

(1952) 07 GUJ CK 0007

In the Gujarat High Court

Case No : Civil. Miscellaneous Appls. No's. 39 and 40 of 1952

Govindsinhji Mulubhai and Others

APPELLANT

Vs

Saurashtra State

RESPONDENT

Date of Decision : 22-07-1952

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 5(2)
Constitution of India, 1950 — Article 226, 227
Saurashtra Land Reforms Act, 1951 — Section 2(15), 59
Saurashtra Land Reforms Rules, 1951 — Rule 105, 107, 108

Citation : (1952) 07 GUJ CK 0007

Hon'ble Judges : Shah, C.J.;Baxi, J

Bench : Division Bench

Advocate : D.N. Vakil and J.L. Hathi, in Civil Misc. applns. No. 39 of 1952 and Jayantilal L. Hathi, in Misc. applns. 40 of 1952, for the Appellant; A.R. Baxi, General and B.R. Joshi, Assistant Govt. Pleader, for the Respondent

Judgement

Shah, C.J.—These are two petitions for the issued of a writ under Articles 226 and 227 of the Constitution directing that the applications of the Petitioners made to a Committee appointed by the Saurashtra Government be decided after giving a hearing to the Petitioners. The petitions arise in this way. The opponent State has enacted a law called The Saurashtra Barkhali Abolition Act (XXVI of 1951) whereby the Barkhali tenure has been completely abolished on payment of compensation to the Barkhalidars. Simultaneously the State also made an Act called The Saurashtra Land Reforms Act (XXV of 1951) providing for the extinguishment of the Girasdar's rights in the lands and for ultimately putting an end to the Girasdari system. "Girasdar" is defined in Section 2(15) of the said Act as meaning any talukdar, bhagdar, bhayat, cadet or mulgirasia, and including any person whom the Government may, by notification in the Official Gazette, declare to be a Girasdar for the purposes of the Act. The State Government has made rules in exercise of its powers u/s 59 of the Act and Rules 105 to 108 thereof, which are relevant, are as under:

105: The Government will, for the purpose of determining whether any person should be included as a Girasdar i.e., any Talukdar, Bhagdar, Shayat, Cadet or Mulgirasia for the purpose of the Act (Section 2(15)) appoint a Committee of three persons, of whom one shall be the Chairman.

106: Any person intending to be declared as Girasdar for the purposes of the Act u/s 2(15) shall apply to the Chairman of the Committee within one month of the publication of these rules.

107: The committee may after making such inquiry as it deems fit determine whether the person should be included as "Girasdar" for the purposes of the Act and may recommend to the Government accordingly for such declaration.

108: The Government may, on the recommendation of such committee, by notification in the official gazette, declare any such person to be a Girasdar for the purposes of the Act.

2. The Petitioners in petition No. 39 of 1952 are Sodha Jiwaitars holding lands in seventeen villages of the former Nawanagar State. They claim to be the proprietors of these villagers alleging that they were there from before the establishment of the Nawanagar State, and they claim to be the absolute owners of the villages. However, as the Petitioners themselves state, at an enquiry held in 1914 by Major Burthan, the Special Alienation Officer appointed by His Highness the late Maharaja Jam Sahab Ranjitsinhji, a regular settlement was made regarding all the different tenures and holdings of lands, and the Petitioners were then declared as holding the status of alienees and were required to pay one rupee per acre on culturable lands as salami to the State. The Petitioners no doubt now state that they never submitted to this order and went on petitioning to His Highness the Jam Sahab, and according to them ultimately His Highness the Jam Saheb reduced the Salami to eight annas by an order dated 11th March 1948. The Petitioners rely on certain observations contained in the said order Exhibit 2. The Petitioners in application No. 40 of 1952 claim to be alienees of certain lands in two villages under a Matha grant given to their ancestor by the former Nawanagar State. They alleged that their grant was different from Inami grant and was not resumable.

3. The Saurashtra Government appointed a Committee in accordance with the rules under the Saurashtra Land Reforms Act, above referred to by a Notification dated 3rd September 1951. Clause 2 of the Notification stated that any person claiming to be declared a Girasdar shall make an application addressed to the Chairman, and Clause 3 thereof stated that the Committee may, after making enquiry, recommend to Government for declaration of the claimant as a Girasdar in the following cases:

(1) if the grant held by the claimant is not resumable at will; and

(2) if the claimant was treated as a Girasdar by the Covenanting State or the Privy Purse Taluka concerned.

The Petitioners applied to the Chairman of the said Committee for being declared Girasdars under the Saurashtra Land Reforms Act, and by subsequent applications they prayed that they may be permitted to produce certain documents and be given a regular hearing. Their grievance is that no hearing was given to them and no opportunity of placing their case before the Committee was afforded, and that the Assistant Settlement Commissioner, who represented the Government, intimated to them by orders dated 30th April 1952 that their applications were rejected.

4. The main ground urged by Mr. Vakil for the Petitioners is that the Committee was a quasi-judicial body, that no hearing was given and no opportunity was afforded to them to support their claim, and that in the inquiry, principles of natural justice have not been observed. Now Rule 107 quoted above says, that the Committee may after making such inquiry as it deems fit determine, whether the person should be included as, "Girasdar" and may recommend to the Government, and under Rule 108 the Government may on the recommendation of the Committee declare such person to be a Girasdar for the purposes of the Act. The Committee was to make the recommendation if the grant held by the claimant was not resumable at will, and if the tenant was treated as a Girasdar by the Covenanted State or the Privy Purse Taluka concerned. Mr. Vakil's contention is that the Committee was to determine objective facts in making the recommendation and that these facts had to be determined after holding an enquiry. He argued that it was incumbent on the Committee to hold the inquiry, that the inquiry was to be judicial or quasi-judicial, that therefore the rules of natural justice must apply to such an inquiry, and that these rules have been violated.

5. Now the Committee here was only a recommendatory body and it had no powers to decide the issue for itself, nor upon such decision to pass orders. Its recommendation was not binding on the Government, and the Government may or may not accept it. This makes a vital difference and it will not be correct to hold that the Committee was a judicial or a quasi-judicial body charged with making certain decisions so as to bind the parties. Apart from it and assuming for a moment that the Committee was a judicial or a quasi-judicial body, the question still is whether it had the duty to act judicially. In -- P.V. Rao Vs. Khushaldas S. Advani, , which was a case where an order for requisitioning premises was made by the Collector of Bombay under the Bombay Land Requisition Act of 1948, the Bombay High Court had taken the view that when power is given to an executive officer to affect the rights of subjects and the statute provides for the determination of an objective fact before the power could be exercised by that officer then the order made by him was a judicial or a quasi-judicial order. However this view was rejected by a majority of the Judges of the Supreme Court in the -- Province of Bombay Vs. Kusaldas S. Advani and Others, . The Late Chief Justice Kania pointed out in his judgment that the conditions laid down by Slessor L.J. in -- The King v. London County Council (1931) 2 KB 215 correctly bring out the distinction between a judicial or quasi-

judicial decision on the one hand and a ministerial decision on the other. These four conditions are: Whether any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority; and it is where these conditions are satisfied that a writ of certiorari may issue.

6. Now here the first condition is present and we will assume that the second condition is also present, but the question still is whether the third condition, viz., whether the committee had the duty to act judicially can be said to exist. As stated by Chagla C.J., in -- Alarakhia Somijee Vs. Collector of Nasik, , in which he followed the above Supreme Court decision, duty means a statutory obligation, an obligation which could be found in the legislation which confers the power upon the authority to affect the rights of subjects. Dealing with this question, the late Chief Justice has observed in -- Province of Bombay Vs. Kusaldas S. Advani and Others, :

The word "quasi-judicial" itself necessarily implies the existence of the judicial element, in the process leading to the decision. Indeed in the judgment of the lower Court, while it is stated at one place that if the act done by the inferior body is a judicial act, as distinguished from a ministerial act, certiorari will lie, a little later the idea has got mixed up where it is broadly stated that when the fact has to be determined by an objective test and when that decision affects rights of someone, the decision or act is quasi-judicial. This last statement overlooks the aspect that every decision of the executive generally is a decision of fact and in most cases affects the rights of someone or the other. Because an executive authority has to determine certain objective facts as a preliminary step to the discharge of an executive function, it does not follow, that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari.

Proceeding further His Lordship observes:

It seems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed.

Therefore the learned Chief Justice emphasises the fact that the law itself must provide, that in reaching the decision the authority making the order must approach the subject in a judicial manner, and further, that the recognised principles of approach, which appear to mean the rules of natural justice, must be required to be followed by the statute itself.

7. Applying this test to the facts here, let us consider, whether an obligation has

been cast upon the committee to hold the enquiry contemplated by Rule 107 in a judicial manner. In -- Alarakhia Somijee Vs. Collector of Nasik, , the language of Section 5(2) of the Bombay Land Requisition Act was similar, viz.:

Where any building or part thereof is to be requisitioned under Sub-section (1), the State Government shall make such enquiry as it deems fit and make a declaration....

In considering the question, Chagla C.J. observed:

In our opinion, the very expression used by the Legislature that the enquiry to be held by the Government shall be such as it deems fit clearly negatives the suggestion that the enquiry is to be a judicial enquiry. The nature, the extent, and the scope of the enquiry is to be determined by the Government. How can it then be said that there is a statutory requirement that Government should observe the rules of natural justice in holding such an enquiry.

This reasoning with which I agree, with respect, applies in this case, and in accordance with it, it must be held that the Committee had no duty to act judicially and that it was not to make a judicial enquiry. In any view therefore there is no case for the issue of a writ against the State.

8. The issue of a writ, besides, will not give any effective remedy to the Petitioners, because, after all the committee can only recommend to the Government, which recommendation the Government may or may not accept. Therefore no useful purpose will be served by issuing a writ even supposing that the Committee was required to act judicially and had failed to observe the principles of natural justice, in that the Petitioners had not been given a hearing.

9. In the above view, it is unnecessary to advert to the nature of the claim made by the Petitioners before the Committee and the merits of that claim. The State's case is that the Committee has considered all the materials which the claimants had placed before it, and that there was no obligation to hear the Petitioners in person and to enter into an elaborate enquiry. We do not pronounce any opinion on this question.

10. The applications fail on the main ground urged before us and are dismissed with costs.

Baxi, J.

11. I agree.