(2005) 12 GUJ CK 0085

In the Gujarat High Court

Case No : Special Civil Application No. 1537 of 1995

Jamnadas Meghji and Another APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 26-12-2005

Acts Referred:
Bombay Land Revenue Code, 1879 — Section 211, 61

Citation : (2006) 26 GLH 620

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Anshin H. Desai, for the Appellant; U.R. Bhatt, Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—The petitioners are before this Court being aggrieved of orders dated 09.06.1992 passed by the Deputy Collector, Veraval, dated 08.06.1993 passed by the Collector, Junagadh and dated 19.12.1994 passed by the Secretary (Appeals), Revenue Department.

2. The facts of the case are that the petitioners are holding land bearing survey No. 11/2 admeasuring 3 Acres and 15 yds. at village Hadmatia (Gir), Tal. Talala, Dist.Junagadh. Adjacent to the land of the petitioners, Government waste land is situated. It was alleged against the petitioners by the Revenue authorities that they have encroached upon the waste land of the Government. A case u/s 61 of the Bombay Land Revenue Code was filed before the Mamlatdar, Talala being encroachment case No. 18 of 1988 - 89. Mamlatdar by his order dated 20.09.1989 held that there is an encroachment on Government waste land since 1970-71. The Mamlatdar passed an order imposing penalty and also to remove the encroachment. The petitioners, in light of the Government policy of regularizing encroachment of small in nature, applied for the same. The extent of encroachment was measured to be 39 gunthas. The request was considered by the Mamlatdar and by order dated 27.09.1990, he accepted the request of the

petitioners for regularization, on condition of payment of Rs. 9,750/- as Occupancy price. A copy of this order is at Annexure-A to this petition.

3. The petitioners paid a sum of Rs. 100/- towards measurement fees and also paid the occupancy price as directed. The petitioners were issued Sanad bearing No. 56/90-91 dated 15.04.1991. The petitioners had already developed the land, they continued cultivating the same. It is the case of the petitioners that they spent substantial amount for developing the land. They incurred expenses for laying down a pipeline 500 fts in length. They also built ''Bund'' at the cost of Rs. 9,000/-, installed an electric motor of 7.5 H.P. at the cost of Rs. 14,000/- for irrigating the land.

4. The Deputy Collector, Veraval took the matter in suo moto revision and issued notice bearing No. Land/Rev./Case:17/91-92 dated 14.05.1992. The petitioners filed their objections/reply to the said notice. The Deputy Collector, overlooking the objections/reply, vide his order No. Land/Rev.17:91-92 dated 09.06.1992, set aside the order of the Mamlatdar mainly on the ground that the petitioners (encroachers) are holding more than 8 acres of land and that the Mamlatdar had not examined the record of the petitioners'' holding. Besides, the Deputy Collector also held that as per Government Resolution dated 01.08.1980, the Mamlatdar ought to have send a proposal to the Government for regularization.

5. The petitioners, being aggrieved of the order of the Deputy Collector, preferred an appeal before the Collector being Appeal No. Land-4-Appeal-Case-122/92. The Collector was pleased to dismiss the same by order dated 08.06.1993. The petitioners preferred a revision before the Secretary (Revenue Department) (Appeals) which was registered as SRD-GMN-GND-98/93. The same was also dismissed by order dated 19.12.1994.

6. Being aggrieved of the aforesaid orders of the Deputy Collector, the Collector and the Secretary (Appeals), Revenue Department, the petitioners are before this Court.

7. Mr. A.H. Desai, the learned advocate appearing for the petitioners invited the attention of the Court to notice issued by the Deputy Collector dated 14.05.1992. He submitted that the notice is too vague. It only says that, ''the order of the Mamlatdar is not according to Government laws, circulars and their provisions, is adverse to the interest of the Government and therefore, required to be taken into revision u/s 211 of the Bombay Land Revenue Code.'' The learned advocate submitted that though detailed reply was filed, the Deputy Collector without taking into consideration the same, passed the order.

8. This matter was filed on 14.02.1995. The Court initially issued notice and granted ad interim relief, directing the respondents to maintain ''status quo'' as on the date of the order, i.e. 24.03.1995. The ad interim relief was confirmed, to operate till final disposal of the matter. The Court, on 04.07.1995, passed the following order:

Rule.

By way of interim relief, respondents are directed not to interfere with the possession of the petitioners, on condition that petitioners shall not carry out any further improvements on the said land.

The matter was then on board for hearing on various dates. On 25.07.2005, the Court passed following order:

Office is directed to notify the name of Mr. Prachchak, learned AGP, who is present in the Court. He shall take instructions in the matter and shall also produce the circular dated 01.06.1993, referred to in paragraph - 4 of the affidavit in reply filed by one Shri R.H. Ghadvi, Dy. Collector, Veraval dated 23.06.1995. Put up on 8/8/05 at 4.45 pm.

The matter was adjourned at the request of the learned Assistant Government Pleader. On a subsequent date, another learned Assistant Government Pleader appeared. He also prayed for time which was granted.

9. On behalf of the respondents, respondent No. 3 - Deputy Collector, Veraval filed affidavit dated 23.06.1995. Paragraph No. 4 of which reads as under:

4. I say and submit that by virtue of the Resolution dated 8th January, 1980 before 1st June 1993 the Mamlatdar has been given the powers to regularise encroachments upto one acre of agricultural lands. By virtue of a circular dated 1st June, 1993 the power to regularise encroachments upto 8 acres has been vested in the Collector of the concerned District. Since the order in question has been passed by the Mamlatdar in 1990, the mamlatdar did have the power to regularise encroachments upto the extent of 1 acre of agricultural lands but by virtue of the resolution dated 8th January 1980 the mamlatdar could regularise such encroachments provided that the total holding of the individual applying for regularisation did not exceed 8 acres.

In light of the averments in paragraph No. 4, the learned Assistant Government Pleader was asked to produce the relevant documents by order dated 23.08.2005. Later on, another affidavit was filed by one Shri Narhari, son of Shri Maganlal M. Trivedi, Mamlatdar, Tal. Talala, dated 5th September 2005. Along with that, certain documents, including Government Resolution (Revenue Department) bearing No. Encroachment-1072-28765-L dated 8th January 1980 is produced.

10. This Government Resolution essentially deals with encroachment on Government lands. Clause No. 6 deals with encroachment on agricultural land. The Resolution then proceeds to deal with the encroachment on ''virgin land'' and ''non-virgin land''. It also deals with encroachment by the ''persons belonging to backward class'' and ''non-backward class''. The Government Resolution also deals with encroachment on non-agricultural land.

Mr. U.R. Bhatt, the learned Assistant Government Pleader submitted that in the present case, the petitioners do not belong to backward class and the encroachment is on the waste land. Therefore, according to him, the part applicable to the case of the petitioners will be the one which deals with the ''encroachment by persons not belonging to backward class''. He submitted that in case of ''encroachment by the persons not belonging to backward class'', regularization is discretion of the Revenue Authorities. He further submitted that in case of ''encroachment on virgin land'', 30 times of the ''assessment'' is to be levied as ''penalty'' whereas, in case of non-virgin land, it will be 60 times of the ''assessment''. He submitted that the regularization of encroachment to the extent of ''1 acre'' is within the jurisdiction of the Mamlatdar, ''encroachment up to 2 acres'' is within the jurisdiction of the Deputy/Assistant Collector and encroachment of more than 2 acres is within the jurisdiction of the Collector.

11. He submitted that the encroachment on agricultural lands can be regularized as provided in Clause 6 of the Government Resolution by the Collector. But then Sub-section 2 puts an embargo on the said power. He submitted that the Sremoval of encroachment?, is a ''Rule'' and regularization of encroachment is an ''Exception''. He submitted that Sub-clause 2 of Clause 6 of the Government Resolution provides that only in the cases where the Collector is of the opinion that the removal of encroachment will result into hardship to the encroacher and he will be in a vary awkward position by that removal, an ''exercise of regularization'' should be undertaken. He further submitted that Sub-clause 2 of Clause 6 provides that the Collector should exercise power of regularization only in such cases where after regularization, total holding of the person does not exceed 8 acres. He submitted that Sub-clause 2 also provides that the encroacher should be removed from the land which is in excess of 8 acres.

12. The learned Assistant Government Pleader despite his best efforts could not convince that Sub-clause 2 is applicable to the facts of the case of the petitioners. He could not point out as to why the case of the petitioners should not be governed by the provision that, ''encroachment to the extent of 1 acre can be regularized by the Mamlatdar, where it is an encroachment on virgin land by persons not belonging to Schedule Caste.'' It is a specific case of the petitioners that the encroachment of the petitioners was on waste land of the Government.

13. The fact that it is separately provided for the encroachment on ''agricultural land'' and encroachment on ''non-agricultural lands.'' It is further classified in two classes i.e., ''Virgin land'' and ''non-virgin land''. In the considered opinion of this Court, the encroachment made on virgin land/non-virgin land by ''persons belonging to Schedule Caste'' and ''not belonging to Schedule Caste'' are governed by different clauses of the Government Resolution and not by the clause pointed out by the learned Assistant Government Pleader. It is clear from the text of the Government Resolution that the encroachment on virgin land/non-virgin land and encroachment by ''persons belonging to backward class'' and not belonging to backward class are to be dealt with differently. The provision dealing with the limit/extent of the encroachment which can be regularized is separate.

The concept of ''total holding'' is deliberately kept away from that provision. Therefore, the submissions of the learned Assistant Government Pleader cannot be accepted.

14. Mr. U.R. Bhatt, the learned Assistant Government Pleader invited the attention of the Court to various paragraphs, viz. paragraph Nos. 5, 7 and 11, wherein the aspect of total holding of the petitioners in their individual capacity is discussed. The said submissions are of no significance in the facts of the present case inasmuch as it is not the case of the ''revenue authority'' that the encroachment by the petitioners is on ''agricultural land''. Therefore, question of outer limit does not arise in the facts of the case of the petitioners.

15. Besides, after the order of the Mamlatdar dated 27.09.1990, the Deputy Collector issued notice for taking the matter in ''suo moto'' revision on 14.05.1992, i.e. beyond the period of ''reasonable time limit''.

16. In view of the aforesaid discussion, the orders dated 09.06.1992 passed by the Deputy Collector, Veraval, dated 08.06.1993 passed by the Collector, Junagadh and dated 19.12.1994 passed by the Secretary (Appeals), Revenue Department are hereby quashed and set aside. The order dated 27.09.1990, pursuant to which the petitioners have already paid the occupancy price of Rs. 9,750/- as back as on 25th October 1990 is restored. The petition is allowed. Rule is made absolute with no order as to costs.