

(2005) 02 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application No. 11919 of 2003

Dhirubhai Chhitlubhai

APPELLANT

Vs

Karsanbhai Chhimabhai Patel

RESPONDENT

Date of Decision : 23-02-2005

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 32G, 32K(3), 32M, 32P

Constitution of India, 1950 — Article 226, 227

Citation : (2005) 02 GUJ CK 0013

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : Hriday Buch, for the Appellant; Shital R. Patel, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—The petitioner herein has challenged the order dated 08/11/2001 passed by the learned Civil Judge (J.D.), Dharampur, below exh.33 in Regular Civil Suit No.43 of 1993, whereby the said application was allowed.

2. The brief facts of the case are as under;

2.1 The mother of the petitioner herein had married to the respondent, immediately after the death of father of the petitioner. The petitioner was tilling the land bearing Survey No.56/1, 61/2 and 65 of Village Motidhol Dungri, Taluka Dharampur and according to him, as on the Tillers" day, since the petitioner was the tenant, he became the "deemed purchaser" of the said land, as provided u/s 32 of the Bombay Tenancy & Agricultural Lands Act, 1948 (for short, "the Tenancy Act"). The petitioner also paid the purchase price as prescribed by the Agricultural Lands Tribunal, after holding inquiry as prescribed u/s 32-G of the Tenancy Act. Therefore, the entries in the Village Form were mutated and certified by the Revenue Authorities and the petitioner became the owner of the said land, as is clear from page 29 of the petition.

2.2 Thereafter, somewhere in the year 1993, the mother of the petitioner requested the petitioner to spare a small piece of land out of the said land to build a hut thereon for residential purpose. Accordingly, the petitioner permitted his mother as well as the respondent herein to reside in the said land for one year. It is the case of the petitioner that thereafter the mother of the petitioner and the respondent herein never vacated the said land as was promised by them.

2.3 Feeling aggrieved by the said action of his mother and the respondent herein, the petitioner instituted a suit being Regular Civil Suit No.43 of 1993 before the Civil Court, Dharampur, claiming possession of the land in question. On 21/09/1994, the mother of the petitioner expired and a serious dispute as regards the legal heirs of the deceased arose before the Civil Court.

2.4 On 21/01/1999, an application was moved by the respondent below exh.33, praying to stay the proceedings of the suit and to refer it to the Tenancy Court, as prescribed u/s 85-A of the Tenancy Act, by raising a dispute that the mother of the appellant was the "tenant" of the said land. The petitioner filed objections to the said application exh.33 by stating that the petitioner was the "deemed purchaser" of the said land and that he had also paid the purchase price of the land on 31/11/1964 and that entries were also mutated in the Village Form.

2.5 Written statement was filed by the defendants where specific contention was raised that the Civil Court had no jurisdiction to entertain the suit in question and that since the mother of the petitioner was a tenant of the said land, the competent authority to decide the dispute regarding tenancy under the law, was the Agricultural Lands Tribunal, Dharampur, and therefore, the said dispute may be transferred to the said Tribunal.

2.6 Issues were framed on 22/07/1994 where the question of jurisdiction was not raised at all, and therefore, it has to be presumed that the same was accepted by the defendants. However, after almost five years, application below exh.33 was preferred by the respondent herein as stated hereinabove. The learned trial Judge by order dated 08/11/2001 allowed the said application preferred by the respondent and directed that the dispute regarding tenancy be transferred to the Agricultural Lands Tribunal, Dharampur and also stayed the proceedings of the suit till the said dispute was decided by the said Tribunal. Hence, this petition.

3. Mr. Hriday Buch learned advocate for the petitioner has contended that as per the provisions of the said Act the petitioner became the "deemed purchaser" of the land in question and that upon payment of the purchase price, the entry was mutated in the name of the petitioner and the same was certified on 05/02/1965. The said fact is clear from the document placed at Annexure-D.

3.1 Mr. Buch learned advocate for the petitioner has submitted that the Entry which was confirmed in the year 1965 was never challenged by the present respondent or the mother of the petitioner, and therefore, it has achieved finality. He has submitted, that, thereafter, no dispute of whatsoever nature was raised

by the respondent or his mother for almost three decades.

4. Mr. Shital R Patel learned advocate for the respondent has submitted that even if the issue of jurisdiction was not raised, it was open for the respondent, at a subsequent stage, to raise the said contention by way of appropriate application.

4.1 Mr. Patel learned advocate for the respondent has relied upon a decision of this Court in the case of Shankerbhai Kanjibhai (Decd.) through his legal heirs Shankerbhai Kanjibhai (Decd.) through his Legal Heirs Vedubhai Shankerbhai Patel and Another Vs. Dagdubhai Govindbhai and Others, wherein it has been held that a Certificate issued u/s 32M of the Bombay Tenancy & Agricultural Lands Act, 1948 is conclusive as against a landlord but not as against a tenant and members of his family.

4.2 Mr. Patel learned advocate for the respondent has tried to canvass that as this being a petition under Article 227 of the Constitution of India, this Court has a very limited jurisdiction. In order to substantiate his contention, Mr. Patel has relied upon a decision of the Apex Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, wherein the effect of amendment on the jurisdiction of the High Courts under Articles 226 & 227 of the Constitution of India was discussed.

5. I have heard learned counsel for the parties and have perused the relevant documents on record. In the present case, the respondent has not claimed any right against the Landlord, but, has claimed right against the Minor for whom he has acted as a Guardian. Before dealing with the contentions raised by the learned counsel for the parties, it would be appropriate to refer to the Objects and Reasons of the said Act.

Objects and Reasons of the Tenancy Act :

Whereas it is necessary to amend the laws which govern the relations of landlords and tenants of agricultural lands;

And whereas on account of the neglect of a landholder or disputes between a landholder and his tenants, the cultivation of his estate has seriously suffered, or for the purpose of improving the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture, it is expedient to assume management of estates held by landholders and to regulate and impose restrictions on the transfer of agricultural lands, dwelling houses, sites and lands appurtenant thereto belonging to or occupied by agriculturists, agricultural labourers and artisans in the Province of Bombay and to make provisions for certain other purposes hereinafter appearing.

5.1 As per the provisions of Section 32M of the Tenancy Act, on payment of the purchase price, the Tribunal issues a Certificate of Purchase in a form prescribed, which shall be the conclusive evidence of purchase. In the event of the failure of recovery of purchase price u/s 32-K(3), the purchase shall become ineffective and the land shall be at the disposal of the Tribunal u/s 32P. Sub-section (2) of

the said Section provides that where in the aforesaid circumstances, the tenant-purchaser has continued in possession on 07/05/1965, the purchase shall not be ineffective, until the Tribunal fails to recover the purchase price u/s 32-K(3).

5.2 The aforesaid issue was indirectly considered by the learned Single Judge of this Court in the case of Nanba wd/o. deceased Hematsinh Maluba and Ors v. Ajitsingh Noghubha and Ors. reported in (1976) G.L.R. 975, wherein it has been held that the question whether a person is a tenant or not is not limited to the narrower issue whether a person is a tenant of a particular landlord. Irrespective of the question whether the issue is raised by the landlord or by a tenant or a co-tenant or any other person, it will still be a question whether a person is a tenant. Therefore, the question contemplated by Section 70(b) of the Bombay Tenancy Act was not limited to an issue between the landlord and the tenant. Hence, it is not appropriate on the part of a Guardian, acting on behalf of a Minor, to claim right against the said Minor. Therefore, the decision relied upon by Mr.Patel cannot come to the rescue of the respondent.

6. So far as the contention raised by Mr.Patel as regards the jurisdiction of this Court under Article 227 of the Constitution of India is concerned, the Hon"ble the Supreme Court in Surya Dev Rai v. Ram Chander Rai and Others (supra) has observed that while examining a petition under Article 227 of the Constitution of India, a writ of Certiorari or the exercise of supervisory jurisdiction is not available to correct mere errors of fact or of law, unless the error is manifest and apparent on the face of the proceedings, such as, when it is based on clear ignorance or utter disregard of the provisions of law or a grave injustice or gross failure of justice has occasioned thereby.

6.1 The Hon"ble the Supreme Court in the case of Surya Dev Rai (supra) in Paras 22, 27 & 32 has observed as under:

"22. Supervisory jurisdiction under Article 227 : Article 227 of the Constitution confers on every High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction excepting any Court or Tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power, the High Court has been conferred with certain specific powers by clauses (2) and (3) of Article 227 with which we are not concerned here at. It is well settled that the power of superintendence so conferred on the High Court 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. Else the parameters invoking the exercise of power are almost similar.

27. In *Chandrasekhar Singh v. Siya Ram Singh*, the scope of jurisdiction under Article 227 of the Constitution came up for the consideration of this Court in the context of Sections 435 and 439 of the Criminal Procedure Code which prohibits a second revision to the High Court against decision in first revision rendered by the Sessions Judge. On a review of earlier decisions, the three Judge Bench summed up the position of law as under: (SCC pp.1121-22, para 11)

(i) that the powers conferred on the High Court under Article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal Procedure.

(ii) the scope of interference by the High Court under Article 227 is restricted. The power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases, in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors;

(iii) that the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution;

(iv) that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as the Court of appeal; the High Court cannot, in exercise of its jurisdiction under Article 227, convert itself into a Court of appeal.

"32. The principles deducible, well-settled as they are, have been well summed up and stated by a two-Judge Bench of this Court recently in *State v. Navjot Sandhu*, SCC pp.656-57, para 28. This Court held :

(i) the jurisdiction under Article 227 cannot be limited or fettered by any Act of the State Legislature.

(ii) the supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with an interlocutory order;

(iii) the power must be exercised sparingly, only to keep subordinate Courts and Tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise."

6.2 On the facts of the present case, when the suit has been filed by the "deemed purchaser" for the possession of the disputed land in question, it is now not open for the respondent to raise the contention with regard to landlord-tenant, which has achieved finality after almost three decades. The land in question was not given by the owner to the respondent in the capacity of a "tenant", but he was holding it in the capacity of a "guardian", acting on behalf of the owner, i.e. the petitioner herein. Therefore, the respondent could not be said to be a "tenant" of the land in question. The trial court has therefore clearly

committed a manifest error and disregarded the provisions of law so as to warrant interference of this Court.

6.3 Apart from that, it is clear that the issues which were framed by the trial Court at exh.9 were accepted by the parties, and therefore, it has to be presumed that only with a view to delay the proceedings and with an intention that the petitioner - original plaintiff may not get the possession of the disputed land in question, the said issues were raised at a later stage.

7. In my opinion, the issue regarding tenancy is not tenable at this stage, inasmuch as the entry which was confirmed on 05/02/1965 was in the name of the petitioner - original plaintiff, and the same was not challenged for almost three decades. Therefore, the respondent, acting as a Guardian of the Minor, i.e. the petitioner herein, could not have claimed any right against the petitioner, merely on the ground of any amount spent on behalf of the minor.

7.1 A Guardian is a trustee of the Minor whose paramount responsibility is to look after the interest of the Minor. It is expected from him that while managing the property of the minor, he will not create any right over the said property and that he will perform his duties diligently. It is also expected from him that he will even sacrifice his interests for the faith reposed in him by the Minor. On the facts of the present case and from the documents on record, it is apparent that the respondent is not a "tenant" of the petitioner, but is his "guardian". Therefore, the respondent cannot be permitted to take advantage of his own actions against the interest of the petitioner.

7.2 The entries in the Village Form were mutated and certified by the Revenue Authorities in the name of the petitioner. It is absolutely the exclusive right of the Minor, and therefore, the Entry at Annexure-D has not been set aside by the competent authority. Accordingly, it is now not open for the respondent to challenge the said entries at this stage. Moreover, there are no other documents on record even remotely to prove the claim of respondent with regard to tenancy right. In above view of the matter I am of the view that the order below Exh.33 is required to be quashed and set aside.

8. In the result, this petition is allowed. The impugned order dated 08/11/2001 passed by the learned Civil Judge (J.D.), Dharampur, below application exh.33 in Regular Civil Suit No.43 of 1993 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

9. Since the suit in question is of the year 1993 and is already ripe for hearing, the trial Court is directed to expedite its hearing and to dispose it of within a period of six months from the date of receipt of writ of this order.

10. Writ to be sent to the trial court forthwith.