

(2014) 07 GUJ CK 0085
In the Gujarat High Court
Case No : Writ Petition (PIL) No. 127 of 2013

Govindbhai Nathabhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 20

Citation : (2014) 07 GUJ CK 0085

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : A.R. Thacker, Advocate for the Appellant; Vandan Baxi, Asst. Govt. Pleader and Mehulsharad Shah, Advocate for the Respondent

Judgement

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Bhaskar Bhattacharya, C.J.—By this Public Interest Litigation, the writ-petitioner has prayed for issue of a writ of mandamus or any other appropriate writ, order or direction declaring that the land in question is a reserve forest land and for further declaration that it was not open for the learned 3rd Additional Senior Civil Judge, Bhuj, to reopen the above issue in view of the judgment and order dated 12th March 1996 of this High Court in SCA No. 1415 of 1995 and consequently, to declare that the said decree passed in Regular Civil Suit No. 206 of 2003 by the learned 3rd Additional Senior Civil Judge, Bhuj is null and void with further direction upon the Government Authorities to take possession of the land in question.

2. The case made out by the petitioner may be summed up thus:-

2.1. In spite of the fact that the location of the land being Survey No. 27 and 51 (paiki) and the land bearing Survey No. 173 (paiki) which are forest land, one Shri Kanji Devji, the predecessor-in-interest of respondent Nos. 3 to 5, filed an application before the Deputy Collector, Bhuj, to grant the land of 1 Acre 20

Guntha from the land bearing Survey No. 173 (paiki) being adjoining land. The Deputy Collector, Bhuj, passed order dated 8th April 1982 in favour of Shri Kanji Devji and on that basis, the Revenue entry was made on 14th April 1982.

2.2. The Collector, Kutch took the aforesaid order of the Deputy Collector, Bhuj, in Revision under Section 211 of the Bombay Land Revenue Code and after hearing the parties, the Collector, Kutch passed order dated 7th August 1989 and set aside the order of the Deputy Collector, Bhuj, dated 8th April 1982.

2.3. The aforesaid order of the Collector dated 7th August 1989 was challenged before the Secretary (Appeals), Revenue Department, Government of Gujarat on behalf of Kanji Devji. The Secretary (Appeals) by order dated 11th October 1990 confirmed the order of the Collector, Bhuj dated 7th August 1989.

2.4. Being dissatisfied, a Special Civil Application No. 1415 of 1995 was filed before this Court at the instance of Shri Kanji Devji and the respondent No. 4, who was holding power of attorney of Shri Kanji Devji, executed sale deed in favour of respondent Nos. 3 and 5 on 15th September 1994. During the pendency of the Special Civil Application, respondent Nos. 3 and 5 made an application for addition of parties and such prayer was allowed by this Court on 11th October 1995. Ultimately, this Court by order dated 12th March 1996 confirmed the order of the Collector, Kutch dated 7th August 1989 holding that the land in question is a forest land.

2.5. After a long period of more than seven years, respondent Nos. 3 and 5 filed a Regular Civil Suit being No. 206 of 2003 in the Court of learned Civil Judge, Bhuj, praying therein for declaration that the land in question is not a forest land and the Forest Department has no right over the said land. The said suit was contested by the State-respondent as well as the Forest Authority and the learned 3rd Additional Senior Civil Judge by the judgment and decree dated 15th May 2009 decreed the suit and held that the Forest Department has no right over the land which is in conflict with the judgment of this Court in SCA No. 1415 of 1995.

2.6. Although the petitioner has no personal interest over the land in question, the petitioner has approached this Court being a public spirited person for wrong being done in which the Government authorities are not taking action as respondent Nos. 3 to 5 are highly influential persons in Kutch district and respondent No. 4 is holding the post of Vice President of a political party.

3. This application is opposed by respondent Nos. 3 to 5 thereby contending inter alia that this Public Interest Litigation is not maintainable and the judgment and decree passed in the Civil Suit having attained finality, the said decree cannot be upset by this application.

4. So far as the previous proceeding is concerned, the defence of the respondent Nos. 3 to 5 is as follows:-

4.1. Kanji Devji had filed revision before the Secretary (Appeals) against the

order of District Collector and thereafter, he filed Special Civil Application No. 1415 of 1995 before this Court which was dismissed by order dated 12th March 1996. After the order passed by this Court in the year 1996, the present respondent Nos. 3 and 5, who had purchased the land bearing Survey No. 27 and the adjoining land, remained in possession and were doing agricultural activities. However, thereafter, on apprehension that the Forest Department may disturb their possession, the respondent Nos. 3 and 5 instituted Regular Civil Suit No. 206 of 2003 in the Court of Civil Judge, Senior Division, Bhuj on 17th July 2003 for a declaration that the land adjoining to Survey No. 27 granted to the predecessor-in-title is not part of reserve forest land and the Deputy Conservator of Forests has no right to disturb peaceful possession of the adjoining land.

4.2. The suit was contested by the State of Gujarat by filing written statement and relevant documents, namely, the map of reserve forest of land (Exh. 56), Government Notification (Exh. 57) were produced on record by the Forest Department. Ultimately, the learned Additional Senior Civil Judge has been pleased to decree the suit and declare that the suit land, that is to say, the land adjoining Survey No. 27 is not forest land. The said decree has not been challenged by the State of Gujarat before any higher authority. It appears from the report of the Forest Settlement Officer that though land admeasuring Hectare 57.34 Ares was allotted to the Forest Department, in fact, the Forest Department was holding the land admeasuring Hectares 66.32 Ares which was in excess of the land originally allotted and as per Notification issued under Section 20 of the Indian Forests Act dated 25th July 2000, the Forest Department is holding land admeasuring Hectares 57.34 Ares out of traverse Survey No. 173 paiki. It appears that proper measurement was done by the Forest Settlement Officer and he had drawn attention of the Deputy Conservator of Forests to several inconsistencies/irregularities and thereafter, detailed measurement was made and map was prepared demarcating forest land, road passing through the forest land and other private lands.

4.3. Subsequently, in case No. 7 of 2002-03, the Forest Settlement Officer, Bhuj, passed a detailed order on 30th July 2002 by which it was specifically declared that after taking land admeasuring Hectares 57.34 Ares from survey No. 173 paiki for reserve forest land, the land mentioned in Schedule-A with marking "A, B, C, D, E, E/1, E/2, F, F/1 & F2" and the land of public road and religious places did not form part of reserve forest. It was further held that the map prepared along with Resolution dated 21st January 1977 had been cancelled. In view of the order passed by the Forest Settlement Officer in Case No. 7 of 2002-03, the Forest Officer filed purshis before the Civil Court, Bhuj, in pending Civil Suit No. 2065 of 2003 declaring that the land adjoining to survey No. 27 did not form part of forest land.

4.4. Thus, after the order of this Court in SCA No. 1415 of 1995 dated 12th March 1996, several other circumstances and events had taken place, as stated above, and on the basis of Notification dated 25th July 2002, actual/exact land of

Hectares 57.34 Ares has been measured and thereafter, the Forest Department has put up fencing around most of the land to earmark their possession. The other allegations contained in the application have also been denied.

5. The State-respondent has also filed separate affidavit-in-reply and in the said affidavit, the State-respondent has taken a peculiar confusing stance. It has been admitted that the order of the Deputy Collector was upheld by this Court in SCA No. 8617 of 1993 but thereafter, in paragraph 19, it has made the following submissions:-

19. Therefore, it has been almost 19 years that has passed since the order of the Hon"ble Court (order dated 16.08.1994) and no appeal has been preferred against the said order of the Hon"ble High Court and the said fact has been considered by the Collector in his order No. A-2/land/vasi/981/2012 dated 30.03.2012 annexed herewith as R-Annexure-B. Therefore, the said order of the Hon"ble High Court dated 16.08.1994 was required to be followed i.e. whatever is the measurement and position of title of Survey No. 27 and Survey No. 51, necessary steps have to be taken accordingly, such were the directions issued in SCA No. 8617 of 1993 vide order dated 16.08.1994.

5.1. The State-respondent has, however, ultimately, prayed for dismissal of this application.

6. Therefore, the only question that arises for determination in this Public Interest Litigation is, whether this Court in exercise of power conferred under Article 226 of the Constitution of India can set aside a subsequent decree of a Civil Court declaring the right of the respondent Nos. 3 and 5 in the land in question at the instance of the petitioner who has no right over the land in question.

7. We have already pointed out that the State-respondents were made parties in the suit and had suffered a decree, but have decided not to prefer any appeal against the said decree.

8. After hearing the learned counsel for the parties and after going through the materials on record, we find that there is no scope of issuing any mandamus for setting aside a contested decree passed by a Civil court where the State-respondents although were the defendants but did not challenge the decree.

9. A decree passed by a Civil Court can be quashed by way of writ in the nature of certiorari but for the purpose of exercising such jurisdiction, the following conditions must be satisfied:-

(i) When the court subordinate to the High Court acts without jurisdiction, or

(ii) when the Court acts in excess of jurisdiction or

(iii) when the Court acts in flagrant disregard of (a) law and rules; or (b) the principles of natural justice (See Surya Dev Rai Vs. Ram Chander Rai and Others, .

10. A. Want of jurisdiction.

Want of jurisdiction, however, can arise in various circumstances, for example,

(1) Defective constitution of the Tribunal (See *The State of Rajasthan Vs. The Mewar Textile Mills Ltd., Bhilwara and Others*, .

(2) It may also arise from nature of the subject-matter so that the inferior court or the tribunal might not have the authority to enter upon the subject-matter of the inquiry or upon any part thereof (See *J.K. Chaudhuri Vs. R.K. Datta Gupta and Others*, .

(3) Absence of some essential preliminary or the existence of some facts collateral to the actual matter which the Court has to try and which are conditions precedent to the assumption of jurisdiction by it. (See *Shrinivasa Reddy and Others Vs. State of Mysore and Others*, . In other words, the general rule is that a Tribunal cannot assume jurisdiction by wrongly deciding facts, the existence of which are essential for assumption of jurisdiction by the Tribunal.

11. B. Error apparent on the face of the record.

When the decision of the court below is vitiated by an error "apparent on the face of the record", it is liable to be quashed by the issue of a writ in the nature of certiorari. It has been pointed by the Supreme Court in the case of *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, that error in this context means "error of law" and "law" in this context also includes a mixed question of law and fact, as further explained by the Supreme Court in the case of *Mohd. Shafi Vs. Additional District and Sessions Judge (VII), Allahabad and Others*, . It has been, however, pointed out by the Supreme Court in the case of *Ambica Mills (supra)* that an "error of fact" apparent on the face of the record although may be a ground for review under Order 47 Rule 1 of the Code but the same cannot be used for interference by means of issue of a writ in the nature of certiorari, however, gross the error of fact may be. Over and above, we should bear in mind that interference on the ground of error apparent on the face of the record is an exception to the rule that in exercise of its power to issue certiorari, a court cannot act as a court of appeal. This, however, does not mean that in exercise of this power, the court issuing writ of certiorari can interfere in case of every error of law which could be corrected by a court of appeal. It is also now settled law that mere formal or technical errors, even though of law or error in appreciation of documentary evidence, is not a ground of interference as pointed out in the case of *Ambica Mills (supra)*. It has, however, been clarified that a finding based on no evidence constitutes an error of law but an error in appreciation of evidence or in drawing inferences except where any reasonable person appropriately instructed in law would not have reached at conclusion or the finding is based on evidence, which is legally inadmissible.

12. C. Violation of the Principles of Natural Justice.

Certiorari can lie where a judicial authority has violated the principles of natural

justice even though the authority has acted within its jurisdiction. As for instance, a judicial authority cannot make any decision adverse to any party without giving effective opportunity of hearing. However, where a reasonable opportunity has been given in a particular case, the above principle will not be applicable. We must, at this stage, bear in mind that natural justice may be excluded by statutory provision and where a statute is silent or the provision can be read consistently with the principles of natural justice the court should do so on the presumption that Legislature intended the statutory authority to act in accordance with natural justice.

13. By applying the aforesaid principles to the facts of the present case, we find that in this case, neither is there any error "apparent on the face of record" nor is it a case of lack of jurisdiction nor is there any breach of the principles of natural justice because the decree impugned is a contested one which has attained finality.

14. Another factor coming in the way of the petitioner in maintaining the application is, in order to give relief of certiorari, the Court whose decree is sought to be challenged should be made party but in the case before us, the concerned court has not been made party. (See Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar,

15. Apart from the facts indicated above, the State-respondent who has suffered the decree, having decided not to challenge the same, the accrued right in favour of a decree holder which has attained finality by lapse of time fixed by law, cannot be taken away except by way of appeal prescribed under the law.

16. On consideration of the above facts, we are of the view that this Public Interest Litigation should be dismissed and the same is, accordingly, dismissed. No costs.