

(2019) 07 GUJ CK 0100

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 1088 Of 2016 In R/Special Civil
Application No. 7734 Of 2016 With Civil Application (For Stay) No. 2
Of 2016

Devjibhai Jivabhai Harijan And 7 Other(S) APPELLANT

Vs

Special Secretary (Appeals) And 2 Other(S) RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 79A, 135D, 211
Constitution Of India, 1950 — Article 226, 300A

Citation : (2019) 07 GUJ CK 0100

Hon'ble Judges : R.M.Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Prabhav A Mehta, Tirthraj Pandya

Judgement

1. Heard Mr. Prabhav Mehta, learned advocate for the appellants and Mr. Tirthraj Pandya, learned AGP for the respondent authorities.

2. The noteworthy facts, which can be culled out from the record of the petition, are as under Â?

2.1 That by an order dated 21.05.1962, the predecessor of the appellants was granted land by Deputy Collector, Dhangadhra, being Survey No. 298

admeasuring Acre 10Â16 Gunthas and Survey No. 305 admeasuring Acre 03Â24 Gunthas situated at village Vrajpar, Taluka Dhangadhra, Dist.

Surendranagar for the purpose of tilling/cultivation. The said grant was for selfÂcultivation. The revenue entries were mutated in the revenue record

as per the order of grant. As it was found that the land was not tilled by the predecessor of the present appellants for three consecutive years,

proceedings for breach of condition were initiated based upon the report and the statement recorded by the TalatiÂcumÂMantri of village Vrajpar.

The record also indicates that the original grantee Shri Jivabhai Kuberbhai gave statement before the Assistant Collector on 04.04.1983 that he was tilling the land in question, however, as the land in question has come in military area, the road is closed and there is harassment from Maldharis and therefore, he could not till the land. Similar statement was also given by one of the original allottee Shri Lakhmanbhai. The Assistant Collector, by order dated 19.05.1983, came to the conclusion that there is breach of condition as provided under section 79A of the Bombay Land Revenue Code and directed Mamlatdar, Dhangadhra to take possession of the land in question. It is also pertinent to note at this stage that after the said order was passed, entry with respect to forfeiture of land came to be mutated in village form no.6 being entry no. 733 dated 02.12.1983 which indicates that the lands are vested with the Government. The record indicates that the said entry came to be certified by Mamlatdar, Dhangadhra on 22.06.1984. The village form no.6 relied upon by the appellants also indicates an undisputed fact that the notice under section 135D of Bombay Land Revenue Code, 1879 was given before mutation of the said entry.

2.2 The order passed by the Assistant Collector forfeiting and confiscating the land in question was challenged by deceased Jivabhai Kuberbhai, predecessor of the appellants during his lifetime before the Collector, Surendranagar, which came to be registered as Appeal No. 3/01 and after hearing the parties, the Collector, Surendranagar, by an order dated 04.09.2001 was pleased to dismiss the appeal and did not believe the grounds raised by the appellant for the delay of 17 years in challenging the said order. The orders so passed by the Assistant Collector as well as the Collector were carried further by the appellants by way of filing appeal no. 41 of 2001 before the Gujarat Revenue Tribunal. The Tribunal vide order dated 24.12.2001 dismissed the appeal on the ground of lack of jurisdiction to adjudicate such dispute of breach of condition. Consequently, the appellants preferred revision before the SSRD as provided under section 211 of the Bombay Land Revenue Code, which came to be registered as Revision Application No. MVV/JMN/SNR/28/2015 on 02.09.2015. Thus, the revision was also filed after 5 years. However, the learned Secretary was pleased to hear the appellants and by a reasoned order, considering the delay as well as the factum that no grounds or reasons have been provided by the

appellants for keeping land uncultivated, the revision came to be dismissed on the ground of delay as well as on merits. The said orders were

challenged by the appellants before this Court by way of filing writ petition being SCA No. 7734/16, which came to be dismissed by the learned Single

Judge of this Court vide order dated 07.06.2016 and all the said orders are impugned in the present appeal.

3. Mr. Prabhav Mehta, learned advocate appearing for the appellants has contended that the appellants who are heirs of the original grantee are still in

possession of land bearing Survey No. 298. Mr. Mehta further contended that in similarly situated case from the same village, in same circumstances,

the delay of 17 years has been condoned by the authority and the land has been re-granted. Mr. Mehta therefore contended that similar treatment

needs to be given to the appellants also. Mr. Mehta further contended that even as per the affidavit-reply filed by the State in the present appeal,

the panch rojkam clearly indicates that the appellants are in possession of Survey No. 298 of village Vrajpar and are actually tilling the land. Mr.

Mehta contended that even before the learned Single Judge, the appellants have shown willingness to approach State Government, however, Mr.

Mehta contended that there is an apprehension that the delay may be a hindrance for such re-grant. Mr. Mehta contended that when in similar

circumstances and facts, the State Government has taken a particular view, there is no reason why a different view deserves to be taken in the case

of the present appellants. It was further contended by Mr. Mehta that the appellants belong to Schedule Caste and even as per the policy of the

Government and even as per Article 300A of the Constitution of India, the appellants are entitled to benefit of re-grant. Mr. Mehta also contended

that the purpose of grant was for agriculture and only because, for three years, the predecessor could not cultivate the land for valid reasons put

forward before the Assistant Collector, the same have not been considered and it was therefore contended by Mr. Mehta that the appeal be admitted

and allowed and the interim relief granted be continued.

4. Per contra, Mr. Tirthraj Pandya, learned AGP has opposed the appeal. Mr. Pandya contended that considering the observations made by the

learned Single Judge in para 7 of the judgment impugned, in fact, the appellants have made a statement before the learned Single Judge that they may

approach the State Government and in spite of the same, they have challenged the order by way of filing the present appeal and therefore, the

appellants are precluded from arguing the matter on merits. Mr. Pandya, learned AGP contended that the concurrent finding of facts of all the three

authorities and by the learned Single Judge are based on the evidence on record, which does not require to be interfered with. Mr. Pandya, learned

AGP contended that there is no inherent right in the appellants to insist for re-Grant and even though they are in possession of Survey No. 298 of

village Vrajpar, the said possession is nothing but trespass and they have no legitimate right to continue with the possession of the same. Mr. Pandya

contended that the appeal being meritless, deserves to be dismissed. Mr. Pandya however contended that as per the statement made by the appellants

before the learned Single Judge, it is still open for the appellants to approach the State Government.

5. No other or further grounds have been raised by the learned advocates appearing for the parties.

6. Having heard the learned advocates appearing for the parties and considering the record of the appeal, it clearly appears that the land bearing

Survey No. 298 and Survey No. 305 situated at village Vrajpar, Taluka Dhangadhra, Dist. Surendranagar were allotted for the purpose of self?

cultivation, i.e., Santhni, to the predecessor of the appellants way back on 21.05.1962. It is a matter of fact that the order dated 19.05.1983 passed by

the Assistant Collector was passed after following due process of law. It is found from the order passed by the Assistant Collector that not only the

predecessor of the appellants were heard but their replies have also been considered and thereafter breach of condition as provided under section 79A

of the Bombay Land Revenue Code has been believed by the authorities. It is also a matter of record that the entry was mutated being Entry No. 733

on 02.12.1983 in the revenue record which came to be certified after issuing notice by the competent authority and such entry is certified way back on

22.06.1984. It is also an admitted position from the record that Jivabhai Kuberbhai challenged the said order of Assistant Collector dated 19.05.1983

after 17 years and the reason put forward by the predecessor of the appellants was ignorance of law. The said reason has been examined by the

Collector as well as the learned Secretary in the appeal and revision respectively. Having raised such contention, the appellants cannot now be

permitted to raise any other grounds. In our opinion, the authorities below having considered the fact that the challenge to the order in origin dated

19.05.1983 passed by the Assistant Collector, Dhangadhra suffers from delay and laches. The learned Single Judge has succinctly set out the same in

the judgment impugned and the same is noteworthy. The learned Single Judge has observed thus :—

“5. The crux ground however is different. The appeal of the petitioner before the Collector against order of the Deputy Collector was preferred

after a yawning gap of 15 years. The Deputy Collector had decided the case on 02nd December, 1983, whereas appeal before the Collector

thereagainst came to be filed as late as in 2001. The petitioner struggled in vain, to explain the unreasonable delay of 15 years on the ground that he

was not aware and further that he was ignorant of law, because of which he could file appeal late. The delay is too long to be countenanced on any

ground. The Collector rightly held not to accept the explanation. Not only that, the Collector further recorded that the land was uncultivated and the

petitioner was not active to cultivate and the land was unused. On such convincing grounds, Collector dismissed the appeal.

5.1 Long delay in initiating the action or to challenge an order is by itself a vitiating aspect and debilitating factor without anything else requiring. For an

action in law, unreasonable delay works fatal; litigant would lose right to seek and get relief in court of law. If a person is not vigilant enough to

approach the legal forum or court for asserting his right or to challenge order of the authority at a later and belated stage, his stale claim cannot be

considered. Entertaining the proceedings of a litigant who has slept over for more than 15 years would tantamount to paying premium to an indolent

litigant. Delay of 15 years which is without acceptable explanation cannot be countenanced to entitle a party to maintain an action in law. Writ court

cannot overlook the said material aspect of delay in initiating the initial challenge. Therefore, the delay of challenging order of Deputy Collector before

the Collector itself was a cogent and good ground for the first respondent to dismiss the case of the petitioner. Delay in the facts and circumstances of

the case has necessarily worked fatal to the rights of the petitioner to seek relief.

6. This petition filed under Article 226 of the Constitution is not found entertainable for the aforesaid reasons. The order impugned passed by the first

respondent's revisional authority is eminently just, proper and legal when it dismissed the Revision Application on the ground that original order of the Deputy Collector was challenged by the petitioner before the Collector after unreasonable delay of 15 years. The petition is, therefore, dismissed.

7. Learned advocate for the petitioner at the last submitted that even if the land is forfeited by the State Government, it could be re-granted under the policy of the State Government. He submitted that petitioner proposes to approach the State Government for that purpose and even ready to pay the penalty and other charges.

8. It is clarified that this order will not preclude the petitioner from approaching the authority in accordance with law, however this Court does not express any opinion on the merits of this aspect.

9. Dismissed as above.??

7. We are in entire agreement with the reasons given by the learned Single Judge. Grant of Government land is not a matter of right and the fact that it was originally granted to the predecessor of the appellants, also does not ipso facto create any right in favour of the appellants. Grant of Government

largesse is based on the policy of the Government. In a given case, the predecessor may be eligible as per the policy which prevailed in the year 1962

when the original grant was given. The orders have been acted upon and the lands in question have been forfeited and confiscated by the State

Government and therefore, even if the appellants are in possession of Survey No. 298 of village Vrajpar, their possession is not based on any order or

any grant or any title. The affidavit which is filed by the State Authorities in the present appeal also indicates that the other land being survey number

305, which was forfeited and confiscated by the same order dated 19.05.1983 is not in possession of the appellants. The learned Single Judge relying

upon the statement made by the learned counsel appearing for the appellants' original petitioners, in para 7, has clearly provided that the order

impugned will not preclude the petitioners from approaching the authority in accordance with law. Even while not entertaining the appeal on merits, we

deem it fit to reiterate that in case if the appellants approach the State Government or its authority with a request for re-grant on the basis of the

facts and circumstances, the same shall be considered in accordance with law, as per the prevailing policy.

8. It was contended by Mr. Mehta that in case of Motibhai Malabhai, the order of re-Grant was passed even though there was delay of 17 years. It

appears from the order that considering the policy of the Government, by imposing penalty of Rs. 1/Â, the said order has been passed, however,

considering the provisions of section 79A of the Bombay Land Revenue Code, the said decision is taken by the Secretary as well as consequential

decision taken by the Deputy Collector is in the facts of the said case and the same does not create any right in favour of the appellants for congruity.

At the most, such order can be taken into consideration by the State Government if any application for re-Grant is filed by the appellants.

9. Considering the statement made before the learned Single Judge, as observed in para 7 of the said judgment of the learned Single Judge, if the

appellants approach the authority by filing an application, such application shall be considered in accordance with law taking into consideration all

aspects that may be raised by the appellants as per the prevailing policy of the Government. In case if the appellants file an application as per the

statement before the learned Single Judge as well as before this Court in this appeal within a period of two weeks, the State Authorities shall not take

any coercive action till the decision is taken by the State Government on such application.

10. In view of the above, the appeal is not entertained and the same stands dismissed.

11. As the appeal is dismissed, the Civil Application also stands disposed of.