(2023) 01 GUJ CK 0084

In the Gujarat High Court

Case No : R/Special Civil Application No. 13234 Of 2018

Jagdishchandra Vithaldas Raval APPELLANT

Vs

State Of Gujarat RESPONDENT

Date of Decision : 17-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Registration Act, 1908 — Section 17, 17(1)(b)
Bombay Land Revenue Code, 1879 — Section 135D

Citation : (2023) 01 GUJ CK 0084

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Dipen Desai

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. By way of this note for speaking to minutes, it has been pointed out that while delivering judgement in this matter on 07/01/2023, inadvertently, in the last paragraph No.7 of the judgement, direction regarding refund of the amount of Rs.1,24,180/- to the petitioner, which was the amount deducted pursuant to the order of penalty is left to be incorporated.

2. In view of the above, corrected paragraph no.7 of Modification of Judgment dtd. ORDER DATED: 17/01/2023 07/01/2023 in R/SCA/13234/2018 the oral judgement dated 07/01/2023 reads as under:

"7. For the aforesaid reasons, the petition is allowed. The order of penalty dated 03.02.2015 passed by the State Government and the communication dated 20.12.2017 of the petitioner's reconsideration by which the application for such reconsideration was rejected are quashed and set aside. The respondent is directed to refund the amount deducted pursuant to the order of penalty i.e. Rs.1,24,180/- to the petitioner. The petition is allowed. Rule is made absolute accordingly with no orders as to costs.”

3. Note for speaking to minutes stands allowed accordingly.

1 This petition has been filed under Article 226 of the Constitution of India by the petitioner challenging the order dated 03.02.2015 and also a communication dated 20.12.2017. By the aforesaid communications, the petitioner has been imposed a penalty of reduction in pension of Rs.5,000/- a month for a period of one year. His request for reconsideration of the same was also rejected.

2 Facts in brief would indicate that while the petitioner was working as a Mamlatdar, from which post he retired on 30.09.2012, a date prior to his retirement, a charge-sheet was issued. The charge-sheet dated 29.09.2012 imputed a misconduct against the petitioner. According to the department, in context of a parcel of land at Iyava Vasna, Survey No. 189 / 1, the land in question was purchased by one Kamani Chemical Works, a partnership firm and a mutation entry pursuant to such purchase on 10.05.1987, was recorded being Mutation Entry No. 1331. An Entry No. 3262 was recorded on the basis of a dissolution deed of partnership produced by the partners of the firm, seven in number. According to the department, the petitioner issued notices under Sec.135-D of the Bombay Land Revenue Code on 02.06.2009 to only seven partners whereas the partnership firm had eleven partners. On a complaint being made by one of the four partners who did not receive the notice under Sec.135-D of the Bombay Land Revenue Code, it was the case of the department that when in the land in question as per the revenue records the name of Kamani Chemicals was registered and such a partnership firm had eleven partners, without obtaining a copy of the partnership deed from the Registrar of Firms and to verify the number of partners, the petitioner, without such verification, issued notices only to seven partners and not all eleven partners, and therefore, such mutation of entries indicated that the petitioner had acted with doubtful integrity.

2.1 The petitioner replied to the charge-sheet. An inquiry was held and by a report submitted on 11.07.2013, the Inquiry Officer exonerated the petitioner.

2.2 The Disciplinary Authority having disagreed, issued a show cause notice along with the Inquiry Officer’s Report in September, 2013. After inviting the petitioner’s comments on the Disagreement Note, by the impugned order, the penalty of Rs.5,000/- cut in pension per month for one year was imposed.

3 Mr.Dipen Desai, learned counsel for the petitioner, would make the following submissions:

3.1 He would submit that a primary Inquiry Report was conducted by his superior i.e. the Prant Officer, Sanand, and based on the report which the Prant Officer indicated that an appeal against the mutation has been filed in his capacity as an Appellate Authority and the same is pending, decision would accordingly be taken. That in the appeal, at the hands of the aggrieved partners who were not given such notices, the Appellate Authority found that there was no misconception and the order of the Mamlatdar, the petitioner, was just and proper.

3.2 Aggrieved by the order of the Appellate Authority, a revision was filed by the aggrieved partners and the Revisional Authority i.e. the Collector found that there was nothing wrong in the order of the Dy. Collector and the revision was rejected.

3.3 Mr. Desai, learned counsel, would submit that when on the appellate side in capacity of he acting in a quasi judicial capacity when the mutation entry in question was confirmed, there was no reason why departmental proceedings could have been taken against the petitioner.

3.4 Mr.Desai, learned counsel, would further submit that even an inquiry proceeding was initiated against Shri R.G.Chaudhary, the concerned Deputy Collector, who confirmed the order of the petitioner. However, the State, by an order dated 30.01.2017, found that as the dissolution deed did not have the exact details of the number of partners, there was no reason for the Appellate Authority to take a view other than the view it had taken. The State Government considering the merits of the appeal found that on 25.11.1992, there were alterations in the partnership firm and therefore, the inquiry against his Appellate Authority being dropped there was discrimination in continuing the inquiry against the original order and imposing a penalty.

3.5 In support of his submissions, Mr.Desai, learned Counsel, would rely on a judgement of the Hon’ble Supreme Court rendered in the case of Union of India vs. K.K.Dhawan, reported in (1993) 2 SCC 56. He would also rely on a decision of the Co-ordinate Bench of this Court in the case of R.S.Patel vs. State of Gujarat., reported in 2016 (4) GLR 3220 in the context of misconduct in passing a quasi judicial order.

3.6 Mr.Desai, learned counsel, would also rely on a decision rendered on 09.06.2022 in Special Civil Application Nos. 20605 of 2015 with Special Civil Application No. 19862 of 2015 and submit that in the question of a challenge to the entries, this Court had held that there is no dispute regarding the constitution of the partnership firm in the name of Kamani Chemicals and also with regard to the reconstitution of the firm and in light of a civil suit already filed by the aggrieved partners for cancellation of the sale deed, the observations of the learned Collector as well as the S.S.R.D, which was a limited question before the Court in context of making the revenue entry in question cannot be faulted. A Co-ordinate Bench of this Court, observed that the documentary evidence that the firm was dissolved did not require any registration and therefore it cannot be submitted that the action of the petitioner was contrary to law.

4 Ms. Dharitri Pancholi, learned AGP, would support the order of penalty and submit that while mutating the entry in question, the petitioner ought to have taken due care in examining the records before the Registrar of Firms as to the constitution of the partnership. She would submit that merely because there

were no guidelines of procedural formalities set out, that itself would not have been observed as a failure to prove a misconduct and the disagreement notice was therefore rightly given to the petitioner vis-a-vis the Inquiry Officer’s Report which indicated that the petitioner had sanctioned the mutation entry under Sec.135-D of the Bombay Land Revenue Code without following proper procedure.

4.1 In support of her submissions, Ms.Pancholi, learned AGP, would rely on a decision of the Hon’ble Supreme Court stating that parity cannot be claimed in case of penalty orders. The decision relied upon was in the case of State of Tamil Nadu & Anr vs. M.Mangayarkarasi & Ors., reported in (2019) 15 SCC 515. She would rely on paras 11 and 12 of the decision. As far as the scope of judicial review in departmental proceedings is concerned, Ms.Pancholi, learned AGP, would rely on a decision in the case of State of Uttar Pradesh vs. Dalbirsingh reported in AIR 2021 SC 4504. Reliance was placed on paras 22 to 26 and para 29.

5 What is evident from the facts on hand and considering the submissions made by the learned counsels for the respective parties, it is clear that one mutation entry No. 3262 pertaining to land at Survey No. 189 paiki 1 was certified by the petitioner. The land belonged to Kamani Chemicals. In the revenue records, there was no information regarding any partners of the firm in the name of Kamani Chemicals. Subsequently, two partners who were not issued notices under Sec.135-D of the Bombay Land Revenue Code, made a complaint before the Gujarat Vigilance Commission stating that though there were eleven partners and the land was purchased in 1984, the sub-registrar had illegally entered the names of only seven partners in the revenue record. Based on this, a show cause notice and a charge-sheet was issued. The facts further indicate that against the revenue entry in question entered in the revenue records, the aggrieved parties had filed an appeal before the Prant Officer and the Appellate Authority rejected the appeal and confirmed the mutation entry by its order dated 15.06.2012. The Appellate Authority observed that there was nothing wrong in entering the mutation entry as it was so done in accordance with law. In light of the Appellate Authority, though the petitioner made an application that the departmental proceedings be dropped to which the Collector sent a positive opinion, the petitioner was charge-sheeted a day just prior to his retirement.

5.1 Perusal of the Inquiry Officer’s Report indicates that in the perception of the Inquiry Officer, and rightly so, nothing had come on record to suggest as to what was the breach committed by the petitioner in not following any procedure so as to impute misconduct against him. What was also observed by the Inquiry Officer that if the petitioner had made the change in the revenue records based on the documents produced before him, i.e. the dissolution deed which was based after an issuance of a public advertisement and also based on a title clearance certificate, it was not the domain of the petitioner to enter into any other roving inquiry and the allegation that the petitioner had in connivance with the partners made the change in mutation entries was erroneous and baseless.

5.2 Perusal of the Disagreement Notice to the charge to the Inquiry Officer's Report would indicate that the only ground on which the Disciplinary Authority thought to defer with the fining of the Inquiry Officer was nothing but a similar opinion and perception and not on any substantial basis. It was not the case of the Disciplinary Authority that the inquiry officer had overlooked certain documents. As is evident from the Inquiry Officer's Report that it was not a case of arriving at a finding based on appreciation of detailed evidence but on assessment of documentary evidence. The Disciplinary Authority merely because it had a different view cannot be made a ground for coming to a disagreement against an Inquiry Officer's Report and be made a tool for imposing a penalty.

5.3 Even otherwise, facts indicate that the Appellate Authority who ruled in the favour of the petitioner in upholding his quasi judicial decision was also issued a charge-sheet. However, it has come on record that the State Government by an order dated 31.01.2017, in respect of the same transaction which was a subject matter of a quasi judicial proceeding withdrew and dropped the departmental proceedings against the Appellate Authority. Having done so, there was no reason why the petitioner could have been proceeded further and a penalty be imposed on him for the subject matter of the same transaction. What is also evident from the records of the case especially in reading the order of a Co-ordinate Bench of this Court in the case of Shah Bipinchandra Ratilal & Ors., vs. State of Gujarat & Ors., in Special Civil Application No. 20605 of 2015 is that in appreciating the dispute where the orders of the SSRD dated 29.09.2015 in the revision applications were the Court after appreciating the facts of the case in para 3 & 3.1 to 3.14, the Court observed as under :

" 12. Having considered the submissions made on behalf of both the sides coupled with the material placed on record and the decisions cited at bar, it reveals that there is no dispute regarding the constitution of the partnership firm in the name of M/s Kamani Chemical Works initially in the year 1984 with 11 partners. There is also no dispute regarding the death of Nutankumar Ratilal Shah in the year 1992. The question regarding reconstitution of the firm after his death having 9 partners and subsequent dissolution of the firm by remaining 7 partners is the bone of contention between the petitioners and private respondent no.3. At this stage, it is pertinent to note that private respondent no.3 has already filed Civil Suit for cancellation of the sale deed as well as for her alleged share in the land in question on the basis of the partnership firm. It is also admitted facts that at present the land in question has already been sold by the petitioner to the respondent nos.4 and 5 (who are petitioners in Special Civil Application No.19862 of 2015).

13. The limited question is regarding the making of revenue entry on the basis of the dissolution deed and the observations of the learned Collector as well as learned SSRD as to necessity of registration of the dissolution deed. In this regard, it is worth while to refer the observations of this Court in the case of Anil

Engineering Works V.s Competent Authority and Deputy Collector, ULC and Another, wherein while relying upon the decision of the Supreme Court in the case of S.V.Chandra Pandian and Others V.s S.V.Shivalinga Nadar and Others, wherein this Court has observed that when dissolution of the partnership firm takes place and the residue is distributed amongst the partners, there is no partition, transfer or extinguishment of interest attracting Section 17 of the Registration Act. It was further observed that the dissolution of the partnership firm does not involve any transfer of interest in any property including any immovable property and document of dissolution does not require registration under the law of Registration.

14. The Andhra Pradesh High Court in the case of M/s.Samyuktha Cotton Trading Co. (Supra) was dealing with question as to whether the registration of an instrument is needed either by the contributing an item of immovable property towards the share of an individual while joining a firm, or for relinquishing it at the time of retirement from it, it has observed that any instrument relinquishing right in an immovable property belonging to the firm need not be registered. To arrive at this conclusion, the Andhra Pradesh High Court has specifically observed in para 13 and 14 as under:-

“13. In A. Narayanappa v. B. Krishtappa, , it was held that once a partnership firm is constituted, the assets held by it merge into one unit, and that no partner can claim any exclusive rights as regards an identified property comprised in the assets of the firm. The principle was summed up as under :

"In determining whether transfer of shares of partnerships which hold immovable property among other assets, require registration the Court must be influenced by the policy of the Partnership Act. The legal conception of the share of a partner in a partnership cannot be assessed in our opinion, by reference to the possibility of his getting a share in the immovable property possessed by the partnership, for his getting a share in the immovable property is only an uncertain factor.

A Full Bench of the Lahore High Court in the case of Ajudhia Pershad v. Shamsunder, ILR (1947) Lah 417 = AIR 1947 Lah. 13, held that the interest of a partner in partnership assets comprising of movable and immovable property would be treated as movable property. We are in agreement with the view expressed in the above.

Our answer to the question referred to is that the interest of a partner in partnership assets cannot be regarded as a right or interest in immovable property within the meaning of Section 17(1)(b) of the Registration Act."

14. The same decision became the subjectmatter of appeal before the Supreme Court reported in Addanki Narayanappa and another v. Bhaskara Krishnappa (dead) and Ors., and it was approved. Similar view was expressed by the decisions rendered in Commissioner of Income-Tax v. Amber Corporation, ; and in . Hence, the contentions of the 1st respondent cannot be accepted.”

15. Thus, so far as the contentions raised by the private respondent no.3 and the observations of the Collector and the learned SSRD regarding necessity of registration of the dissolution deed is concerned, same is not sustainable in the eyes of law.

16. It also appears from the record that as per the original partnership deed, page no.42, the partnership firm was to continue at will and any partner can retire from the firm by giving notice or even by oral expression. There was also clause that in case of retirement of any partner, the partnership firm may be continued. It also reveals from the records that earlier some notices were issued by the Dhankunwarben and four others wherein there is no mention of the property relating the M/s Kamani Chemical Works. It also reveals that on reconstitution of the partnership firm, necessary intimation was given to the Kalupur Bank and it was also intimated to the Registrar of Firms at the relevant time. The documentary evidence also suggests that the firm was dissolved by the deed which does not require any registration. It also reveals that the on the basis of that deed, mutation entry was made and confirmed. It also reveals that the said firm has also issued public notice inviting public at large to approach the firm within 15 days if anybody has any right, title or interest against the firm. This factum does suggest that public notice was issued and none has filed any objection including the respondent no.3. At this juncture, it is pertinent to note that during the course of argument, the respondent no.3 has tried to show that there were two firms Kamani 1 and Kamani 2. However, the submissions that there were two firms are not pleaded in the Civil Suit itself which has been filed by the respondent no.3 before the Civil Court. Even in the affidavit in reply, the respondent no.3, has not put forward the defense that there are two firms Kamani 1 and Kamani 2. From the documentary evidence produced in the matter, it clearly appears that there was only one firm and due to death of one of the partners in 1992, the firm was reconstituted inducting one partner and retiring two partners as per their oral wish and thereafter, out of 9 partners two partners have died and therefore remaining 7 partners had dissolved the firm and necessary mutation entry giving shares in individual partners, according to their shares, in the partnership firm was made. This action of the revenue authority cannot be said to be illegal one.

17. It is submitted by the respondent no.3 that these entries had been made due to corrupt practice adopted by the Revenue Officers and for that inquiry has been initiated against the concerned Revenue Officers and therefore, the entry needs to be cancelled on that basis only. The initiation of any departmental proceeding against Erring Government Officer has nothing to do with the right of a person based on a documentary evidence. Initiation of the proceedings against the concerned revenue authority does not ipso facto suggest that the dissolution of the firm as alleged by the petitioners is illegal. Therefore the submissions on this count made on behalf of respondent no.3 is not acceptable.

18. Thus, considering the facts and circumstances of this case, it is clearly found

that the Deputy Collector has rightly rejected the RTS Appeal filed by the respondent no.3 against the challenge of entry no.3262. The learned Collector as well as the learned SSRD has misdirected themselves for insistence of registration of the dissolution deed and has committed error of facts and law in setting aside the order of the learned Deputy Collector. The orders of the learned Collector as well as learned SSRD are not sustainable in the eyes of law and therefore both the orders deserves to be quashed and set aside and the order of the learned Deputy Collector needs to be restored of course with the observation that the entry would be subject to the outcome of the Civil Suit pending between the parties and the Civil Court shall decide the suit in accordance with law."

6 In light of this position, when even on the judicial side the entry and the mutation exercise had received approval including while examining the case by this Court, there is no reason why the order of penalty can be sustained.

7 For the aforesaid reasons, the petition is allowed. The order of penalty dated 03.02.2015 passed by the State Government and the communication dated 20.12.2017 of the petitioner's reconsideration by which the application for such reconsideration was rejected are quashed and set aside and the petition is allowed. Rule is made absolute accordingly with no orders as to costs.