(2000) 07 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 6575 of 1988

Harshadbhai Dahyabhai Desai APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Citation : (2000) 4 GLR 626

Hon'ble Judges : B.C. Patel, J

Bench : Single Bench

Advocate : R.S. Sanjanwala, for the Appellant; Digant Joshi AGP, for the Respondent

Final Decision : Allowed

Judgement

B.C. Patel, J.—The petitioner by filing this petition under Art. 226 of the Constitution of India has prayed to quash and set aside Annexures D & E i.e. order Annexure `D'' passed by respondent no.2 on 18.1.88 in Fragmentation Case No. 4/87 and order Annexure `E'' passed on 20.7.88 whereby the order Annexure : D is confirmed in Revision Application vide Annexure : `E''.

2. It is not disputed that vide Annexure : `A'' dated 3.1.79/4.1.79, Assistant Collector, permitted Chhotubhai Kalyanji Desai to transfer the property being land situated in village Jujva in favour of Shri Harshadbhai Dahyabhai and Natvarlal Makanji. Considering the special facts, it seems that the permission was granted despite the fact that the land in question was covered under the provisions contained in Bombay Prevention of Fragmentation & Consolidation of Holdings Act. It is required to be noted that the sale deed was executed on 8th February, 1980 and entries were made in the relevant record. Thereafter, a show cause notice was issued on 15th February, 1984. For the aforesaid facts, there is no dispute. Thus, it is very clear that after a period of about 4 years, show cause notice has been issued.

3. The Apex Court in the case of State of Gujarat v. Patel Raghav Natha & Ors.

(10 GLR P.992) considered the question of delay. Whether the Commissioner can revise an order made u/s 65 of the Bombay Land Revenue Code at any time? The Apex Court pointed out that there is no period of limitation prescribed u/s 211. But from the plain reading of this section, the Court pointed out that the power must be exercised within reasonable time and the length of reasonable time must be determined by the fats of the case and the nature of the order which is being revised. In the instant case, after the transfer of the property, investment has been made by the purchasers and have developed the land. In the case of Raghav Natha (Supra), in para 13, the Apex Court pointed out as under.

"It seems to us that sec. 65 itself indicates the length of the reasonable time within which the Commissioner act under sec. 211. Under sec. 65 of the Code, if the Collector does not inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading sections 211 and 65 together, it seems to us that the Commissioner must exercise its revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations atleast within a few months from the date of the permission. In this case, the Commissioner set aside the order of the Collector on October 12, 1961, i.e. more than a year after the order, and it seems to us that this order was passed too late."

4. Considering the aforesaid aspect, it is clear that the order is passed at the belated stage. Mr. Sanjanwala, learned counsel for the petitioner drew my attention to a decision of the learned Single Judge wherein there was a transfer of property without the permission of the Collector. The case was under the provisions contained in the Bombay Prevention of Fragmentation & Consolidation of Holdings Act. The Court considered the action on the part of the authorities exercising the powers under the Act after a number of years and waking up one fine morning after 7 years by issuing a notice to the concerned parties for showing the cause why the transaction entered into by them should not be held null and void, the Court held such action to be unreasonable. The learned Single Judge of this Court in a decision reported in the case of Jiviben Vs. State of Gujarat and Others, has taken the same view. That was also the case under the Bombay Prevention of Fragmentation & Consolidation of Holdings Act.

5. In view of what is stated hereinabove, the petition is required to be allowed with costs. The petition is accordingly allowed with costs. The impugned orders at Annexures : D & E are quashed and set aside. Rule is made absolute.

