(2015) 04 GUJ CK 0052

In the Gujarat High Court

Case No : Writ Petition (PIL) No. 148 of 2011

Haripara Gram Panchayat APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:
Gujarat Land Revenue Code, 1879 — Section 7(A), 7A

Citation : (2015) 2 GLR 1734

Hon'ble Judges : V.M. Sahai, A.C.J;R.P. Dholaria, J

Bench : Division Bench

Advocate : Siraj R. Gori, for the Appellant; Vandan Baxi, AGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.P. Dholaria, J.

1. By filing the present writ petition, the petitioner has prayed for the following reliefs.

"12. A That the petitioner prays that this Hon''ble Court may be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction directing the respondent authorities to take effective corrective steps to re-earmark and reassign the land in question as gauchar land (pasture land) belonging to Petitioner Gram Panchayat.

B. That this Hon''ble Court may be pleased to issue appropriate writ, order or direction directing the respondent authorities not to allot or issue sanad of the land in question in favour of persons from another village.

C. That this Hon''ble Court may be pleased to issue appropriate order declaring the impugned action on part of the Respondent Authorities of assigning the Gauchar (pasture) land of the Petitioner Gram Panchayat to the Respondent No. 5 Gram Panchayat as its "gam tal", as bad in law, arbitrary and in violation principles of natural justice and further be pleased to quash and set aside the same.

D. That during the pendency of the present petition this Hon''ble Court may be pleased to issue appropriate direction to the respondent authorities not to disturb nature of land as gauchar land (pasture land).

E. That during the admission and pendency of the present petition this Hon''ble Court may further be pleased to pass appropriate order directing the respondent authorities not to allot or issue sanad of the land in question in favour of persons from another village.

F. xxx xxx xxx"

2. The short facts giving rise to the present petition are as under.

2.1 It is the case of the petitioner that because of intended impugned action on the part of the respondent authorities, the petitioner is likely to lose its substantial part of gauchar land which is sought to be illegally taken away by the State authorities. It is the case of the petitioner that the petitioner gram panchayat belongs to Indian National Congress, whereas elected body of respondent No. 6 have the majority of Bhartiya Janta Party. The impugned action of allotting the gauchar land of the petitioner to landless persons of another village by assigning the same as "gamtal" land of village Dhari is bad in law and suffers from the vice of political mala fide and is against the larger public interest and also against the state policy of encouraging the field of animal husbandry.

2.2 It is the case of the petitioner that total population of village Haripara is approximately more than 4000 and total population of cattle in the village is approximately 3500 to 4000. It is averred that originally 60 acres of land was available with the petitioner which was earmarked as "gauchar land" in the year 1957. Thereafter, respondent No. 3 assigned 20 acres land as "gamtal" out of 60 acres land and gave the same to the landless persons and out of 20 acres, 5 acres of land was reserved for allotment to the government employees. It is averred that against the action of the respondent authority, villagers have made certain representations, however, no corrective measures has been taken though the respondent authorities are clothed with ample powers for taking corrective measures. It is also averred that the respondent authorities are likely to issue sanad in favour of the villagers of another village by holding "Garib Kalyan Mela". It is the case of the petitioner that nature of land of Survey No. 633 is not changed and the same has remained with the petitioner and the said pasture land is now sought to be allotted to the landless persons of another village on the basis of some resolution passed by respondent No. 6.

2.3 It is the case of the petitioner that the petitioner made an application in 2002 to the respondent authority to assign part of gauchar land for "samshan". Pursuant thereto, respondent authority passed order on 20.2.2003 earmarking 0.20 gunthas of land for "samshan". Thereafter, the petitioner made representation to the Deputy Collector on 24.6.2010. Again, the petitioner made representation on 23.12.2010 agitating the said issues. The villagers of village Haripara also made detailed representation on 27.12.2010. It is the case of the petitioner that the respondent authorities assured the petitioner for recalling of the land of the petitioner and hence, villagers of village Haripara called off their agitation. Thereafter, the petitioner made another representation on 14.3.2011 and the petitioner attended the meeting which was held in the office of the Taluka Panchayat on 17.3.2011 and submitted detailed representation along with necessary details and documents. It is averred that the said meeting remained inconclusive and no final decision was taken. Thereafter, the petitioner again made detailed representation to the office of the Revenue Minister by letter dated 30.8.2011. It is the case of the petitioner that representation dated 27.12.2010 made by the petitioner was replied by respondent No. 6 by letter dated 20.10.2011. The petitioner also received the copy of the report dated 7.1.2011 prepared by respondent No. 4 along with the letter dated 20.10.2011 as well as the report dated 7.5.2011 prepared by respondent No. 6 along with the letter dated 20.10.2011 and the report dated 14.8.2011 along with letter dated 20.10.2011. It is the case of the petitioner that land bearing revenue Survey No. 434 paiki 1/2/3/4/5 admeasuring more than 9 Hectares is available with Dhari Gram Panchayat and the same can be allotted to the landless persons. The petitioner was shocked and surprised to know that the entire gauchar land of the petitioner is now shown to be in the name of respondent No. 5. Hence, the petitioner has approached this Court by way of the present writ petition in the nature of public interest litigation.

3. In affidavit-in-reply filed on behalf of respondent No. 6, it is stated in paragraphs 8 and 9 as under.

"8. I say and submit that the Haripara Gram Panchayat does not have Revenue Records of its own. Haripara Gram Panchayat does not have a survey Nos. of land in the revenue records in its name. Which ever land is shown in the revenue record, is in the name of Dhari Gram Panchayat. As per the extract of 7/12 the land admeasuring 5 acres is in the name of the Dhari Gram Panchayat.

9. I say and submit that the Dhari Gram Panchayat is a revenue village having revenue records. Dhari village is surrounded by five different village panchayats i.e. Haripara, Vekariapara, Prempara, Nabapara etc. However, none of these Gram Panchayats have their revenue records...."

3.1 In affidavit-in-reply filed on behalf of respondent No. 5, it is stated in paragraphs 3 and 6 as under.

"3. At this stage, the respondent No. 5 craves leave to point out that though there are separate Gram Panchayats for the suburbs, there is only one revenue village i.e. Mouje Dhari, Taluka Dhari, District Amreli. In other words, Haripara, Vekariapara and Prempara, Nabapara and Linepara are not the revenue villages and therefore, did not have separate gauchar land.

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6........The respondent No. 5 submits that subsequently the Taluka Land Committee has met on 24/12/2010 and resolved to allot free plots of land to in all 96 beneficiaries who are below poverty line and eligible for relief. It is stated that thereafter in all 39 beneficiaries are handed over the possession of their respective plots of land while remain 57 beneficiaries are yet not handed over the possession as there is no budgetary provision in the current financial year to provide funds for construction of houses."

3.2 In affidavit-in-reply filed on behalf of respondent Nos. 2 and 4, it is stated in paragraph 3 as under.

"3. I hereby state and submit that haripara village is not a revenue village it is sub part of village Dhari and village Dhari is revenue village into Taluka Dhari District Amreli, I further state and submit that Haripara Village Panchayat is sub-village Panchayat under Dhari Village Panchayat. For all intent and purposes of land, Dhari is only village on record. Dhari village Panchayat which also includes Haripara, Vekriapara, Prempara, Nabapara, Layanpara. And gauchar lands are common for all areas which belong to Dhari Village Panchayat."

3.3 In Additional Affidavit filed by one Jyotindra Manilal Manjarawala, Mamlatdar, Dhari, it is stated in paragraphs 6, 7 and 8 as under.

"6. I state that Dhari is the only revenue village having its own revenue records. Dhari is surrounded by other hamlets villages namely Prempara, Vekariapara Nabapara and Haripara. I state that none of these hamlets-suburbs have separate revenue records of their own. All land with respect to these hamlets are in the name of village Dhari as per the revenue records.

7. I state that there are total 77 revenue villages in Taluka Dhari. A list showing the revenue villages of Dhari Taluka is annexed herewith and marked as Annexure-E to this affidavit. Bare perusal of the said list shows that Haripara village is not included in the said list of revenue villages of Dhari Taluka. I state that had Haripara village been a revenue village, its name would definitely be included in the list of revenue villages of Taluka Dhari. Hence, Haripara gram panchayat does not have revenue records of it own and whatever land is vested in the gram panchayat is in the name of Dhari as per the revenue records.

8. I state that against the order of Assistant Collector dated 22.04.2010, the petitioner gram panchayat herein had an alternative remedy under the statute to prefer an appeal before the Special Secretary (Dispute). However, instead of preferring an appeal against the said order, the present petitioner has preferred Public Interest Litigation which may not be entertained by the Hon''ble Court when there is an alternative remedy available to the petitioner under the statute. Hence the petition of petitioner deserves to be dismissed."

3.4 In the affidavit-in-reply filed on behalf of respondent No. 3, it is stated in paragraphs 3 and 4 as under.

"3.......I say that after the dissolution of Dhari Municipality, five gram panchayats were constituted. However, none of these five gram panchayats have separate revenue records. The geographical topography of these five gram panchayats is almost contiguous, separated only by Shetrunji River. So all Gram Panchayat have joint revenue records. Meaning thereby that some of these villages for example, Dhari and Haripara have contiguous gamtal. In these circumstances, no separate revenue record was created at the time of creation of these five gram panchayats.

4. As per Section-7(A) of Gujarat Land Revenue Cord and Circular of Revenue Department Dt.31.01.2003, (Annexure-R1) Revenue Department can declare any revenue village. Proposal for declaring of a revenue village should be submitted to Revenue Department through Settlement Commissioner, along with consent resolutions of The Gram Panchayat, Taluka Panchayat and District Panchayat.

In this case Haripara Gram Panchayat has not demanded to declare Haripara as a revenue village therefore Haripara Gram panchayat has not got a status of revenue village till today. So all the revenue survey numbers are in Dhari revenue village. If Haripara Gram Panchayat will demand to declare Haripara as a revenue village, necessary action will be taken by revenue authority as per rules."

4. The crux of challenge as regards to various actions taken by respondent No. 5 as well as other Government authorities for allotment/allocation of land bearing Revenue Survey No. 633 for various purposes like rehabilitation of landless people, increasing land of gamtal, crematorium etc. are dehors the provisions of law and violative of principles of natural justice as Haripara Gram Panchayat - petitioner herein is not provided an opportunity of being heard at all before taking any such actions. In support of the aforesaid contention, Mr. Gori, learned counsel for the petitioner has taken us through various orders passed by various authorities which are annexed along with this petition.

5. It is further contended that even though the aforesaid gauchar land was placed under the administration of the petitioner since 25.4.1957 vide mutation entry No. 1728, none of the authorities either heard or consulted the petitioner before making allocation for various public purposes. He has also taken us through various mutation entries as well as Village Form No. 7 and 12. According to the submission of Mr. Gori, all these proceedings are against the provisions of law and are required to be set aside as such.

6. On the other-hand, learned AGP as well as learned advocates appearing on behalf of respective respondents have contended that even though vide Notification No. D.II.GPA.2(5) issued by the Commissioner, Rajkot Division, Rajkot dated 4.3.1963 under sub-section (1) of section 9 of the Gujarat Panchayats Act 1961 ("the Act" for short) at serial No. 49, Dhari local area consisting of revenue village Dhari excluding area of Panchayats of (1) Navapura-Linepura, (2) Haripara-Vekariapara and (3) Prempara declared as Dhari Gram Panchayat. Thereafter, as contended by the respondent authorities that after

dissolution of Dhari Municipality, five Gram Panchayats were constituted. However, none of these five Gram Panchayats have separate revenue record and all the Gram Panchayats are situated adjacent to each other and having no separate revenue record, but the revenue record is being continued with Dhari Gram Panchayat and in spite of declaring separate Gram Panchayat under section 9 of the Act, no procedure was undertaken under section 7A of the Gujarat Land Revenue Code and as per the provisions of the circular of the Revenue Department dated 31.1.2003 for declaring the revenue village so far as the petitioner is concerned. Consequently, the respondent authorities carried out allocation/allotment of land under consultation with Dhari Gram Panchayat as the land only belongs to Dhari Gram Panchayat and the petitioner has nothing to do with the land in question. In the affidavit-in-reply, the respondents have contended that they have made it very clear that in absence of procedure being carried out under section 7A of the Gujarat Land Revenue Code, the petitioner does not get any status of an independent revenue village and cannot acquire any control over the land in question in absence of declaration of an independent revenue village as the entire land record belongs to Dhari Gram Panchayat.

7. Mr. Siraj Gori, learned counsel for the petitioner has argued at length and he has taken us through the entire material available on record. We have perused the entire material available on record. The short question arises for determination of this Court in the present writ petition is, whether in absence of vesting gauchar land, the petitioner can contend that action undertaken by the respondent authorities in consultation with Dhari Gram Panchayat in whose favour the land is vested from inception is illegal and in violation of the principles of natural justice?

8. Indisputably, in our reading of the entire revenue record of agricultural and non-agricultural land, it appears that the land in question belongs to Dhari Gram Panchayat only. In absence of declaring the petitioner as revenue village, none of the land can be shown in the occupation or in the name of the petitioner.

9. In view of the aforesaid factual position, when the Government taken the action declaring the petitioner as an independent Gram Panchayat under the provisions of section 9 of the Act, the Government has not carried out the exercise of declaring the petitioner as an independent revenue village. Consequently, no piece of land was transferred or allocated to the petitioner. Under the circumstances, in our view, the Government while declaring the petitioner as an independent Gram Panchayat ought to have simultaneously undertaken the procedure of declaring the petitioner as revenue village and that has not done in the case of the petitioner so far.

10. In this view of the matter, the aforesaid question arises in the present writ petition is totally misplaced till the aforesaid exercise is undertaken by the Government for declaring the petitioner as revenue village as per the notification under section 7A of the Gujarat Land Revenue Code as well as various circulars issued for carrying out detailed procedure for declaring an independent revenue

village. As stated above, since no piece of land was allotted to the petitioner in absence of declaring the petitioner as revenue village, the land in question has not been vested with the petitioner and consequently, no relief can be granted to the petitioner as prayed for.

11. Even if we may accept the argument of Mr. Gori, learned counsel for the petitioner that since 1957, the petitioner was entrusted with the administration of gauchar land, but that by itself does not indicate that the petitioner is the owner of the land in absence of the petitioner being declared as revenue village and resultantly, the petitioner cannot become the owner and occupant of the land in question, as such. It may be that the possession of the land in question was continued with the limited extent of administration of land only, but in absence of declaring the petitioner as an independent revenue village, neither the petitioner can maintain any sort of land nor become occupant of the land independently. In this view of the matter, we are of the considered view that when the Gujarat Land Revenue Code and the Gujarat Panchayats Act, 1961 itself have provided for efficacious remedy for declaration of Gram Panchayat as well as revenue village, the petitioner could have resorted to the said particular remedy in accordance with law and not by way of preferring the present writ petition in the nature of Public Interest Litigation. This is a pure and simple dispute of rival claims of the panchayats against each other and element of public interest is not involved in this writ petition.

12. In the result, this writ petition is devoid of any merits and the same fails. Accordingly, this writ petition is dismissed. Notice is discharged. Interim relief granted earlier stands vacated forthwith. No order as to costs. However, it shall be open for the petitioner to approach the concerned competent authority under section 7A of the Gujarat Land Revenue Code for declaring it as an independent revenue village and for seeking allocation of appropriate land in its favour.