

(2011) 01 GUJ CK 0058
In the Gujarat High Court

Case No : Special Civil Application No. 6012 of 2000

Hiralal Ugreshwar Trivedi and Another	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 01 GUJ CK 0058

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : Mehul H. Rathod, for the Appellant; Manisha Narsinghani, AGP, for the Respondent

Judgement

M.D. Shah, J.—Land bearing survey No. 500/28 of Village Dhandha was declared as Government waste land under the provisions of

Bombay merged Territories and Areas (J.A.) Act, 1953 and entry No. 4 was mutated. This was challenged by the Petitioners and other persons

by way of RTS Appeal No. 6 of 1965, however, it was dismissed by the Collector on 2-4-1968. When it was carried before the Special

Secretary(Appeal) by way of revision, said revision was dismissed on 30-7-1971 directing the Collector to hold inquiry under the provisions of

Jagir Abolition Act and then to mutate fresh entry. Thereafter on 11-5-1972, Mamlatdar, Palanpur, held that the Petitioners were the permanent

holders of the land as they held the same since long and remanded the case. Order dated 11-5-1972 of Mamlatdar was set aside by Deputy

Secretary (Appeals) and ordered for a decision afresh. Thereafter, the Petitioners were held not entitled for the land under the Jagir Abolition Act

by the Mamlatdar vide order dated 30-4-1973 which, when challenged before the Special Secretary, was dismissed. On 11-10-1995, the

Petitioner requested for non-removal of his unauthorized occupation by approaching the Mamlatdar, Palanpur. The Petitioners in March, 1996

requested for regularization of their land bearing Survey No. 504. Said application was rejected by the Collector, Banaskantha on 29-12-1997.

They challenged the said order before Deputy Secretary (Appeals) by way of revision. However, it was rejected vide order dated 26-4-2000 on

the ground that land was mutated in the name of Government since long and it was decided to allot the said land to the affected persons of Sipu

Project for rehabilitation. Hence, the present petition.

2. Heard learned advocate, Mr. Mehul Rathod for the Petitioners and learned AGP, Ms. Manisha Narsinghani for the Respondents.

3. It is submitted by Mr. Rathod that affected persons of Sipu Project refused to take possession of the said land as being unsuitable and hence,

possession of the said land kept reserved for the affected persons of Sipu Project came back to the Government. As per the order passed by the

Deputy Collector, Sipu Project, in February, 1984, it was decided that land in question was not required for rehabilitation of affected persons of

Sipu Project and hence, Government was requested to cancel the order for allotment of said land to the affected persons of Sipu Project. It is

further submitted that in similar type of cases, the Collector, Banaskantha, at Palanpur vide order dated 10-5-1992 regularized the encroachment

made by other persons and order for allotment of land to the affected persons of Sipu Project was also cancelled. Copy of said order is placed on

record from pages 27 to 36. This aspect was not considered by the Collector while deciding the application as well as by the Deputy Secretary

(Appeals) in revision.

4. It is an admitted fact that the Petitioners have been in possession over the disputed land since 1957-58 and till date, land is in their possession.

In view of the above, in the opinion of this Court, if the orders passed by the Collector as well as Deputy Secretary (Appeals) are quashed and set

aside and matter is remanded to the Collector for a decision afresh, ends of justice will be met.

5. Thus, the orders dated 29-12-1997 passed by the Collector, Banaskantha, and 26-4-2000 passed by the Deputy Secretary (Appeals) are

quashed and set aside and matter is remanded to the Collector, Banaskantha, for

a decision afresh. The Collector, after giving full opportunities of producing documents and hearing, will decide the same in light of the decision rendered qua other persons. Till such a decision is rendered by the Collector, status quo prevailing as on today shall remain in force. This Special Civil Application stands disposed of. Rule is made absolute to the aforesaid extent.