(2005) 05 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No''s. 16171, 16172, 16175 and 16176 of 2004

Janakbhai Virjibhai Patel APPELLANT

Vs

The State of Gujarat RESPONDENT

Date of Decision : 03-05-2005

Acts Referred:

Citation : (2005) 05 GUJ CK 0003

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Trusha K. Patel, for the Appellant; Prachchhak, Ld. AGP for Respondent No. 1 and Anand R. Patel, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—As in all the petitions there are common issues and common challenge, they are being considered together by this common order.

2. Rule. Mr. Prachchhak, learned AGP appears for the State of Gujarat and waives service of notice of rule. Mr. Pahwa, learned Counsel appearing for all private respondents and Mr. Anand R. Patel, learned Counsel appearing for Respondent No. 2 in Special Civil Application No. 16171/2004 waive service of notice of rule.

3. The short facts of the case are that the petitioners claim to have purchased the property under registered sale deed. There is no dispute on the point regarding the existence of the registered sale deed. It appears that on the basis of the said registered sale deed the entries were mutated in the revenue record. Thereafter, the matters were carried in the appeal and the concerned appeal were allowed on the ground that the power-of-attorney was cancelled. Thereafter, the matters were carried before the Collector in revisions and the said revisions came to be dismissed. It also appears that the matters were further carried before the State Government and the State Government dismissed the revisions by confirming the order of the Dy. Collector cancelling the entries. It is

under these circumstances the petitioners have approached this Court by preferring these petitions.

4. Upon hearing the learned Counsel appearing for the parties, it appears that there is no dispute on the point that the Civil Suits vide Nos.3970/1999 to 3973/1999 are preferred by the concerned private respondents in respect to the property in question in the Court of City Civil Court, Ahmedabad. It appears that the issues involved in these petitions are covered by the decision of this Court in case of "Jayantilal Jethalal Soni v. State of Gujarat" dated 28.9.2004 passed in Special Civil Application No. 12547/2004 and the decision dated 24.12.2004 passed in Special Civil Application Nos. 14037 & 14039 of 2004 and in the order dated 28.9.2004 passed in SCA No. 12547/2004, at paragraphs 7,8 and 9 it was observed by this Court as under:

"7. It appears that if a registered sale deed is executed by the holder of the land, it confers the right pertaining to the land in question in favour of the purchaser of the land and, therefore, the rights pertaining to the land in question in normal circumstances can be said to have been acquired over the land in question for which recording is required to be made in the revenue record. It is also well settled that the revenue entries are having value only for fiscal purpose and more particularly for the purpose of recovery of revenue and it neither confers any right or title over the property, nor does it take away the right or title in the property which otherwise cannot be available under the law. However, the question which arises for the consideration is if a sale deed is executed by the holder of the land which runs prima facie counter to the other statutory provisions of other enactment or is barred under the other enactment or it alters or disturbs the rights of the persons under the other enactment then, can the revenue authority shut its eyes by ignoring such flagrant violation of such law or if it is considered, what will be the proper course to be followed ? In case of "Evergreen Apartment Co-op. Housing Society" (supra), this Court has expressed the view that it is not open to the revenue authority exercising power under the Code to exercise power under the other enactment and to decide in respect to the breaches which are committed under the other enactment and thereby to uncertify the entry or to cancel the entry made in the revenue record. In case of "Janardan D. Patel v. State of Gujarat" (supra) at para 11, it has been observed as under:

"11. If any such question arises, the matter should be referred to the authority empowered to deal with under the said other enactment. For example, the validity of a transaction on the basis of Sec. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for brief) is sought to be challenged. That question cannot be decided by revenue authorities in RTS proceedings. In such situation, the correct procedure to be followed would be to refer the matter to the authority empowered under the Tenancy Act for his decision. The necessary mutation entry may be made only after the decision of that authority under the Tenancy Act is received. It would, however, not be open to revenue authorities in RTS proceedings to decide that question."

8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgement, it appears that it would not be proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into adversely affecting the rights under the other enactment and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is prima facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to the final decision which may be taken by the competent authority under the other concerned enactment. This Court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with law. If the entry, on the basis of the sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it cannot be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising power under the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not.

9. In view of the above, it cannot said that the orders passed by all the authorities on the basis that the Mamlatdar has not inquired into the aforesaid

three aspects namely as to whether there is any breach of the provisions of the Prevention of Fragmentation Act or the provisions of Tenancy Act, are absolutely without any basis and the orders can be maintained only to the extent that in case it is found by the Mamlatdar after remand that there are prima facie breach of the other enactment by the transfer in question, the revenue authority exercising power under the Code may refer the matter to the appropriate authority under the other enactment or may relegate the affected party to resort to appropriate proceedings under the other enactment and the entry may be considered subject to the final outcome in the proceedings under the other enactment, as observed hereinabove in earlier paragraphs."

5. Mr. Pahwa, learned Counsel for the private respondents attempted to submit that in the aforesaid matters the Court considered the case where there was breach of other enactment, whereas in the present case, such is not the situation. However, Mr. Pahwa is not in a position to dispute the fact that the Civil Suits for cancellation of the power-of-attorney and in respect to the rights of the property being Civil Suit Nos.3970/1999 to 3973/1999 are pending. The observations made by this Court in the above referred decision were considered in the aforesaid latter decision in Special Civil Application Nos.14037 and 14039 of 2004 and it was observed by this Court as under:

"4. Therefore, so far as the entries which are based on registered sale deed are concerned, the same cannot be cancelled in toto and it deserves to be restored in the revenue record with the clarification that they shall be subject to the outcome of the proceedings u/s 84C of the Tenancy Act which as per the contention of Mr. Barot are pending before the Revenue Tribunal. So far as entry No. 1900 dated 26.2.1972 is concerned, the same was not directly the subject matte of the proceedings u/s 84C of the Tenancy Act which were initiated in respect to three registered sale deeds on the basis of which entries No. 2067, 2068 and 2248 were mutated in the revenue record. It appears that after entry No. 1900 dated 26.2.1972 the very land is sold by registered sale deed by deceased Dahiben through power-of-attorney holder Hirabhai Shanabhai and the sale deed is not signed by Hirabhai Krishnakantbhai, but only a reference is made to the entry No. 1900 dated 26.2.1972 in the succession of title of the property. The land is sold subsequently by the owner who is shown in the revenue record. But even if it is the case of the contesting respondents through Mr. Barot that entry No. 1900 dated 26.2.1972 is in breach of provisions of Section 84C of the Tenancy Act, then it would be for the appropriate authority under the said act to initiate the proceedings. In any event, the fact remains that the entry has continued for a long period and thereafter the land is already sold by registered sale deed. Therefore, the exercise of the power for cancellation of the entry which in view of the subsequent sale of the land in question by the registered sale deed dated 21.2.1976, cannot be said as proper and justified on the part of the authority. If the contesting respondents who are represented by Mr. Barot are asserting any right in the property, it would be for them to prefer appropriate proceedings by preferring Civil Suit or they may resort to appropriate proceedings for identifying their rights, if any, in the property. It is well settled even otherwise also, the exercise of suo motu power cannot be undertaken after an unreasonable period and further revenue entries are having values for fiscal purposes and they never confer any title, nor do they alter any right in the property, which otherwise exists as per the provisions of Transfer of Properties Act or the relevant law for the time being in force."

6. Therefore, the same situation would prevail even in respect of the present case. As a consequence thereof, the entry based on the registered sale deed executed in favour of the petitioners of the land in question deserves to be restored to the revenue record with the qualification and clarification that the same shall be subject to the outcome of Civil Suit Nos.3970/1999 to 3973/1999, as the case may be, qua that particular entry.

7. Mr. Pahwa, learned Counsel appearing for the private respondents also attempted to submit that the concerned private respondents have also sold the land by registered sale deed on 24.11.2003 and the revenue entry based on the same is also mutated in the revenue record and, therefore, he submitted that in view of the subsequent entry recorded in the revenue record, the earlier entry would automatically shall stand cancelled. The aforesaid submission of Mr. Pahwa cannot be accepted for two reasons; one is that the aforesaid sale deed is executed pending the proceedings and, therefore, it cannot defeat the adjudication of the matter, if otherwise permissible in law; and the second is that even if the registered sale deed is executed and the revenue entry is mutated, there is no provision that the earlier entry shall automatically stand cancelled. At the most, the subsequent entry which is said to have been on the basis of the registered sale deed may continue with the earlier entry already made and subsequently cancelled and are now found by this Court to be restored subject to the aforesaid Civil Suit as indicated earlier.

8. In view of the above, the impugned orders passed by the Dy. Collector and its confirmation thereof by the Collector and also by the State Government so far as it relates to cancelling the entry in toto are quashed and set aside with the direction that the entry shall stand restored to the qualification and clarification that the same shall be subject to the outcome of the Civil Suit Nos.3970/1999 to 3973/1999, as the case may be.

9. All the petitions are partly allowed to the aforesaid extent. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs.

