

(2000) 10 GUJ CK 0075

In the Gujarat High Court

Case No : Special Civil Application No. 3106 of 1989

Hasmukhlal H. Shah

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 17-10-2000

Acts Referred:

Citation : (2000) 4 GLR 842

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : P.V. Hathi, for the Appellant; Pandya, AGP, for the Respondent

Final Decision : Allowed

Judgement

H.K. Rathod, J.—Mr. P.V. Hathi, learned advocate appearing on behalf of the petitioner. Mr. Pandya, learned AGP appearing on behalf of the respondent authorities. Though notice of rule has been served to the respondent no. 2, no one appearing on behalf of the respondent no. 2.

2. In the present petition, rule has been issued by this court on 1st May, 1989 and ad-interim relief has been granted by this court.

3. The brief facts of the giving rise to this petition are as under :-

The petitioner is a resident of village Pedhada, Ta.Lakhatar, Dist.Surendranagar and his fore-fathers were doing agricultural work. At the time when the Saurashtra State was formed, the petitioner and his fore-fathers were doing actual agricultural work. However, with a view to avoid any complication in future, the petitioner made an application to the Competent Officer viz. the Assistant Collector, Dhrangadhra to grant permission to purchase agricultural land. The said application was supported by the necessary evidence and after holding necessary enquiries, the Assistant Collector, Dhrangadhra, by his order dated 26th December, 1983 granted permission to the petitioner to purchase the above stated agricultural land. It was specifically mentioned in the said order/

certificate of the Assistant Collector that the petitioner had led necessary evidence to show that his father was an occupant/agriculturist and that, though it was not necessary, the permission/certificate was granted to the petitioner u/s 18(1) of the Ordinance. The said certificate has been produced by the petitioner at Annexure-A to this petition. According to the petitioner, the said certificate at Annexure-A was not illegal or improper. Eventhough, sufficient time has been lapsed passed the Collector, Surendranagar issued a show cause notice dated 17th September, 1984 on the assumption he exercised revisional powers u/s 211 of Land Revenue Code and ignoring the material facts that the Assistant Collector who has passed an order at Annexure-A to this petition has also exercised the power of the Collector and called upon the petition as to why the said order should not be set aside. The petitioner filed a detail reply on 5th February, 1985 and pointed out interalia to him that his fore-father is agriculturist and that he had proved the said fact before the Assistant Collector. That he was not required to seek any prior permission but had made an application out of abundant caution and he has invested large amount for execution of theregistered document and for improving upon the land, that as no appeal preferred within the prescribed period of limitation,in such situation, the revisional powers should not be exercised after lapse of 90 days. That there was no illegality or impropriety for the order passed by the Assistant Collector, Dhrangadhra at Annexure-A to this petition. There was no question of exercising revisional power. Accordingly, the notice was required to be cancelled. The Collector, Surendranagar, after hearing the petitioner by his order dated 29th March, 1985, set aside the order certificate dated 26th December, 1983 at Annexure-A on the ground that the petitioner had ceased to be an agriculturist, that there was no evidence to show that his income was less than Rs. 5,000/- and accordingly, the order which was illegal and improper was required to be set aside since the order was illegal and no question of limitation would arise for setting aside such order. The Collector has also setting aside such order. The District Collector has also proceedings u/s 75 of the Ordinance even though the said provision was also repealed as submitted by the petitioner. Again the said order was passed by the District Collector, the petitioner preferred Revision Application to the Gujarat Revenue Tribunal . The said Revision Application was converted into Appeal No. 54 of 1985 by the Tribunal and was heard by the learned member, who by his judgment and order dated 31st January, 1989, dismissed the same according to the order of the Collector. Therefore, the present petition is filed challenging the order passed by the Collector, Surendranagar and also the order passed by the Gujarat Revenue Tribunal.

4. Mr. P.V. Hathi, learned advocate for the petitioner has submitted that both the authorities have passed their orders without their having any jurisdiction or authority and without appreciating thesubstantial contentions which vitally affected their powers flowing from the provisions of the Ordinance and the Land Revenue Code. Since both the authorities have committed obvious errors of law in interpreting and applying the provisions of the Saurashtra Ordinance and the

applicability of Land Revenue Code, particularly section 211 of the Code. Mr. Hathi has also submitted that the Assistant Collector has exercising the powers of the Collector or an officer equivalent to that post and against the order passed by the Assistant Collector under the Saurashtra Ordinance in which no remedy way of appeal or revision was provided for particularly in view of the fact that Chapter IX as a whole was repealed by the subsequent Act of 1951. Mr. Hathi has submitted that the Tribunal has failed to appreciate the substantial contention as regards the jurisdiction raised before it. Because section 211 of the Land Revenue Code was not applicable to an order passed under the Saurashtra Ordinance. Mr. Hathi has also submitted that there is no provision to cancel the certificate under the provisions of the Ordinance and such powers which has been issued by the Collector which are not available to him under the relevant provision of the Act. Mr. Hathi has submitted that the Saurashtra Ordinance was enacted on the lines of the Bombay Tenancy Act then in force, the Collector had no powers of suo motu revision and was not authorised to exercise his powers under the Land Revenue Code. Accordingly, in 1952, a new section, section 76-A was inserted empowering the Collector to exercise suomotu revisional powers as are ordinarily exercised u/s 211 of the Land Revenue Code. No such amendment or insertion was made in the Saurashtra Ordinance and, therefore, the Collector could not have invoked section 211 of the Land Revenue Code. Mr. Hathi has also submitted that the Land Revenue Code and the Ordinance are to distinct pieces of legislation and they occupy different fields and different the object to achieve and hence, the order passed u/s 54 could not have been set aside by invoking suomotu revision powers u/s 211 of the Code. Mr. Hathi has also submitted that such revisional powers could not have been invoked after unduly longtime and in this particular case, the impugned certificate was issued and the sale transaction had already taken place and, therefore, there was no purpose in setting aside the order which otherwise would result in setting at naught the sale transaction effected between the parties. Mr. Hathi has also submitted that the reasonable period initiated in such enquiry or such proceedings are initiated within the period of one year and cannot consider more period for reasonable for exercising such powers. Mr. Hathi, has also submitted that the observation made by the Collector that once the profession of agriculture was left, he could not be considered as agriculturist, is misconceived and based on misinterpretation of the provisions of the Ordinance. Mr. Hathi has relied upon the relevant provisions of section 54 and also rule-18 and section 65 of the Saurashtra Ordinance and Mr. Hathi has also considered that relevant provision of rule-18(1) which provides the Collector or other Officer authorised under proviso to sub-section (1) of section 54 may grant permission for sale, gift, exchange, lease or mortgage of any land in favour of a person who is not an agriculturist in the following cases :-

- (a) if the person bona fide requires the land for non-agricultural purpose;
- (b) if the Collector or authorised Officer is satisfied that the owner of the land had complied with the provisions of section 55;

- (c) if the Collector or authorised Officer is satisfied that no agriculturist in the village in which the land is situate is prepared to take the land on lease from the owner;
- (d) if the land is required for the benefit of an industrial or commercial undertaking or an educational or charitable institution;
- (e) if the land is required by a Cooperative Society;
- (f) if the mortgagee has obtained from the Collector a certificate that he intends to take the profession of agriculturist and agrees to personally cultivate the land;
- (g) if the owner, cultivating any land personally, wants to donate such land to a person who does not own or possess any land and who has obtained from the Mamlatdar a certificate that he intends to take the profession of an agriculturist and agrees to cultivate the lands personally.

The circumstances have been specifically in which the permission cannot be granted by the Collector or other officer authorised under proviso to sub section (1) of section 54 to grant permission in favour of a person who is not an agriculturist. Therefore, the permission can be granted in favour of the petitioner. While considering the relevant provision of section 54 read with rule-18 of sub-section (1) of the Saurashtra Ordinance. According to Mr. Hathi, the order passed by the Collector as well as Revenue Tribunal are required to be set aside.

5. Mr. Pandya, learned AGP appearing on behalf of the respondent-authority has submitted that the Deputy Collector has suo motu power and, therefore, the Collector has passed an appropriate order after appreciating the facts on record and relevant provision of section 54 of the Saurashtra Ordinance. Therefore, the Collector has rightly set aside the certificate which has been issued by the Assistant Collector in favour of the petitioner. Mr. Pandya, learned AGP has also submitted that the Gujarat Revenue Tribunal has rightly considered the revision application and submission made by the petitioner before the Tribunal and Tribunal has rightly rejected the revision application. While confirming the order passed by the Collector. Both the authorities have not committed any errors which can be said to be errored apparently on the basis of records which required any interference from this Court. while exercising power under Article 226 and 227 of the Constitution of India. Therefore, according to him the present petition is required to be dismissed.

6. I have heard the learned advocates for respective parties. I have perused the certificate issued by the Assistant Collector on 26th December, 1983 and I have also perused the order passed by the Collector dated 29th March, 1985 and the order passed by the Tribunal dated 31st January, 1989. The certificate which has been issued by the Assistant Collector, wherein the Assistant Collector has considered the relevant register and documents and also considered the relevant rule-18 of sub-section (1) of the Saurashtra Ordinance. The observation which has been made by the Assistant Collector, Dhrangadhra that the petitioner wants

permission as his fore-father was an agriculturist and evenafter, it is considered that the petitioner was not an agriculturist then also considered the relevant rule-18 of sub-section (1) of the Saurashtra Ordinance. The Assistant Collector is empowered to grant permission for sale of any land in favour of any person who is not an agriculturist in the following cases cover under sub-clause 18(1)(a) of the Saurashtra Ordinance. The Collector, Surendranagar has issued show cause notice to the petitioner dated 17th November, 1984, after the period of nine months from the order passed by the Assistant Collector. However, the Collector, Surendranagar has not considered the relevant provision of Rule-18 of Saurashtra Ordinance, but only considered the relevant provision of section 54 of Saurashtra Ordinance. Similarly, the Revenue Tribunal has also not appreciated the fact that the certificate which has been granted by the Assistant Collector in favour of the petitioner. While considering the rule-18 of the Saurashtra Ordinance, the relevant Rule-18 are as under:-

18. Circumstances in and conditions on which permission for transfer of lands to non-agriculturist may be granted -

(1) The Collector or other Officer authorised under proviso to sub-section (1) of section 54 may grant permission for sale, gift, exchange, lease or mortgage of any land in favour of a person who is not an agriculturist in the following cases, namely :-

- (a) if the person bonafide requires the land for non-agricultural purpose;
- (b) if the Collector or authorised Officer is satisfied that the owner of the land had complied with the provisions of section 55;
- (c) if the Collector or authorised Officer is satisfied that no agriculturist in the village in which the land is situate is prepared to take the land on lease from the owner;
- (d) if the land is required for the benefit of an industrial or commercial undertaking or an educational or charitable institution;
- (e) if the land is required by a Cooperative Society;
- (f) if the mortgagee has obtained from the Collector a certificate that he intends to take the profession of agriculturist and agrees to personally cultivate the land;
- (g) if the owner, cultivating any land personally, wants to donate such land to a person who does not own or possess any land and who has obtained from the Mamlatdar a certificate that he intends to take the profession of an agriculturist and agrees to cultivate the lands personally.

(2) The permission under the proviso to sub-section (1) of section 54 shall be granted on the condition that the person shall use the land for the purpose for which the permission has been granted to him within one year from the date on which he takes possession of the land in accordance with the provisions of this Ordinance.

7. Considering the relevant provision of rule-18 read with section 54, of sub-clause (1), the Collector or other Officer authorised the proviso to sub-section (1) may grant permission for sale, gift, exchange, lease or mortgage of any land in favour of a person who is not an agriculturist in the following cases which cover the cases of petitioner. Therefore, considering the observation made by the Assistant Collector in the certificate dated 26th December, 1983, wherein the permission has been granted by the Collector, while considering the relevant provision of rule-18 and, therefore, both the authorities have not considered the effect of rule-18 of Saurashtra Ordinance. Both the authorities have considered only relevant provisions of section 54 of Saurashtra Ordinance. Therefore, both the authorities have not applied their mind in respect to the relevant rule-18 of Saurashtra Ordinance and, therefore, according to my opinion, it is a basic error which has been committed by the Collector, Surendranagar, while setting aside the order passed by the Assistant Collector, Dhrangadhra and similarly, the basic error which has been committed by the Tribunal by confirming the order passed by the Collector, Surendranagar.

8. Therefore, both the orders passed by the Collector dated 29th March, 1985 and the Gujarat Revenue Tribunal dated 31st January, 1989 are required to be set aside and the same are hereby quashed and set aside. The present petition is allowed. Rule is made absolute.