

(2000) 02 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No. 4514 of 1988

Heirs of Jeshanker P. Mehta

APPELLANT

Vs

Addl. Special Secretary

RESPONDENT

Date of Decision : 18-02-2000

Acts Referred:

Citation : (2000) 2 GLR 175

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Advocate : P.K. Jani, for the Appellant; P.G. Desai, Government Pleader for Respondent No. 1 and H.M. Patel, for A.J. Patel, for the Respondent

Judgement

R.K. Abichandani, J.

1 The grievance of the petitioners is that the revisional authority under Rule 108(5) of the Gujarat Land Revenue Rules, 1972 has, by making the impugned order dated 2.7.1988 relegating the petitioner to appellate remedy, refused to exercise jurisdiction vested in it by law.

2. According to the petitioners, the dispute pertains to the record of rights in respect of agricultural land on the outskirts of village Bhaili of District Baroda. The Revenue authority had certified entry No. 6087 on 14.5.1980. The respondent No.2 filed an appeal being RTS Appeal No. 46 of 1987 before the Assistant Collector, Baroda, who allowed the appeal on 21st March, 1988. That order was communicated on 26.3.1988. After obtaining a copy of that order on 15.4.1988, a revision application was filed by the petitioners before the respondent No.1, who is the Commissioner empowered to exercise the revisional powers under Rule 108(6) of the Rules. By the impugned communication dated 2.7.1988, the papers of the Revision Application were returned to the petitioner and he was informed that since an appeal could be filed against the order of the Assistant Collector before the Collector, under Rule 108(5) of the said Rules, the Revision Application did not lie.

3. Under Rule 108(3), an officer making an enquiry contemplated by the said provision has to record his order, disposing of the dispute, in the register and make the necessary entry in the diary of mutations. As provided by sub-rule (1) of Rule 108, various categories of officers named therein can make such order and a revenue officer of a rank superior to that of First Karkun can also make that order. Under sub-rule (5) of Rule 108 an appeal would lie against an order that may have been made under this rule by the First Karkun, the Mamlatdar, the District Inspector or Revenue Officer of lower rank than that of a Deputy Collector to the Sub-Divisional Officer or any other officer who may have been appointed by the State Government for the purpose. An Assistant Collector is admittedly a Sub Divisional Officer and an appeal was filed before the Assistant Collector against the order made by the District Inspector. In the later part of sub-rule (5), it is provided that if the order is made by the Sub Divisional Officer or the Superintendent of Land Records Officer of a rank not lower than that of a Deputy Collector, an appeal would lie to the Collector. It is further provided in sub-rule (5) that subject to the provisions of sub-rule (6), the decision of the appellate authority shall be final. It is also provided that there shall be no appeal against the order of the Collector. It is further provided that no second appeal shall lie in any case. This would mean that when a decision was rendered by the appellate authority i.e. the Assistant Collector, it was to be treated as final, subject to the provisions of sub-rule (6) of Rule 108, which provided for the remedy of a revision before the Commissioner, who is empowered to call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 or sub-rules (1) to (5) of Rule 108 for the purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed therein. It is thus, clear that the order of the first appellate authority is not made appealable and is treated final, subject to the revisional powers, more particularly in view of the specific provision that no second appeal shall lie in any case. Therefore, the impugned communication dated 2.7.1988 of the respondent No.1 relegating the petitioners to filing a second appeal under sub-rule (5) of Rule 108 is misconceived and amounts to refusal of the revisional authority to exercise revisional jurisdiction under sub-rule (6) of Rule 108 of the said Rules.

4. The impugned communication/order dated 2.7.1988 at Annexure "A" to the petition is therefore, set aside. The respondent No.1 is directed to hear and decide the revision application of the petitioners in accordance with law. The original revision application which was returned to the petitioners and which is with the petitioners as stated by their learned Counsel, shall be re-submitted to the respondent No.1 and on that being done, it shall be treated as having been pending before the respondent No.1 for its expeditious disposal in accordance with law. Rule is made absolute accordingly with no order as to costs.