pradyumansinhji Jadeja (supra), is concerned, it is required to be noted that the vires of the said Act were challenged before this Court in the case of Khachar Godadbhai Pithubhai and Others v. The State of Gujarat (supra), and the same were held as constitutionally not ultra vires. The learned Senior advocate Mr. Vyas has failed to point out any other decision of this Court or of the Supreme Court to show that the vires of the said Act were held to be unconstitutional, and therefore, struck down. The only resort taken by Mr. Vyas is on certain observations made by the Supreme Court in the case of State of Gujarat and Another v. Manoharsinhji Pradyumansinhji Jadeja (supra). The relevant para - 60 thereof is reproduced as under :

"That being the position, by the implication of the Act, 1976 in respect of the land used for agriculture within the urban agglomeration, the question for consideration is whether such exclusion from acquisition having regard to the character of the land as used for agriculture would entitle the owner of such land to contend that such exclusion would deprive the competent authorities under the 1960 Act to restrict their powers to be exercised under the said Act and from resorting to acquisition by applying the provisions contained in the said Act. We are of the considered opinion that the conspectus consideration of the various provisions of the Act, 1976 considered again in the light of the object and purport of the 1960 Act which was intended for equal distribution of agricultural lands to the landless poor agriculturists, the application of the said Act will have to be independently made and can be so applied as it stood prior to the coming into force of the Act, 1976 as from 17.02.1976. At this juncture it will have to be noted and stated that the subject namely, the "land" being an item falling under Entry 18 of List II of Schedule VII of the Constitution, by virtue of the so-called surrender of power of legislation in respect of the said entry namely "land" by way of Central Legislation namely Act, 1976 to be enacted by the Parliament pursuant to a State resolution by invoking Article 252 (1) of the Constitution, there would be every justification in the submission on behalf of the respondent that any subsequent legislation by way of Amendment or otherwise with regard to the said Entry, namely, "land" will be directly hit by the specific embargo contained in Article 252 (2) of the Constitution."

5. It is to be noted that except the afore stated observations made by the Supreme Court, the provisions of the said Act 2/74 have neither expressly nor impliedly been struck down on the ground of being ultra vires the Constitution of India. Under the circumstances, the case of the deceased Madhavsinh was governed by the Act of 1960 as amended by the Amendment Act 2 of 1974 only, which came into force w.e.f. 01.04.1976.

6. The issue whether the bid land could be included within the definition of agricultural land or not is no more res integra in view of the decision of Supreme

Court in the case of Nagbhai Najbhai Khackar v. State of Gujarat (supra), in which it has been held as under :

"22. Now, coming to the question of interpretation of the definition of the words "dry crop land" in Explanation I(e), one finds that the definition has two parts, namely, (i) "land other than the land specified in paragraphs (a) to (c)" and (ii) "grass land". Thus, the first part includes all lands other than those specified in paragraphs (a) to (c).

Therefore, once the subject land falls in the first part of definition of the word "dry crop land" which land comes under Section 2(17) and which falls outside paragraphs (a) to (c) then such lands would fall within the definition of the words "dry crop land". Further, there are two reasons why "grass land" stood separately defined in Explanation I(e). Firstly, under the proviso to Section 5, which is also inserted by the Amending Act, a distinction is made between "grass lands" included within "dry crop land" and "grass lands" falling in the desert or hill areas of drought-prone areas for fixing the ceiling of dry crop land in those areas. Secondly, under clause (f) to Explanation I, "grass land" and not all "dry crop land" is deemed to be rice land in certain situations.

23. The proviso to Section 5 itself makes it clear that by the Amending Act of 1974 the Legislature was placing a ceiling even on desert and hill areas. The proviso inter alia states that the ceiling limit with reference to "dry crop land" shall be 12 % per cent more than that specified in the Schedule which makes it clear that the Legislature intended to include even desert and hills in drought-prone areas within the definition of "dry crop land". Once such lands are used for grazing of cattle, Section 2(1) of the Ceiling Act would kick in and consequently the "bid lands" would stand covered by the Ceiling Act. The definition of "dry crop land" under Section 2(6) is relevant for the purpose of ascertaining the extent of ceiling limit under Schedule I. It is important to note that the subject lands got saved from acquisition under the 1952 Act only because the appellants were the holders of "bid lands" which were put to use for grazing of cattle or cutting of grass. It is these very lands which are now sought to be covered by the 1960 Act, as amended.

24. We also do not find any merit in the argument advanced on behalf of the appellants that the Legislature unwittingly through oversight left out the word "includes" in the definition of "dry crop land" in Explanation I(e). If one looks at the Pre 1974 Act under Section 2(6) which defined "class of land", it covered four items, namely, perennially irrigated land, seasonally irrigated land, dry crop land and rice land, whereas under the Post 1974 Act, rice land has been deleted from the "class of land". Under the Pre 1974 Act, "dry crop land" was defined by clause (e) of Explanation to mean "land other than perennially or seasonally irrigated or dry crop land or rice land" and it included "grass land", whereas under Post 1974 Act, not only the word "includes" but even the words "rice land" do not find place in the definition of "dry crop land" in clause (e) of Explanation I."

7. The Court also does not find any substance in the submission made by learned Senior Advocate Mr. Vyas that the Tribunal had committed an error in deducting only 54 acres 21 gunthas instead of 71 acres 4 gunthas. As transpiring from the orders passed by the Mamlatdar and Alt, and the Deputy Collector, as also of the GRT, the deceased had executed an agreement to sell on 02.01.1971, in respect of his 7th share in the land bearing Survey No. 32, situated at village Dhara Dungri, and had executed the registered sale deed in respect thereof on 28.04.1972, and therefore, the GRT has deducted the area of 54 Acres 21 Gunthas in respect of the said land from the total holdings of the deceased. At this juncture, it is required to be noted that as per Section 8 of the said Act, any transfer made after 15th day of January, 1959, but before the commencement of said Act, or after 24th day of January, 1971, but before the specified date i.e. 01.04.1976, would be deemed to have been made in order to defeat the object of the Act, and such transfer was required to be ignored while computing the area of surplus land. In the instant case, it appears that the deceased Madhavsingh had executed various agreements to sell his lands after 24.01.1971, and therefore, such sale of lands could not be held to be genuine. The learned Senior advocate Mr. Vyas has failed to point out either from the impugned orders or from any other documents as to how the Tribunal had committed any error in computing the holdings of the deceased. Thus, the impugned order passed by the Tribunal being just and proper, does not call for any interference.

8. In that view of the matter, the Court does not find any substance in the present petition. The petition being devoid of merits, is dismissed. The request of Mr. Vyas, learned Senior advocate to stay the operation of this order, is rejected in view of the above stated reasons.

9. Interim relief stands vacated forthwith. Rule is discharged.