(2005) 04 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 1183 of 2005

Ganeshbhai Manilal Mayavanshi APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63

Citation : (2005) 04 GUJ CK 0054

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Gaurang H. Bhatt, for the Appellant; Government Pleader for Respondent Nos. 1-3 and 16-17 and R.M. Chhaya, for Respondent No. 4-15, for the Respondent

Judgement

Jayant Patel, J.—As the notice for final disposal was issued, the matter is finally heard today.

2. The short facts of the case are that the petitioner has purchased the property by registered sale deed, dated 25.11.1980 vide Registration

No.572 and the description of the property is the land admeasuring 0 acres 5 gunthas bearing No.10. It appears that when the entry was mutated

in the revenue record on the basis of registered sale deed, the objections were filed by respondent Nos 4 to 15 on the ground that they are the

coparceners of the property. The objections were rejected by the Mamalatdar as per order, dated 20.11.1995. It appears that the matter was

carried before the Dy. Collector in appeal and ultimately as per order, dated 10.5.96 the said appeal came to be dismissed. The private

respondents carried the matter before the Collector and the Collector as per his order dated 15.12.98 allowed the revision on the ground that by the registered sale deed dated 25.11.1980 the transfer of the land admeasuring 5 Gunthas was a fragmentation of the land in question. It also

appears that the matter was carried before the State Govt in the revision application by the petitioner herein and ultimately the said revision is

dismissed and it is under these circumstances the petitioner has approached this court.

3. Upon hearing Mr. Bhatt for the petitioner, Mr. Mengdey, Ld.AGP for the State authorities and Mr. Chhaya for the private respondents, it

appears that the issues arise for the consideration of this court are covered by the decision of this court, dated 28.9.2004 in the case of Jayantilal

Jethalal Soni v. State of Gujarat (Special Civil Application No.12547/04). In the said decision at paras 7,8 and 9 it was observed as under:

7. It appears that if a registered sale deed is executed by the holder of the land, it confers the right pertaining to the land in question in favour of

the purchaser of the land and, therefore, the rights pertaining to the land in question in normal circumstances can be said to have been acquired

over the land in question for which recording is required to be made in the revenue record. It is also well settled that the revenue entries are having

value only for fiscal purpose and more particularly for the purpose of recovery of revenue and it neither confers any right or title over the property,

nor does it take away the right or title in the property which otherwise cannot be available under the law. However, the question which arises for

the consideration is if a sale deed is executed by the holder of the land which runs prima facie counter to the other statutory provisions of other

enactment or is barred under the other enactment or it alters or disturbs the rights of the persons under the other enactment then, can the revenue

authority shut its eyes by ignoring such flagrant violation of such law or if it is considered, what will be the proper course to be followed ? In case

of ""Evergreen Apartment Co-op. Housing Society"" (supra), this Court has expressed the view that it is not open to the revenue authority exercising

power under the Code to exercise power under the other enactment and to decide in respect to the breaches which are committed under the other

enactment and thereby to uncertify the entry or to cancel the entry made in the revenue record. In case of ""Janardan D. Patel v. State of Gujarat

(supra) at para 11, it has been observed as under:

11. If any such question arises, the matter should be referred to the authority empowered to deal with under the said other enactment. For

example, the validity of a transaction on the basis of Sec. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for brief)

is sought to be challenged. That question cannot be decided by revenue authorities in RTS proceedings. In such situation, the correct procedure to

be followed would be to refer the matter to the authority empowered under the Tenancy Act for his decision. The necessary mutation entry may be

made only after the decision of that authority under the Tenancy Act is received. It would, however, not be open to revenue authorities in RTS

proceedings to decide that question.

8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgement, it appears that it would not be

proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities

exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising

power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of

both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of

the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into adversely

affecting the rights under the other enactment and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority

would be to record the entry for registered sale deed with the express observations that the registered sale deed is prima facie in breach of the

other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed

and the entry should be made subject to the final decision which may be taken by the competent authority under the other concerned enactment.

This Court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property

would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known

to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other

enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with

law. If the entry, on the basis of the sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also

conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such

transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the

other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore,

it cannot be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the

matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising power under

the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or

not.

9. In view of the above, it cannot said that the orders passed by all the authorities on the basis that the Mamlatdar has not inquired into the

aforesaid three aspects namely as to whether there is any breach of the provisions of the Prevention of Fragmentation Act or the provisions of

Tenancy Act, are absolutely without any basis and the orders can be maintained only to the extent that in case it is found by the Mamlatdar after

remand that there are prima facie breach of the other enactment by the transfer in question, the revenue authority exercising power under the Code

may refer the matter to the appropriate authority under the other enactment or may relegate the affected party to resort to appropriate proceedings

under the other enactment and the entry may be considered subject to the final outcome in the proceedings under the other enactment, as observed

hereinabove in earlier paragraphs.

4. If the matter is examined in the light of aforesaid observations made by this

court in the above referred decision in the matter of Jayantilal Jethalal

Soni (supra) the entry on the basis of registered sale deed deserves to be maintained on record with the qualification that as per the revenue

authority the transaction is in, prima facie, breach of the provisions of Bombay Prevention of Fragmentation & Consolidation of Holdings Act,

1947 (hereinafter referred to as ""the said Act""). It may be that the revenue authority may make reference to the competent authority under the said

Act and the entry may be allowed to be continued on record till the finalisation of proceedings, if any, before the competent authority under the

said Act. Under the circumstances, the order of the Collector and its confirmation thereof by the State Govt for cancellation of the entry on the

ground that the transaction is in breach of the aforesaid Act can not be maintained in toto and to that extent the orders passed by the Collector and

its confirmation thereof by the State Govt deserve to be quashed and set aside and hence the Entry No.3119 dated 12.2.1994 by the registered

sale deed dated 25.4.80 is directed to be restored to the revenue record with clarification and qualification that the transaction is in primafacie

breach of the provisions of the said Act and the entry should continue on the revenue record subject to finalisation of decision in appropriate

proceedings under the said Act by the appropriate authority.

It is also made clear that it would be open to the revenue authority to make reference to the competent authority under the said Act for examining

the legality and validity of the transaction, and if such a reference is made, all the contentions of the petitioner including delay shall also remain open.

5. The petition is partly allowed to the aforesaid extent. Rule is made absolutely accordingly. Considering the facts and circumstances of the case,

there shall be no order as to costs.

