(2004) 03 GUJ CK 0062

In the Gujarat High Court

Case No : Special Civil Application No. 10638 of 1993

Govindji Chhabaji APPELLANT

Vs

Prant officer RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 2004 Guj 309 : (2004) 24 GLH 487

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Sudha R. Gangwar, for Petitioner Nos. 1-5, for the Appellant; L.R. Poojari, AGP for Respondent Nos. 2-3 and J.K. Parmar, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—The petitioners, who are owners of block No. 431 situated at Village Kujad, Taluka Dascroi, have preferred the present Special Civil Application under Article 226 of the Constitution of India challenging the judgment and order dated 22.9.1993 passed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, dismissing Revision Application and confirming the judgment and order passed by the Collector, Ahmedabad, dated 30th December 1988 by which the Collector, Ahmedabad, has confirmed the judgment and order passed by the Deputy Collector, Viramgam dated 20th August 1988 in cancelling the Entry No. 1729.

2. The petitioners had purchased the land bearing block No. 431 situated in Village Kujad, Taluka-Dascroi by registered Sale Deed from the respondent No. 4 herein and names of the petitioners were entered into the Record of Rights vide Entry No. 1729 dated 13th March 1987 which was certified on 2.5.1987. That the said Entry No. 1729 dated 13th March 1987 which was certified on 2.5.1987 came to be reviewed by the Deputy Collector, Viramgam Prant exercising suo motu powers on the ground that there is breach of provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act ("the Act" for

short). That the Deputy Collector, Viramgam Prant by his judgment and order dated 20th August 1988 not only quashed and set aside the entry No. 1729 but also passed an order of imposing the penalty u/s 9 of the Act and further directed to return possession of the land in question.

3. That being aggrieved and dissatisfied with the judgment and order passed by the Deputy Collector, Viramgam Prant dated 20th August 1988 passed in Review Case No. 207 of 1988 the petitioners preferred an appeal before the Collector, Ahmedabad which was numbered as Appeal No. 68 of 1989 and the District Collector, Ahmedabad, by his judgment and order dated 30th December 1991 dismissed the said review application confirming the judgment and order passed by the Deputy Collector, Viramgam Prant dated 20th August 1988.

4. That being aggrieved and dissatisfied with the judgment and order passed by the Collector, Ahmedabad dated 30th December 1991 dismissing the said Revision Application and confirming the judgment and order passed by the Deputy Collector, Viramgam Prant, Ahmedabad dated 20th August 1988 in cancelling the Entry No. 1729 and in imposing the penalty u/s 9 of the said Act and directing to return possession of the land in question, the petitioners preferred Revision Application before the learned Special Secretary (Appeals), Revenue Department, State of Gujarat which was numbered as Revision Application No. 14 of 1992 and the learned Special Secretary (Appeals), Revenue Department, State of Gujarat by his judgment and order dated 21.9.1993 dismissed the said Revision Application confirming the judgment and order passed by both the authorities below.

5. That being aggrieved and dissatisfied with the judgment and order dated 22.9.1993 passed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, passed in Revision Application No. 14 of 1992 in dismissing the same and confirming the judgment and order passed by the Collector, Ahmedabad, dated 30th December 1988 and also the judgment and order passed by the Deputy Collector, Viramgam Prant dated 20th August 1988 in cancelling the Entry No. 1729 and imposing the penalty u/s 9 of the Act and directing to return possession of the land in question, the present Special Civil Application is filed under Article 227 of the Constitution of India.

6. Ms. Archana Singh, appearing for Ms. Sudha Gangwar, ld. advocate appearing on behalf of the petitioners, has mainly contended that while exercising powers by the Deputy Collector under Rule 108 of the Bombay Land Revenue Rules, the Revenue authorities had no jurisdiction to cancel the entry on the assumption that there is a breach of provisions of any other Statute. For that proposition of law, she has relied upon the judgment of this Court in the case of Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State, (Para 12) in which it is held by this Court that the Revenue authorities, as mentioned in Rule 108 of the Rules cannot pass orders of cancelling the entries on an assumption that the transactions recorded in the entry are against the provisions of a particular enactment and whether the

transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. She has also relied upon a judgment of this Court in the case of Siddharth B. Shah vs. State of Gujarat, reported in 1999(3) GLR 2527, in which it is held that the entries made in the Revenue records have primarily a fiscal value and they do not create title and that Revenue authorities cannot pass orders on an assumption under Rule 108 that the transactions recorded in the entries are against the provisions. It is further contended on behalf of the petitioners that the Deputy Collector has not only cancelled the Entry but while exercising the suo motu powers in a matter relating to mutation entry, he has also passed an order imposing the penalty u/s 9 of the Act and directing to return possession of the land in question. It is contended that while exercising the powers under Rule 108, the Revenue authority had no jurisdiction to pass an order with regard to imposing the penalty for breach of any other law and has no jurisdiction to pass an order with regard to returning the possession of the land in question. If there is any breach, then the competent authority under relevant legislation as to initiate independent proceedings for breach of any of the provisions of the Act and appropriate order can be passed in those proceedings, but the Revenue authority cannot pass order for returning possession of land and imposing penalty under another Statute.

7. On the other hand, Mr. Poojari, learned AGP appearing on behalf of the State Government, has supported the order passed by all the authorities below and has stated that as there is a breach of provisions of Section 9 of the Act and as the transaction was void ab initio the authorities were justified in passing the order of returning the possession.

8. I have heard the learned advocates appearing for the parties. There is substance in the submission on behalf of the petitioners. Firstly, as held by this Court in the aforesaid 2 Judgments, reported in Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State, (Para 12) and 1999 (3) G.L.R. 2527 (Para 3), the Revenue authorities, while exercising the powers under Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transactions recorded in the Entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. Under the circumstances, the order passed by the Deputy Collector cancelling the Entry No. 1729 on the ground that there is a breach of the provisions of Section 9 of the Act is erroneous and requires to be quashed and set aside, and consequently the judgment and order passed by the Collector, Ahmedabad, as well as of the learned Special Secretary (Appeals) confirming the order passed by the Deputy Collector are also required to be quashed and set aside.

9. There is also substance in the argument on behalf of the petitioners that while exercising the powers under Rule 108 of the Rules, while considering the question with regard to the mutation entry, the authority has no power and/or jurisdiction to impose the penalty for breach of the provisions of any other enactment and the authority has also no jurisdiction to pass an order with regard to returning the possession. Ordinarily, when a transfer of property takes place by a registered document, an Entry is effected in the Revenue records and such entries are certified subsequently. If there is any dispute, then the suo motu powers can be exercised by the State Government under sub-rule (6) of Rule 108 of the Rules and the entire enquiry under revisional power has to proceed under the Bombay Land Revenue Rules and not under any other enactments like The Bombay Tenancy & Agricultural Lands Act, The Bombay Urban Land (Ceiling & Regulation) Act, or Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It is well settled that the Entries made in the Revenue records have primarily a fiscal value and they do not create any title. As held by the aforesaid two Judgments, such mutations have to follow either document of title or order passed by the competent authorities under special enactment. Independently, the Revenue authorities cannot pass orders of cancelling the entries on an assumption that the transactions recorded in the entries are against the provisions of particular enactment. Similarly, the Revenue authorities also while exercising the power under Rule 108 of the Rules cannot pass an order with regard to imposing the penalty and/or returning possession of the land in question for breach of the provisions of any other above said enactments and in the present case Section 9 of the said Act. Under the circumstances, the judgment and order passed by the Deputy Collector, Viramgam Prant, dated 20th August 1988 in cancelling the Entry No. 1729 dated 13th March 1987 certified on 2.5.1987 and confirmed by the Collector, Ahmedabad, by his judgment and order dated 30th December 1988 passed in Appeal No. 68 of 1989, and further confirmed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, by his judgment and order dated 21.9.1993 passed in Revenue Application No. 14 of 1992, requires to be quashed and set aside and are hereby quashed and set aside, restoring the Entry No. 1729 dated 13th March 1987 certified on 2.5.1987 with regard to land bearing Plot No. 431 situate at Village Kujad, Taluka-Dascroi. The petition is accordingly allowed. Rule is made absolute with no order as to costs.

10. It is, however, made clear that this Court has not gone into the validity of the transaction and the authorities are not precluded from proceeding further against the petitioners for breach of any of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act and it will be open for them to take appropriate action in accordance with law.