(1966) 01 GUJ CK 0005

In the Gujarat High Court

Gulam Husein Jivabhai APPELLANT

Vs

The State of Gujarat RESPONDENT

Date of Decision : 20-01-1966

Acts Referred:

Citation : (1966) 7 GLR 280

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—This second appeal is by the original plaintiff, who filed a suit to set aside an order of the Prant Officer Dholka, holding that the suit land belonged to the Government. It is admitted that the suit was filed one year after the order and the date of the appeal. But it is contended that a revision application was filed and that the suit was filed within one year from the date of the decision of the revision application. Section 37(3) of the Land Revenue Code reads as under:

Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed under Sub-section (1) or Sub-section (2) or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined according to Section 204, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that in the case of an order under Sub-section (2) the plaintiff has had the notice of such order.

It does not talk of any revision application. In fact, the Land Revenue Code does not contemplate an application in revision, although Section 211 of the Land Revenue Code contemplates the exercise of what may be called revisional jurisdiction by the Collector or by the Government. They can call for the papers whether there is an application or not. There is no provision for an application in revision in the Land Revenue Code. There is no limitation for what is usually called an application in revision in the Land Revenue Code. The application requesting the Government to exercise their powers u/s 211 of the Land Revenue

Code may be given at any time, and if limitation for a suit u/s 37 of the Land Revenue Code is to start from the date of an order passed by the Government u/s 211 of the said Code, then the suit can be filed at any time and there would be no limitation for the suit. The provision of limitation for such suits would be meaningless. The contention of the learned Counsel for the appellant is, therefore, rejected.

2. But relying on Malrajeppa v. Secretary of State for India ILR 36 Bom 325, the learned Counsel for the appellant contends that the order in question was an ultra vires order. It is difficult to understand the reasoning in ILR 36 Bom. 325. Merely because a person is in peaceful possession for some time, it cannot be said that the Collector cannot make an inquiry u/s 37 of the Land Revenue Code if the property is claimed by the Government. If any property is claimed by the Government or by any private person, then it is the duty of the Collector to make an inquiry u/s 37 of the said Code, and simply because at the time when the claim was made by the Government, certain person was alleged to be in peaceful possession of the property, does not affect the duty of the Collector to make an inquiry u/s 37 of the Code and it cannot be said that the inquiry made by the Collector u/s 37 of the Land Revenue Code is ultra vires and that it is not a proper exercise of his powers. The questions as to who was in possession and the nature and duration of such possession will only be clear from the inquiry. It is the duty of the Collector to make an inquiry once a claim is made by the Government or by any private person. The inquiry made by the Collector under the statute cannot, therefore, be said to be ultra vires the statute. With great respect, it is difficult to agree with the reasoning of the learned Judges in ILR 36 Bom 325. In the instant case, the learned appellate Judge has observed in his judgment as follows:

Now, in this case both the appellant and the State Government were claiming the suit property as theirs.

It is, therefore, clear that the Government was claiming the property. It was therefore the duty under the law of the Prant Officer to make an inquiry, and it cannot be said that what is done is ultra vires. This contention of the learned Counsel for the appellant is, therefore, rejected.

3. No other contention is urged. The second appeal is therefore dismissed. No orders as to costs. Leave to appeal under Clause 15 of the Letters Patent is granted.

