

(2011) 05 GUJ CK 0147

In the Gujarat High Court

Case No : Letters Patent Appeal No. 2863 of 2010 in Miscellaneous Civil Application for Review No. 1796 of 2010 in Special Civil Application No. 7494 of 1993 and Civil Application No. 33 of 2011 in Letters Patent Appeal No. 2863 of 2010

Gangaben Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 15, 6, 6(2), 7, 8

Citation : (2011) 05 GUJ CK 0147

Hon'ble Judges : S.J. Mukhopadhaya, C.J; Anant S. Dave, J

Bench : Division Bench

Advocate : M.A. Kharadi, for, 1.2.1, 1.2.2, 1.2.3, 1.2.4, for the Appellant; Pranav Trivedi, Asst. Government Pleader for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

Anant S. Dave, J.—The Appellants (original Petitioners) have filed this appeal under Clause 15 of Letters Patent Appeal against the order dated 8.10.2010 passed by learned Single Judge in Misc. Civil Application No. 1796 of 2010. The above application for review came to be disposed of by correcting a fact noticed by learned Single Judge about nature of perennially irrigated land erroneously included in the total holding of agricultural land and declaring the land as surplus by the authority under the provisions of the Gujarat Agricultural Lands Ceiling Act, 1961 (for short "the Act").

2. It is necessary to refer orders passed by various authorities under the Act namely, Mamlatdar and ALT, Dy. Collector and Gujarat Revenue Tribunal under the Act. As per the record, a finding was given by the competent authority namely Mamlatdar and ALT and Agricultural Land Tribunal on 24.6.1987 declaring a total of 28 Acres 38 Gunthas of land of the Petitioners as surplus, which came to be upheld by the Dy. Collector in appeal vide order dated 13.6.1988 and also

by the revisional authority namely, the Gujarat Revenue Tribunal as per decision dated 4.7.1992. Thus, when Special Civil Application No. 7494 of 1993 was filed with regard to area of land and ceiling limit, no dispute was raised by the Petitioners. However, various contentions were raised with regard to applicability of provisions of Sections 6(2) and 15 of the Act in the context of the facts about nature of agricultural land as defined under the Act. One of the main contention raised by the Petitioners before learned Judge was about land admeasuring around 18 Acres 37 Gunthas was transferred by him in favour of his son in the year 1970 and his wife, i.e. mother of his son, remained as guardian to look after the land. It is not necessary for us at this stage to consider various facts in details along with other arguments of learned advocate canvassed before the learned Single Judge in the above writ petition, since after considering provisions of Sections 6(2) and Section 15 of the Act and transfer of the land admeasuring 18 Acres 37 Gunthas prior to the specified date and further different types of the land held by the holder, the learned Judge dismissed the writ petition on 22.10.2008.

2.1. The above order of learned Single Judge was challenged before Division Bench in Letters Patent Appeal No. 1483 of 2008 and various contentions were raised and Division Bench noticed two main contentions and found no merit in any of the contentions raised by the Appellants but upon a request made by leaned advocate for the Appellants to prefer a review application before the learned Single Judge with regard to an erroneous calculation of perennially irrigated land, permission was granted to withdraw the appeal and order was passed accordingly. However, the above order dated 30.12.2008 passed in Letters Patent Appeal No. 1483 of 2008 was sought to be reviewed by filing Misc. Civil Application No. 2980 of 2009 and Division Bench of this Court having gone through the record and in absence of error apparent on the face of the record dismissed said review application. However, in terms of liberty reserved to the Appellants as per earlier order dated 30.12.2008 passed in Letters Patent Appeal No. 1483 of 2008 the Appellants preferred the review application being Misc. Civil Application No. 1796 of 2010 before the learned Single Judge which came to be disposed of as stated herein above after due consideration of various aspects and noticing the fact about 1 Acre of land approximately was not getting perennially water supply and authorities under the Act were directed to correct their orders about declaration of surplus land accordingly.

3. Mr. Kharadi, learned advocate for the Appellants reiterated all submissions canvassed before learned Single Judge in an application for review as well as contentions raised in appeal in which liberty was reserved to the Appellants to prefer review application and further contended that while reviewing the order, learned Single Judge again has not addressed to very aspects of nature of perennially irrigated land in the context of Canal Certificate issued by the authority in the command area of irrigation project and before the competent authority Canal Officer was not cross examined. Therefore, order passed in review application impugned in this appeal suffers from basic error and when all

the authorities namely, Competent, Appellate and Revisional under the Act failed to appreciate above factual error and also depriving the Appellants/Petitioners of right to cross-examine Canal Officer so as to unearth truth deserves to be corrected by this Court. According to learned advocate for the Appellants provisions of Sections 6(2) and 15 of the Act are not interpreted in the context of factual background of the case and thus, learned Judge committed an error barring a minor correction in confirming the orders passed by the authorities below in declaring the land of the Petitioners as surplus.

4. Heard learned AGP for the Respondent-State.

5. Having heard learned advocate for the parties and on perusal of the record along with provisions of the Act, we are of the opinion that there is no merit in any of the contentions of learned advocate for the Appellants canvassed before us inasmuch as, this appeal is another attempt in succession to convince this Court about a case on fact as well as on law which is non-existent at the stage of appeal. That, declaration of surplus land under the Act was made by the competent authority after considering all relevant aspects including the nature of land held by the Appellants and it came to be confirmed in appeal as well as in revision and, therefore, finding of fact of total holding of agricultural land and declaring surplus land under the Act virtually became final. Against concurrent findings of fact a writ petition preferred by the Appellants came to be dismissed after considering the contentions raised therein in the context of provisions of Sections 6(2) and 15 of the Act. The learned Judge in the decision dated 22.10.2008 also noticed transfer of land by the Petitioner in favour of his son as early as in 1970 and procedure prescribed of computation of surplus land in Section 15 which provided inclusion of the land transferred or partitioned by such person after 15th Day of January, 1959 but before the commencement of the Act and the land admeasuring of 18 Acres and 37 Gunthas was transferred in favour of a minor son was in the year 1970. The learned Single Judge has also summarized requirement of Sub-section (2) of Section 6 but due to inadvertence though stated, the above provisions could not be reproduced but obligation of the authority to consider various parameters while computing surplus have been stated in no uncertain terms. However, in Letters Patent Appeal which was preferred against the above order a Division bench permitted the Appellants to prefer a review application on a limited aspect of nature and measurement of perennially irrigated land and that was the factor to be considered in review in the context of factual finding by the authorities below. In the review application, learned Single Judge while reviewing the order once again undertook scrutiny of factual aspect and noticed that 1 Acre land of block No. 202 was not receiving perennial water supply. In view of the above finding, learned Single Judge modified earlier judgment dated 22.10.2008 to the above extent and orders passed by the authorities below also stood modified and the Petitioner was granted an opportunity to select retainable part of the land as per the Rules and to apply to the Mamlatdar accordingly. In view of the above finding on fact and relevant provisions of the Act as under:

Section 6(2) of the Gujarat Agricultural Lands Ceiling Act, 1961 reads as under:

6(2). Where an individual, who holds land, is a member of a family [not being a joint family which consists of the individual and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters, irrespective of whether the family also includes any major son and] land is also separately held by the individual's spouse or minor children, then the land held by the individual and the said members of the individual's family [excluding major sons, if any] shall be grouped together for the purposes of this Act and the provisions of this Act shall apply to the total land so grouped together as if such land has been held by one person.

15. Computation of surplus land.- The extent of surplus land, if any, held by any person [xxx] shall be computed on the basis of the total land held by such persons[xxx];

Provided that the total land so held shall include-

(a) where such person holds in addition to the land held by him individually as owner or tenant, a share in the land held by a joint family, an area of land equivalent to his share in the land which such joint family, is entitled to hold u/s 6,

(b) land, if any, transferred or sub-divided by or on behalf of such person in contravention of Section 7, and

(c) land, if any, transferred or partitioned by such person after the 15th day of January, 1959 but before the commencement of this Act or after 14th January, 1971 but before the specified date, and in respect of which no application for a declaration u/s 8 was made or any application made u/s 8 has been rejected.

6. In view of conjoint reading of Sections 6(2) and 15 of the Act transfer of land in question in favour of a minor son in 1970 by the Appellants would have to be included as a land in the total holding of agricultural land and declaration of surplus land accordingly by the authorities below cannot be said to be illegal, and, therefore, on merit also we are convinced that no error appears on the record while rejecting the petition as well as review application of the Appellants. Thus, exercising powers by learned Single Judge in a review jurisdiction cannot be said to be in any manner contrary to settled law on the issue and an error apparent on the face of the record as noticed by the learned Judge about 1 Acre of land in block No. 202 was considered and the order was corrected accordingly by issuing proper directions. In addition to above, earlier, Division Bench of this Court in order dated 30.12.2008 passed in Letters Patent Appeal No. 1483 of 2008 did not find merit in any other contention. We do not find any force in any of the submissions of learned advocate for the Appellants including the certificate issued by Canal Authority and opportunity was not made available to the Petitioners to cross-examine officer issuing Canal Certificate are in realm of re appreciation of evidence at the stage of appeal and we do find that while

reviewing the order learned Judge has done complete justice to the Appellants.

7. No interference is called for. Letters Patent Appeal is rejected with no order as to costs.

8. In view of the above order, no order on Civil Application.