
(1993) 06 GUJ CK 0025

In the Gujarat High Court

Case No : Special Civil Application No. 2305 of 1983

Jailaxmi Estate and Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-06-1993

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211, 65

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 11, 16, 17, 17A, 17B

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1994 Guj 38

Hon'ble Judges : D.G. Karia, J

Bench : Single Bench

Advocate : J.M. Patel, for the Appellant; U.R. Bhatt, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

D.G. Karia, J.—By this petition under Articles 226 and 227 of the Constitution of India, the petitioners challenged the validity and legality of the show cause notice dated April 14, 1983 u/s 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the said Act") and also the show cause notice dated April 28, 1983 at Annexure "E" issued to the petitioner No. 2 to show cause why the N.A. permission granted in respect of the land in question on May 27, 1981 should not be revoked.

2, The relevant facts giving rise to the petition may shortly be stated thus:--

The petitioner No. 2 was owner and occupier of the agricultural land bearing Survey No. 561 admeasuring 1 acre 1 guntha, situated in the sim of village Limda in Vaghodia Taluka. It is not in dispute that the said land is an old tenure land. On an application by the petitioner No. 2, the Taluka Development Officer, Vaghodia, by his order dated May 27, 1981 ordered to convert the land into non-agricultural one. It is the case of the petitioners that since that date, the land in question was being used for non-agricultural purpose and the petitioners paid non-agricultural charges to the State Government as fixed under the said N.A.

order. The petitioner No. 2 by registered sale-deed sold said land to petitioner No. 1 on June 10, 1981. The petitioner No. 1 thereafter plotted out the said land into various small plots for the purpose of industry. The land has thus been divided into about 110 plots. The small plots Nos. 1 to 68 had been sold between July to December 1981 to various parties. Plots Nos. 69 to 85 were similarly sold in 1982 to various parties and plots Nos. 86 to 103 were sold in March 1983 to other parties and plots Nos. 104 to 109 were thus sold during May-June 1983. All these transactions were made by registered sale deeds. Second respondent-Mamlatdar, Vaghodia, by the impugned show cause notice dated April 14, 1983 purported to be u/s 84C of the Bombay Tenancy Act, called upon the petitioners to show cause why the acquisition or transfer of the lands in question should not be declared invalid, as there was a breach of Section 63 of the Act and why the proceedings u/s 84C of the Act should not be initiated against the petitioners. The petitioners have challenged this show cause notice u/s 84C on the ground that the land in question was no longer agricultural land and the provisions of the Bombay Tenancy Act were not applicable to the land in dispute. The Secretary, Revenue Department, Gujarat State, meanwhile, issued notice to the petitioner No. 2 to show cause why the N.A. permission granted on May 27, 1981 should not be cancelled for the reasons stated in the notice. The petitioners have also challenged this notice dated April 28, 1983.

.3. It is not in dispute that the Taluka Development Officer, Vaghodia, has accorded N.A. permission to the petitioners on May 27, 1981 by his order at Annexure "B" to the petition. The said land, after being converted into non-agricultural one, was divided into several sub-plots and had changed hands. By the Government Resolution dated March 31, 1981 at Annexure "A" to the petition, the Government of Gujarat in Industries, Mine and Power Department provided relaxation to Vaghodia Taluka, among other places, for the purpose of being eligible for full incentive schemes as would be enforced from time to time by the Government. The Government considered the Vaghodia Taluka and other Talukas as under-developed Talukas of backwards Districts. It appears that in view of the said policy as relaxation, the several industrial units purchased the sub-plots of the lands in question.

4. In order to appreciate the contention of Mr. J. M. Patel, learned Advocate appearing for the petitioners, that the provisions of the Bombay Tenancy Act were not applicable to the lands in question, it is necessary to refer to the relevant provisions of the Act. Section 2(8) defines "land" as under:--

"2.(8) "land" means --

(a) land which is used for agricultural purposes or which is so used but is left fallow, and includes the sites of farm buildings appurtenants to such land? and "

(b) for the purposes of Sections 11, 16, 17, 17A, 17B, 18, 19, 20, 26, 28, 29, 29A, 30, 41, 43, 63, 64, 64A, 84A, 84B and 84C --

(i) the sites of dwelling houses occupied by agriculturists, agricultural labourers

or artisans and land appurtenant to such dwelling houses,

(ii) the sites of structures used by agriculturists for allied pursuits."

5. Section 84C of the Act pertaining to disposal of land, transfer or acquisition of which is invalid is reproduced below :

"84.(1) Where in respect of the transfer or acquisition of any land made on or after the commencement of the Amending Act, 1955, the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in Section 84B and decide whether the transfer or acquisition is or is not invalid.

(2) If after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land to be invalid, he shall make an order declaring the transfer or acquisition to be invalid, unless the parties to such transfer or acquisition give an undertaking in writing that within a period of three months from such date as the Mamlatdar may fix, they shall restore the land along with the rights and interest therein to the position to which it was immediately before the transfer or acquisition, and the land is so restored within that period :

Provided that where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed the ceiling area, the Mamlatdar shall not declare such transfer to be invalid --

(i) if the amount received by the landlord as the price of the land is equal to or less than the reasonable price determined u/s 63A and the transferee pays to the State Government a penalty equal to Re. 1 within such period not exceeding three months as the Mamlatdar may fix.

(ii) if the amount received by the landlord as the price of the land is in excess of the reasonable price determined u/s 63A and the transferor as well as the transferee pays to the State Government each a penalty equal to one-tenth of the reasonable price within such period as may be fixed by the Mamlatdar.

....."

6. Section 63 of the Bombay Tenancy Act provides that the transfer of any agricultural land by way of sale, gift, exchange or lease, mortgage, etc. to non-agriculturists shall be invalid. It is alleged in the show cause notice u/s 84C that the petitioners have committed breach of Section 63 of the Act. Sections 2(2), 2(5) and 2(6) of the Act are also referred to in the said show cause notice, alleging that according to the said provisions, the petitioners were not entitled to be considered as agriculturists. Section 2(2) defines "agriculturist" as a person who cultivates lands personally. Sections 2(5) and 2(6) define "to cultivate" and "to cultivate personally". According to definition of "land" as stated hereinabove, "land" means land which is used for agricultural purpose or which is so used but

is left fallow, including the site of the farm buildings appurtenant to such land. In the present case, in view of the N.A. order dated May 27, 1981, the land in question cannot be characterised as an agricultural land. u/s 63, an agricultural land cannot be sold to any one except an agriculturist. The sale-deed at Annexure "C" came to be executed on June 11, 1981, i.e. after the land was converted into non-agricultural one. In the facts of the case, the provisions of Section 63, therefore, cannot be said to be attracted, as the land in question was no longer an agricultural land. The question, therefore, to sell it to the person other than agriculturist does not arise. With the grant of N.A. permission on May 27, 1981, the land in question did not retain its agricultural character. The second respondent has, therefore, no authority or jurisdiction to issue show cause notice u/s 84C of the Bombay Tenancy Act, inasmuch as it cannot be said that the land which has been disposed of was an agricultural land. In my view, a land in respect of which N.A. permission has been granted and which has, therefore, lost its official character of agricultural land is not "land" within the meaning of Section 2(8) of the Bombay Tenancy Act. Therefore, the provisions of Section 63 of the Bombay Tenancy Act were not applicable to it and the show cause notice issued on that basis cannot be sustained.

7. Mr. U.R. Bhatt, learned Assistant Government Pleader, appearing for the respondents contended that the petition involved disputed questions of fact as mentioned in the affidavit-in-reply and that the land was not used for the N.A. purpose and therefore the show cause notice can be said to be valid and legal. I am afraid, this submission of Mr. Bhatt is not tenable and cannot be accepted. Mr. Bhatt invited my attention to paras 6, 15 and 22 of the affidavit-in-reply, which inter alia recite that the land in question is an agricultural land. In view of the order at Annexure "B" dated May 27, 1981, the land cannot be said to be agricultural land. Para 15 of the affidavit in reply states that "It is not proved that the petitioner No. 1 purchased the land, when it was already converted into N.A. purpose". N.A. permission order and the sale deed, both are on record. Thus, the contentions of Mr. Bhatt cannot be accepted. Mr. Bhatt, relying upon averments made in para 22 of the affidavit-in-reply submitted that the Mamlatdar has got powers to suo motu issue such notice u/s 84C of the Bombay Tenancy Act and the petitioners could have gone in appeal against such order or the show-cause notice. The Mamlatdar has of course powers to issue notice u/s 84C, but such notice can only be issued in respect of the agricultural land requisition of which is found to be invalid. In light of the above discussion, I find no substance in the contention of Mr. Bhatt.

8. As regards the show cause notice at Annexure "E" dated April 28, 1983 for cancellation of the N.A. Permission, Mr. J.M. Patel, learned Advocate for the petitioners, contended that the said show cause notice is illegal and issued after considerable long time since N.A. permission was granted. Mr. Patel relied upon the decision of the Supreme Court in case of The State of Gujarat Vs. Patil Raghav Natha and Others, . It is held that there is no period of limitation prescribed u/s 211 of the Bombay Land Revenue Code, but it is plain that this

power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order. Section 65 of the Code itself indicates the length of the reasonable time within which the Commissioner or the Collector must act u/s 211. Section 65 shows that the period of three months is considered ample for the Collector to make up his mind and beyond that the Legislature thinks that the matter is so urgent that the permission shall be deemed to have-been granted. Thus, reading Ss. 211 and 65 of the Bombay Land Revenue Code, it is clear that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. In the instant case, the powers are sought to be exercised after one year and about eleven months after the land in question was converted into N.A. one. This is, per se, not the reasonable time within which the powers could have been exercised to review, renew and revise the N.A. order. The ratio laid down in the aforesaid decision squarely applies to the facts of the present case, inasmuch as the N.A. permission was sought to be cancelled when the land in question was divided into several sub-plots and had changed many hands. In the facts of the case, the show cause notice at Annexure "E" issued after quite unreasonable time requires to be quashed.

9. In the result, the petition is allowed. The show cause notice dated April 14, 1983 at Annexure "D" and the show cause notice dated April 28, 1983 at Annexure "E" are quashed and set aside. Rule made absolute with no order as to costs.