
(2008) 05 GUJ CK 0069

In the Gujarat High Court

Case No : Special Civil Application No. 3482 of 2008

Devendra Chandulal Shah and Others

APPELLANT

Vs

Shambhu Ruda Ayar and Others

RESPONDENT

Date of Decision : 08-05-2008

Acts Referred:

Bombay Inams (Kutch Area) Abolition Act, 1958 — Section 26, 7
Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958
— Section 107 , 111
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 41 Rule 23
Constitution of India, 1950 — Article 226 , 227

Citation : (2008) 05 GUJ CK 0069

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : A.J. Patel, for D.K. Puj, for the Appellant; H.M. Parikh, for Respondent 1 and Yatin Oza, learned and Apurva R. Kapadia, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—The challenge in this petition under Articles 226 and 227 of the Constitution of India is to the order dated 29-1-2008 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN.B.K.13 of 2002 whereby the matter has been remanded to the Special Mamlatdar, Bhuj.

2. Briefly stated, the facts of the case, relevant for the adjudication of the petition, as emerging from a perusal of the averments made therein as well as the documents annexed thereto, are that land bearing old Survey No. 258 admeasuring 10 Acres and 35 Gunthas (new Survey No. 51, admeasuring 5 acres and 32 Gunthas and new Survey Bo.563, admeasuring 5 Acres and 09 Gunthas) of village Mithi Rohar, Taluka - Gandhidham, District Kutch was the subject matter of inquiry under the provisions of Bombay Inams (Kutch Area) Abolition Act, 1958 (herein-after referred to as "the Inams Act"). The inquiry was made under the provisions of Section 7 of the Inams Act for the purpose of

determining as to whether the person concerned would be entitled to the conferment of occupancy, on the abolition of "Inam". By order dated 22-11-89, the Mamlatdar held the respondent No. 1 i.e. Shambhu Ruda Ayar to be the occupant of the land in question. This order was taken in suo motu revision and proceedings were initiated under the provisions of the Inams Act by the Revenue Secretary (Appeals), who quashed and set aside the order dated 22-11-89 and remitted the matter to the Special Mamlatdar by order dated 27/29-12-1993. The matter was sent back with a specific direction to find out whether, as per the provisions of Section 26 of the Inams Act, the respondent No. 1 is a tenant or not, or cultivating the land on the date on which the Act was abolished. The Special Mamlatdar, Kutch-Bhuj initiated proceedings, which was registered as Tenancy Case No. 10 of 1994 and by order dated 24-4-2000 dismissed the application of the respondent No. 1. Against this order, the respondent No. 1 filed an appeal, which was registered as Tenancy Appeal No. 5 of 2000 before the Deputy Collector, under the provisions of Section 107 of Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958. This appeal was dismissed by the appellate authority vide judgment and order dated 16-9-2002. Being aggrieved by the aforesaid order, the respondent No. 1 preferred a Revision Application before the Gujarat Revenue Tribunal ("the Tribunal" for short). This Revision Application has been remanded by the Tribunal by the impugned order dated 29-1-2008, leading to the filing of the present petition.

3. Mr.A.J.Patel, learned advocate for Mr.D.K.Puj, learned Counsel for the petitioners has submitted as under:

(a) That the respondent No. 1 had submitted a withdrawal purshish in the Revision Application pending before the Tribunal to the effect that he withdraws his claim upon land bearing Revenue Survey No. 51/1 unconditionally, and the effect of this has not been taken note of by the Tribunal. It is submitted that since Revenue Survey No. 51/1 is a part of old Revenue Survey No. 258, regarding which the respondent No. 1 had made a claim as tenant, the withdrawal of the claim with regard to Survey No. 51/1 will definitely have an effect upon the claim of the respondent No. 1 with respect to the entire land in question since, the respondent No. 1 is claiming tenancy rights upon the same and in this view of the matter, the Tribunal could have come to a specific conclusion, but instead of adjudicating the matter, an order of remand has been passed after about 19 long years of litigation. It is submitted that the claim of the respondent No. 1 with regard to old Survey No. 258 was that he was a tenant thereupon and tenancy rights cannot be abandoned only qua part of the land. If the respondent No. 1 is withdrawing tenancy rights qua Survey No. 51/1, it only means that he is not a tenant upon the rest of the land, since tenancy rights cannot be claimed in part and, therefore, the Tribunal ought to have come to a decision on merits on this aspect of the matter. Mr.A.J.Patel, learned Counsel for the petitioners has, therefore, submitted that the impugned order be set aside and the matter be sent back to the Tribunal with a direction to the Tribunal to render a decision, in accordance with law.

(b) That the Tribunal should not have passed the impugned order by remanding the matter back to the Mamlatdar, particularly when there was enough evidence on record to come to a conclusion, one way or the other, and render the judgment. It is submitted by the learned Counsel for the petitioners that the Mamlatdar initially passed the order in the year 1989 and, thereafter, the matter was taken in suo motu proceedings and was pending before the Revenue Secretary (Appeals), who remitted the matter back to the Mamlatdar in the year 1993. It is submitted that after remand of the matter, the Mamlatdar initiated proceedings in the year 1994 and the matter remained pending before the Mamlatdar for a long period of seven years, during which period the matter was adjourned 52 times, which is evident from the order of the Mamlatdar dated 24-4-2000. The learned Counsel has further submitted that the appeal before the Deputy Collector was filed in the year 2000 and remained pending for more than two and half years and, thereafter, the respondent No. 1 preferred the Revision Application in the year 2002, which had been disposed of in the year 2008 by the Tribunal by way of the impugned order. The crux of the submissions made by Mr.A.J.Patel, learned Counsel for the petitioners, is that the matter has remained under adjudication from the year 1989 to 2008 and even before the Mamlatdar, in proceedings initiated after the order of remand, the matter has been adjourned 52 times to give an opportunity to respondent No. 1 and, therefore, ample opportunities have been provided to the parties to appear and lead evidence. It is further emphasised that the Mamlatdar had dismissed the matter on 24-4-2000 after a period of more than seven years by considering the evidence on record. It is further submitted that even before the Deputy Collector, six adjournments have been taken by the respondent No. 1 and the appeal remained pending for two and a half years. It is stressed that the Revision Application was filed in the year 2000 and now after eight years i.e. in 2008 the matter has been remanded back to the Mamlatdar, adding to the woes of the parties, who are now subjected to another round of protracted and lengthy litigation. The learned advocate has contended that there was sufficient material on record for the Tribunal to come to a conclusion either way and by not doing so, the Tribunal has committed an error and sent the parties back to another round of long drawn litigation, resulting in financial and mental strain. It is submitted that the observation of the Tribunal that the respondent No. 1 has not been given an opportunity to adduce evidence in support of his case is not correct and that the record reveals that the respondent No. 1 was given sufficient opportunities before both the authorities below, and, therefore, the order of the Tribunal being contrary to the record of the case, deserves to be set aside.

(c) That under the provisions of Section 111 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, the Tribunal can exercise jurisdiction in three situations, which are enumerated in the Section i.e. (a) that the order of the Collector was contrary to law, (b) that the Collector failed to determine some material issue of law and (c) that there was a substantial defect in following the procedure provided under the Act, which has resulted in

the miscarriage of justice, which it has failed to do. It is submitted that if the Tribunal found it necessary, it could have invoked the provisions of Regulation 22 of the Bombay Revenue Tribunal Regulations, 1958 ("the Regulations" for short) which empowers the Tribunal to direct the Collector or any authority against whose order an application is made to make such further investigation or to take additional evidence directly or through any subordinates as it may think necessary, and in cases where fresh evidence has been adduced or further investigation is made, the Tribunal can direct the parties to address it on the points raised out of the fresh or additional evidence or further investigation made under the provisions of Regulation 22(3), and the matter could have been decided on merits by the Tribunal itself. It is submitted that by not invoking the provisions of Regulation 22, the Tribunal has not exercised jurisdiction vested in it in a proper manner and has wrongly remanded the matter back to the Mamlatdar. The learned Counsel for the petitioners has submitted that it is the settled position of law that an order of remand shall not be made for the sake of remand and to fill in the lacuna in the evidence, and in support of this contention he has relied upon (a) K. Krishna Reddy and Others Vs. Special Deputy Collector, Land Acquisition Unit II, Lmd Karimnagar, Andhra Pradesh, , (b) Tanbaji Madhoji Chagre and Another Vs. Nathoba Janbaji Dongre and Others, , (c) State of Punjab and Another Vs. Gram Panchayat and Others, and (d) Ashwinkumar K. Patel Vs. Upendra J. Patel and Others, . It is, therefore, submitted that the impugned order deserves to be quashed and set aside.

4. Mr.H.M.Parikh, learned Counsel for the respondent No. 1, has raised certain preliminary objections, which are stated as under:

(a) That a petition challenging an order of remand is not maintainable under the provisions of Article 227 of the Constitution of India and a finding of fact recorded by the Tribunal cannot be assailed in such a petition;

(b) That the petitioners are not aggrieved parties and have no locus standi to file the present petition, since the land has been sold to the respondent No. 3.

(c) That the petition is liable to be dismissed on the ground of suppression of material facts and the petitioners have not disclosed that the property has been sold to the respondent No. 3.

In this connection, reliance has been placed upon *Vallabhdas Nandlal v. Mansukhlal* 1974 GLR 225.

4.1 Mr.H.M.Parikh, learned advocate for the respondent No. 1, has submitted as under:

(i) That the impugned order is just and proper as it records that the Special Mamlatdar (ALT) has not afforded opportunity to the petitioners as well as the respondents to lead evidence. It is submitted that before the Tribunal, the respondent No. 1 has not prayed for remand but the order has been passed on the basis of the record and, therefore, this Court ought not to interfere with the

impugned order.

(ii) That the Tribunal has observed in para 10 of the judgment that the name of the applicant-respondent No. 1 appears in the cultivation column in the record of rights of suit land on the specified date i.e. 1-4-1961 and, therefore, the observation made by the Mamlatdar and ALT as well as the Deputy Collector to the contrary is not borne out from the judgment of the Tribunal. In support of this submission, learned Counsel for the respondent No. 1 has placed reliance upon *Harivadan Bhagwandas v. Chandaben* .

(iii) That the petitioners have never *Harivadan Bhagwandas and Others Vs. Chandaben and Another*, challenged the entry, which was mutated in the revenue record in favour of the respondent No. 1 since 1963 in any R.T.S. proceedings and in the present case, the Mamlatdar was exercising jurisdiction under the Tenancy Act and not under the Bombay Land Revenue Code. It is further submitted by the learned Counsel for the respondent No. 1 that the petitioners have not led any evidence to the effect that the entry was a fraudulent one. The said mutation entry, which was recorded in the revenue record, is under the Bombay Land Revenue Code and in these circumstances, the Mamlatdar as well as the Deputy Collector have committed grave error in holding that the revenue entry could not be relied upon. It is submitted by Mr.H.M.Parikh that this revenue entry has been relied upon by the Tribunal as is evident from a perusal of paragraph 10 of the impugned judgment. In support of this contention, reliance has been placed upon *Laxmi Associates Vs. Collector and Another*,

(iv) That the finding of fact recorded by the Tribunal to the effect that none of the parties have been given an opportunity of hearing is also supported by the observations made by the Mamlatdar in his order dated 24-4-2000 to the effect that the petitioners have filed an application but before the stage of evidence could be reached, the application of the respondent No. 1 was dismissed by the Mamlatdar. It is further submitted that the observation of the Tribunal that neither the applicant (respondent No. 1) nor the landlord (petitioners) have been given any opportunity to adduce evidence is therefore based on facts and the impugned order of the Tribunal, which is based upon finding of fact and has been rightly passed in the exercise of jurisdiction vested in it, and it may not be interfered with, by this Court.

(v) Regarding the filing of the withdrawal purshish with regard to the claim for Survey No. 51/1 by the respondent No. 1, it is submitted that in the year 1989 the land was sold to the respondent No. 1 under the Inams Act by the Mamlatdar and the respondent No. 1 has paid the purchase price and, thereafter, the land bearing Survey No. 51/1 was sold by the respondent No. 1 to respondent No. 2 and, therefore, when the proceedings were initiated by the Mamlatdar under Sections 46 and 47 of the Act in the year 1994, the respondent No. 1 was not interested in the said land and has abandoned his claim thereto. It is submitted that even as per Order 23 Rule 1 of the Civil Procedure Code, the claimant(plaintiff) has a right to abandon the claim in part and merely because

the respondent No. 1 has abandoned one property, it cannot be presumed that he is not the tenant of the other property.

(vi) That by impugned order of the Tribunal, the matter has been remanded to the Mamlatdar and since there is no jurisdictional error or error apparent on the face of the record, the Court may not interfere and the petition may be dismissed. In support of this contention, reliance has been placed upon Nagkunverba Balvantsinh through her P.A. Mansinh M. Atalia Vs. Parthivbhai Lomeshprasad and Others,

5. Mr.Yatin Oza,learned senior advocate, with Mr.Apurva R.Kapadia,learned Counsel for the respondent No. 3 has supported the stand taken by Mr.A.J.Patel, learned Counsel for the petitioners and has submitted as under:

(a) That the Tribunal has committed a patent error in passing the impugned order remanding the matter to the Mamlatdar after nearly twenty years of lengthy litigation. It is submitted that the observation of the Tribunal to the effect that proceedings, to decide whether the respondent No. 1 is a tenant or not,were not initiated is not correct, since these proceedings were initiated in the year 1994 by the Mamlatdar after the matter was remanded by the Revenue Secretary (Appeals) vide order dated 27/29-12-1993. Therefore, the very foundation of the impugned order being wrong and erroneous, the order deserves to be quashed and set aside.

(b) That sufficient opportunity has been given to the parties, including the respondent No. 1 to lead evidence at various stages of the litigation and the record reveals that when the matter was pending before the Mamlatdar, 52 opportunities have been given to the respondent No. 1, which have not been availed of by him and the matter continued to linger on for seven years before it was decided vide order dated 24-4-2000. The learned senior advocate has further submitted that even at the appellate stage before the Deputy Collector, a number of opportunities were given to the respondent No. 1, but nobody remained present and ultimately, the appeal came to be dismissed by the Deputy Collector vide order dated 16-9-2002 after more than two and half years.

(c) That the Revision Application was filed by the respondent No. 1 in the year 2000 and, after a period of nearly eight years before the Tribunal it has been remanded to the Mamlatdar, even though there is sufficient evidence on record to decide the case on merits. It is submitted that even assuming, that the Tribunal concluded that more evidence was required to decide the matter on merits, the provisions of Regulation No. 22(3) and (4) could have been invoked and the litigation could have been brought to an end by the Tribunal by rendering a decision. It is urged that the Tribunal has not exercised the jurisdiction vested in it by Regulation 22 of the Regulations and has passed the impugned order without application of mind to the evidence on record, subjecting the parties to another round of litigation after almost 20 years.

(d) That a perusal of the order of the Mamlatdar dated 24-4-2000 and of the

order in Appeal rendered by the Deputy Collector, dated 16-9-2002 reveal that there was sufficient evidence on record for the said two authorities to come to a conclusion in the matter and as per the provisions of Section 111 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, the Tribunal could have exercised jurisdiction if it was of the opinion that the order of the Collector was contrary to law, or that the Collector had failed to determine some material issue of law, or that there was a substantial defect in following the procedure provided under the Act, which it has failed to do. It is emphasised that not only has the Tribunal overlooked the record which shows that ample opportunities have been provided to the respondent No. 1 to lead evidence, but it has also failed to call for fresh evidence in case it felt that evidence was lacking and, remanding the matter back to the Mamlatdar after nearly 20 years of litigation, would amount to a travesty of justice and, therefore, the impugned order deserves to be quashed and set aside.

(e) That the Tribunal has not come to any conclusion regarding the Purshish for withdrawal of the claim of the respondent No. 1 over land bearing Survey No. 51/1 even after recording in paragraph 5 of the impugned order, that the applicant-respondent No. 1 has withdrawn his tenancy claim qua the land bearing Survey No. 51/1. It is submitted that the Tribunal was duty bound to come to a decision on merits taking into consideration the effect of the withdrawal of the claim of the respondent No. 1 qua the land in question, and fortuitous circumstances should not come to the aid of a party, who is ready to withdraw his tenancy rights qua part of the land and the said withdrawal has to be considered in the light of the claim of the respondent No. 1 for the rest of the land, as a whole. It is submitted that the respondent No. 1 had filed an application for amendment of the Revision Application on the basis of the withdrawal Purshish in respect of tenancy claim upon land bearing Survey No. 51/1 and, without deciding the application, or taking into consideration the factum of unconditional withdrawal of tenancy rights qua land bearing Survey No. 51/1, the Tribunal has chosen not to decide the case on merits, by passing the impugned order and, therefore, the impugned order deserves to be set aside.

6. I have heard Mr.A.J.Patel, learned Counsel for the petitioners, Mr.H.M.Parikh, learned Counsel for the respondent No. 1 and Mr. Mr.Yatin Oza, learned senior advocate with Mr.Apurva R.Kapadia for the respondent No. 3 and have gone through the averments made in the petition as well as the documents annexed thereto.

7. Before dealing with the submissions made by the learned Counsel for the respective parties, the preliminary objections raised by the learned Counsel for the respondent No. 1 may be taken into consideration.

(a) The first preliminary objection raised by the learned Counsel for the respondent No. 1 is that the petition challenging an order of remand is not maintainable under the provisions of Article 227 of the Constitution of India and that a finding of fact recorded by the Tribunal, cannot be assailed in such a

petition. This petition has been filed under Articles 226 and 227 of the Constitution of India. The powers of the Court under Articles 226 and 227 of the Constitution have been specified by the Supreme Court in *Surya Dev Rai Vs. Ram Chander Rai and Others*, wherein it is held that:

It is well settled that the power of superintendence conferred on the High Court under Article 227 is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.

Upon a review of decided cases and a survey of the occasions, wherein the High Court have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncements.

Applying the principles of law laid down in *Surya Dev Rai v. Ram Chander Rai* (Supra), it become clear that a person aggrieved can invoke the jurisdiction of the Court under Articles 226 and 227 of the Constitution and it cannot be said that this jurisdiction is not available to a party who is aggrieved by an order of remand. As has been held by the Supreme Court, the power of superintendence of the High Court under Article 226 is very wide and vesting the Court with such a wide power is to ensure that procedural technicalities will not come in the way of substantial justice. In the light of the above mentioned reasons, this preliminary objection is not sustainable.

(b) The second preliminary objection is that the petitioners have no locus standi since the land has already been sold to the respondent No. 3. In this respect, the learned Counsel for the petitioners has submitted that being an aggrieved party, the petitioners can always invoke the jurisdiction of this Court and since they were a party before the Tribunal, they can challenge the order of the Tribunal, if they are aggrieved thereby. In support of this contention, reliance has been placed upon *Dhurandhar Prasad Singh Vs. Jai Prakash University and Others*, , wherein it has been held that leave of the Court to continue a suit by or against a person on whom interest has devolved, is not necessarily to be obtained by a person on whom interest has been devolved and the prayer for leave can be made not only by the person upon whom interest has been devolved, but also by the plaintiff or any other party or person interested. Keeping in mind the above principles of law, the second preliminary objection of the respondent No. 1 also,

cannot be upheld.

(c) The third preliminary objection is on the ground of suppression of material facts. The same also cannot be sustained as the petitioners have joined respondent No. 3, who is the purchaser of the land in question, as party respondent in the present petition. It is noteworthy that the respondent No. 3 was also a party respondent in the Revision Application before the Tribunal and, being the purchaser of the land in question he has been impleaded through-out. It, therefore, cannot be said that there is a suppression of material facts by the petitioners.

8. Before I deal with the submissions made by the learned Counsel for the respective parties, it may be clarified that it would not be prudent to deal with those submissions which relate to the merits of the matter, since the Tribunal has not rendered a decision either way and to deal with the merits may result in causing prejudice to the parties. For this reason, the submissions made on the merits of the matter by the learned Counsel for the respective parties will not be dealt with and this Court will consider only those submissions which have been advanced on the point of remand.

9. It will be relevant to keep in mind that the case of the petitioners is supported by the respondent No. 3, who is the purchaser of the land in question and, therefore, the submissions made by Mr.A.J.Patel, learned Counsel for the petitioners as well as those of Mr.Y.N.Oza, learned senior advocate for the respondent No. 3, being more or less similar, shall be dealt with, together.

10. Mr.A.J.Patel has submitted that the impugned order remanding the matter back to the Mamlatdar could not have been passed when there was enough evidence on record to come to a conclusion one way or another. A perusal of the impugned order of the Tribunal, especially paragraph 9, reveals that the Tribunal has recorded reasons for remanding the matter back to the Mamlatdar. One of the reasons is that neither the applicant (respondent No. 1) nor the petitioners have been given an opportunity to adduce evidence. The order of the Mamlatdar dated 24-4-2000 reveals that the matter was adjourned 52 times, and the respondent No. 1 chose not to appear in spite of several notices being issued to him. Even otherwise, the Mamlatdar has decided the application of the respondent No. 1 on the basis of evidence on record, after affording ample opportunity to the said respondent to adduce evidence. Similarly, the order dated 16-9-2002 passed by the Deputy Collector shows that as many as 6 opportunities were given to the respondent No. 1, who did not care to remain present. The Deputy Collector has also decided the appeal on merits, by upholding the order of the Mamlatdar. As far as the observation of the Tribunal, that the petitioners have not been given an opportunity to adduce evidence to the effect that the respondent No. 1 was their paid servant is concerned, it is relevant to notice that it has never been the case of the petitioners that they have been denied such an opportunity. It, therefore, transpires from the record, that the submissions advanced by the learned Counsel for the petitioners as well

as the learned senior advocate for the respondent No. 3 are well founded and are supported by the material on record. In view of this position, the remand of the matter by the Tribunal on the ground of lack of opportunity to adduce evidence, is not justified.

11. The learned Counsel for the petitioners and the learned senior advocate for the respondent No. 3 have drawn the attention of the Court to the provisions of Regulation 22(3) of the Regulations, which empowers the Tribunal to direct the Collector or any authority concerned against whose order an application is made to make such further investigation or to take additional evidence directly or through any subordinates, as it may think necessary. Regulation 22(4) provides that where fresh evidence has been adduced under Sub-rule (1) or a further investigation is made or additional evidence is taken under Sub-rule (3), the parties may, if they so desire, address the Tribunal on points arising out of the fresh or additional evidence or further investigation. Although the record reveals that sufficient opportunities have been provided to the respondent No. 1 to adduce evidence, however, if the Tribunal was of the opinion that there was necessity to make further investigation, or to take additional evidence, then the provisions of Regulation 22(3) and (4) could have been invoked. It cannot be lost sight of, that the matter has remained under litigation for about 19 years and to relegate the matter back to the Mamlatdar at this late stage would entail another equally protracted round of litigation, which may never come to an end during the life-time of the parties. In this regard the observations made by the Supreme Court in *K. Krishna Reddy v. Special Deputy Collector* (Supra) are relevant.

The appellate power of remand, at any rate ought not to be exercised lightly. It shall not be resorted to unless the award is wholly unintelligible. It shall not be exercised unless there is total lack of evidence. If remand is imperative, and if the claim for enhanced compensation is tenable, it would be proper for the appellate court to do modest best to mitigate hardships. The appellate court may direct some interim payment to claimants subject to adjustment in the eventual award.

12. In *Ashwinkumar K. Patel v. Upendra J. Patel* (Supra), it has been held as under in paragraph 7:

In our view, the High Court should not ordinarily remand a case under Order 41, Rule 23, C.P.C. to the lower Court merely because it considered that the reasoning of the lower Court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have itself decided the appeal one way or other. It could have considered the various aspects of the case mentioned in the order of the trial Court and considered whether the order of the trial Court ought to be confirmed or reversed or modified. It could have easily considered the documents and affidavits and decided about the prima-facie case on the material available. In matters involving agreements of 1980 (and 1996) on the one hand and an agreement of 1991 on the other, as in this case, such

remand orders would lead to further delay and uncertainty. We are, therefore, of the view that the remand by the High Court was not necessary.

13. In *State of Punjab v. Gram Panchayat* (Supra), it has been held as under in paragraph 10:

It is next contended by the learned Counsel for the appellants that the case may be remanded to the Collector to enable the appellants to place necessary material on record. We are afraid we cannot accede to the contention of the learned Counsel. As the litigation is pending for more than fifteen years we do not want to put the clock back after such a long time.

14. Similarly in *Tanbaji v. Nathoba* (Supra), the Supreme Court has observed as under in paragraph 7:

Once having found the error in the approach of the appellate authority, the learned Member of the Tribunal was entitled to take into account whether the burden that is cast upon the tenant has been properly discharged and whether the order under revision could at all be sustained. In such process it is not always necessary that the matter must be remanded to the appellate authority for rehearing or re-writing the judgment.

15. The above principles of law, in my considered view, will squarely apply to the facts and circumstances as obtain in the present case, since not only have ample opportunities been provided to adduce evidence but, the Tribunal could also have invoked the provisions of Regulations No. 22(3) and (4), if it found that evidence was lacking. This course of action was always open to the Tribunal. Instead, by remanding the matter, the clock has been put back to almost twenty years and another round of lengthy litigation has been inflicted upon the parties. It was open to the Tribunal to consider the various aspects of the case as mentioned in the orders of the revenue authorities below and come to a conclusion either way, by confirming, reviewing or modifying or setting aside the order impugned before it. To relegate the parties back to square one after almost twenty years, especially when the record does not support the ground of lack of opportunity for adducing evidence, in my view, is not justifiable, in the facts and circumstances of the case.

16. Another ground for remand is that the petitioners have not been given an opportunity to adduce evidence that the respondent No. 1 was their paid servant. The learned Counsel for the petitioners has submitted that it has never been the case of the petitioners that they have been denied opportunity to adduce evidence, and neither was such a submission made before the Tribunal. It is not the case of the petitioners that they have been prejudiced due to lack of opportunity to adduce evidence that the respondent No. 1 was their paid servant. In this view of the matter, the order of remand on this ground cannot be upheld.

17. The third ground for remand of the matter by the Tribunal is that no proceedings were initiated to decide whether the respondent No. 1 is a tenant or

not. This observation is also not borne out from the record since these very proceedings have been initiated in the year 1994 by the Mamlatdar after the matter was remanded by the Revenue Secretary(Appeals) vide order dated 27/29-12-1993. These proceedings have culminated in the order of the Mamlatdar dated 24-4-2000. In these proceedings, the respondent No. 1 was given 52 opportunities to appear and adduce evidence. After having filed an appeal against the order dated 24-4-2000 before the Deputy Collector, which was disposed by order dated 16-9-2002 which, in turn was challenged before the Tribunal, it cannot be said that this is a case of no evidence so as to necessitate passing of an order of remand.

18. The remand of the matter on this ground after almost twenty years, especially as the respondent No. 1 has never prayed for remand on this ground, cannot be upheld.

19. As far as the submissions of the learned Counsel for the petitioners as well as the learned senior advocate for the respondent No. 3 regarding the pursish for withdrawal of the claim of tenancy by the respondent No. 1 is concerned, I am not inclined to express any opinion upon this aspect, as to do so would touch upon the merits of the case. The Tribunal has not given any conclusive judgment and the effect of withdrawal of the claim of the respondent No. 1 with regard to Survey No. 51/1 is required to be gone into at the time of final disposal of the matter. The learned Counsel for the respondent No. 1 has submitted that even as per Order 23 Rule 1, the claimant(plaintiff) has a right to abandon a claim in part. However, this submission of the learned Counsel for the respondent No. 1 is not being dealt with for the reasons stated hereinabove.

20. Similarly, I am not inclined to deal with the contention of the learned Counsel for the respondent No. 1 to the effect that the petitioners have not challenged the mutation entry in favour of the respondent No. 1 since 1963 since, it also relates to the merits of the case and, therefore, the judgment in *Laxmi Associates v. Collector, Vadodara*, (Supra) relied upon by him in this regard is also not being dealt with as it would touch upon the merits of the case.

21. In support of the order of remand, the learned Counsel for the respondent No. 1 has placed reliance upon *Nagkunverba v. Lomeshprasad* (Supra) in which the Court upheld the order remanding the matter back to the Mamlatdar and ALT to decide the same. That case turns upon its own facts and is, in my view, not applicable to the facts and circumstances of the present case. In the case in hand, one of the reasons for remanding the matter is that the respondent No. 1 was not granted "any chance to adduce any evidence to prove his tenancy rights". As has already been observed earlier, this ground is not made out from the material on record which reveals that sufficient opportunities have been given to the respondent No. 1.

22. In my considered opinion, in view of the fact that 52 opportunities have been given by the Mamlatdar to the respondent No. 1 and 6 opportunities by the

Deputy Collector, and the matter has remained pending for almost 20 years and also in view of the principles of law laid down by the Supreme Court as mentioned hereinabove, the order dated 29-1-2008 remanding the matter to the Mamlatdar cannot be sustained. It is, therefore, quashed and set aside. The matter is remitted back to the Gujarat Revenue Tribunal to decide afresh on the basis of evidence on record. If it is thought necessary, the provisions of Regulation 22(3) and (4) of the Bombay Revenue Tribunal Regulations, 1958 can be invoked by the Tribunal for arriving at a decision.

23. The petition is, therefore, allowed in the above terms. Rule is made absolute, to the above extent. There shall be no orders as to costs.