(2004) 12 GUJ CK 0061

In the Gujarat High Court

Case No : Special Civil Application No. 10516 of 2004

Hemant Kumar Mangubhai Patel APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 84C
Hindu Minority and Guardianship Act, 1956 — Section 8

Citation : (2004) 12 GUJ CK 0061

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Dhirendra Mehta, for Petitioner Nos. 1-2, for the Appellant; Dipen Mehta, A.G.P. for Respondent Nos. 1 and 6, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—As the notice for final disposal was issued, the matter is finally heard today.

2. The facts of the matter are that the petitioners purchased the agricultural land bearing Block No. 307, situated in village Kasmada of Kamrej Taluka by registered sale deed dtd.16/11/1989, for which Revenue Entry was mutated in the revenue record vide Mutation Entry No. 2566 on 15/1/1990. It is the further case of the petitioner that as the land was earlier purchased by Harishbhai Manchhubhai, respondent No. 3 herein from Mr.Hargovanbhai Hirabhai Patel, respondent No. 2 herein, and Mutation Entry No. 2365 was earlier recorded in the revenue record on 4/6/1986 and thereafter the names of co-owners being respondent Nos.4 and 5 were entered into the revenue record vide Mutation Entry No. 2395 dtd.12/11/1987. It appears that the District Collector, Surat on 18/10/1994 issued notice for suo-motu exercise of revisional jurisdiction under the Bombay Land Revenue Code (hereinafter referred to as "the Code") read with Gujarat Land Revenue Rules on the ground that the transaction is in breach of the provisions of the Bombay Tenancy and Agricultural Lands Act (hereinafter

referred to as "the Tenancy Act") and also for the alleged breach of Section 8 of Hindu Minorities and Guardians Act and ultimately as per the order dtd.30/11/1995, the District Collector set aside the entries. The matter was carried before the State Government by preferring Revision Application. It is the case of the petitioners that the advocate of the petitioners could not remain present on the date fixed for hearing but it appears that ultimately on 28/4/2004, the State Government decided the revision whereby the revision is dismissed. It is also the case of the petitioners that in the meantime, the tenancy proceedings initiated u/s 84C of the Tenancy Act have been concluded in favour of the petitioners as per order dtd.15/1/2004 passed by the Mamlatdar and consequently the proceedings u/s 84C of the Tenancy Act are dropped and the notice is withdrawn and it is under these circumstances, the petitioners have approached this Court by preferring this petition.

3. Upon hearing Mr.Mehta learned counsel for the petitioners and Mr.Desai, learned AGP for the respondents authorities, it appears that there is no dispute on the point that the petitioners have purchased the property by registered sale deed. There is also no dispute on the point that the entries came to be cancelled on the ground of breach of the provisions of the Tenancy Act and also the provisions of the Hindu Minority and Guardians Act. There is also no dispute on the point that ultimately in the proceedings under the Tenancy Act, order dtd.15/1/2004 has been passed by the Mamlatdar whereby the proceedigns are dropped and the notice u/s 84C of the Tenancy Act is withdrawn. However, Mr.Desai learned Asst.Govt.Pleader submitted that as in the order of the Mamlatdar passed u/s 84C of the Tenancy Act, it has been stated that the said order is subject to the final order which may be passed by the Special Secretary of the State Government in revision which was pending at the relevant point of time; and as now the State Government has decided the revision against the petitioners and therefore, the petitioners would not be entitled to the benefits of order passed by the Mamlatdar under the Tenancy Act.

4. In my view the aforesaid contention is misconceived inasmuch as the Secretary was exercising the powers under the provisions of the Code, whereas the Mamlatdar was was exercising powers under the provisions of the Tenancy Act. Both the proceedings are independent to one another. However, as the powers were exercised under the Tenancy Act by the Mamlatdar and as the revision was pending before the State Government, the language is used of passing the order subject to the final order which may be passed by the State Government in revision. As such, the said observations made by the Mamlatdar in the order passed under the provisions of the Tenancy Act, cannot be read to nullify its effect, in substance of dropping the proceedings under the Tenancy Act, even if the revision is dismissed by the Secretary of the State Government.

5. So far as the order passed by the Collector and confirmation thereof by the State Government is concerned, in my view, the issue is covered by the decision of this Court in the case of Jayantilal Jethalal Soni v. State of Gujarat, in Special

Civil Application No. 12547 of 2004 as per decision dtd.28/9/2004, wherein the view taken is that in a matter when the transaction has taken placed by registered sale deed, consequently mutation entry should be entered into the revenue record with the clarification and qualification that the transaction is in breach of other enactment and the entry is subject to the final order which may be passed in the proceedings under the other enactment. Therefore, so far as the exercise of the powers by the Collector as well as the Secretary under the Code for cancellation of the mutation entries is concerned, the same cannot be maintained in toto and the entries deserve to be restored to the revenue record and as such, the could have been continued in the revenue record with the prima facie observation that the transaction was is in breach of the provisions of the Tenancy Act because at the relevant time, the proceedings under the Tenancy Act were pending. However, as recorded hereinabove, the proceedings under the other enactment i.e. Tenancy Act are finally concluded in favour of the petitioners, no such clarification or qualification is required to be made in the mutation entries which have been cancelled by the order of the Collector and by the State Government.

6. In view of the aforesaid, the impugned orders passed by the Collector as well confirmation thereof by the State Government for cancelling the Mutation Entries Nos. 2365, 2395 and 2566 are quashed and set aside and the said entries shall stand restored to the revenue record. The petition is allowed to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs. Rule is made absolute accordingly.