
(2010) 07 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 9993 of 2009

Desai Mohanbhai Ratnabhai

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 07 GUJ CK 0040

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Keyur A. Vyas, for the Appellant; Pranav Dave, AGP for Respondent 1, for the Respondent

Judgement

M.R. Shah, J.—Rule. Shri Dave, learned AGP waives service of notice of rule on behalf of the respondent State. In the facts and circumstances of the case and with the consent of learned advocates for the respective parties, the matter is taken up for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and order quashing and setting aside the communication of the State Government dated 23.6.2009 (Annexure O) and the consequential order passed by the Collector, Banaskantha dated 13.7.2009 (Annexure P) treating the land in question as new tenure restricted land.

3. The facts leading to the present Special Civil Application in nutshell are as under:

3.1. It is not in dispute that the disputed land in question was old tenure land, however the same was forfeited to the Government. That thereafter, an application was submitted by the original owner to re-grant the land which came to be allowed and considered by the Deputy Collector, Palanpur vide order dated 5.3.1991 and as per the said order the land in question came to be re-granted to

the original owner as it is i.e. as same tenure as it was earlier. That thereafter, petitioner purchased the said land in question and submitted the application for grant of NA permission. It was submitted that petitioner is ready and willing to pay the premium for converting the land into non agriculture use and accordingly the proceedings were initiated and reached to the Collector. However, the Collector was of the opinion that as land in question was already forfeiting and was re-granted it could have been re-granted only as a new tenure land and, therefore, he sought opinion from the State Government and by impugned communication dated 23.6.2009 the State Government communicated that the land in question is required to be treated as restricted new tenure land and consequently Collector, Banaskantha informed the petitioner vide impugned communication dated 13.7.2009. Being aggrieved and dissatisfied with the aforesaid two communications of the State Government as well as Collector, Banaskantha, petitioner has preferred present Special Civil Application under Article 226 of the Constitution of India.

4. Shri Keyur Vyas, learned advocate for the petitioner has submitted that the impugned communication by the State Government as well as District Collector, Banaskantha treating the land in question as restricted new tenure land is contrary to the order of re-grant passed by the Deputy Collector, Palanpur dated 5.3.1991. It is submitted that as such the land in question was an old tenure land which was ordered to be forfeited and at the time when the order of re-grant was passed it was specifically mentioned that the land is re-granted as it is i.e. with the same tenure (old tenure). Therefore, it is submitted that it is not open for the State Government and/or Collector to treat the land in question as new tenure restricted land. It is submitted by Shri Keyur Vyas, learned advocate for the petitioner that petitioner is ready and willing to pay the premium required to be paid while converting the land from agriculture to non agriculture use. Therefore, it is requested to quash and set aside the impugned communications of the State Government as well as District Collector treating the land in question as new tenure restricted land.

5. Petition is opposed by Shri Dave, learned AGP. It is submitted that as the land in question was forfeited to the State Government and subsequently it was re-granted, it is always re-granted as a new tenure restricted land. Therefore, the State Government and the Collector have rightly treated the land in question as new tenure land.

6. Having heard the learned advocates for the respective parties and considering the order passed by the Deputy Collector, Palanpur dated 5.3.1991, it is to be noted that land in question was re-granted to the original owner as it is i.e. as same tenure which was there earlier. It is not in dispute that earlier the land in question was a old tenure land. It might be the policy of the State Government to re-grant the land which was forfeited as new tenure but in the order dated 5.3.1991 passed by the Deputy Collector, Palanpur re-granting the land to the original owner it is specifically mentioned to treat the land in question as old

tenure and the said order has attained the finality. In the facts and circumstances of the case and in light of the order passed by the Deputy Collector, Palanpur dated 5.3.1991 the land in question could not have been treated as new tenure restricted land. Under the circumstances, impugned communications treating the land in question as new tenure restricted land without upsetting and/or quashing and setting aside the earlier order dated 5.3.1991 passed by the Deputy Collector cannot be sustained. If the State Government and the Collector were of the opinion that the order passed by the Deputy Collector dated 5.3.1991 treating the land as old tenure land while re-granting the land is not correct and/ or in consonance with the policy of the State Government in that case, appropriate remedy available to the State Government and the Collector was to take said order in review. However, no such attempts have been made and the order passed by the Deputy Collector, Palanpur dated 5.3.1991 continuing the land as old tenure land while re-granting the land has attained the finality. Under the circumstances, the impugned communications treating the land in question as new tenure restricted land is quashed and set aside.

7. For the reasons stated above, petition succeeds. The impugned communications of the State Government dated 23.6.2009 (Annexure O) and the order passed by the Collector, Banaskantha dated 13.7.2009 (Annexure P) treating the land in question as new tenure land are hereby quashed and set aside. However, as agreed by Shri Vyas, learned advocate for the petitioner and so recorded in earlier correspondence, petitioner has to pay the amount of premium while converting the land from agriculture to non agriculture use which shall be determined in accordance with law and on merits and the same shall be paid by the petitioner while converting the land into non agriculture use. Rule is made absolute to the aforesaid extent. No costs.