

(1996) 04 GUJ CK 0031
In the Gujarat High Court

Janardan D. Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 19-04-1996

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63
Constitution of India, 1950 — Article 226, 227
Urban Land (Ceiling and Regulation) Act, 1976 — Section 27

Citation : (1997) 1 GLR 50

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—Practically identical orders are challenged in all these petitions. Common questions of law and fact are found arising in all of them. I have, therefore, thought it fit to dispose of all of them by this common judgment of mine.

2. The petitioner in each case has challenged the order passed by the Deputy Collector of Dabhoi sometime in August/September 1983 as affirmed in appeal by the Collector of Baroda sometime in February 1984 as affirmed in further revision by the State Government (the respondent herein) by the order passed sometime on 11th January 1988. By his impugned order, the Deputy Collector at Dabhoi cancelled the mutation entry made and certified in the record of right pertaining to the subject-matter in each petition sometime during April to September 1981.

3. The facts giving rise to these petitions move in a narrow compass. Each petitioner purchased the respective subject-matter of each petition by a registered sale deed executed during March and April 1981. Thereafter each petitioner moved the concerned Talati for mutation of his name in the record of right pertaining to the subject-matter of each petition. In each case the entry was made and certified. during the period from April to September 1981 by the Mamlatdar of Vaghodia. It appears to have come to the notice of the Deputy

Collector at Dabhoi. He appears to have found each entry not according to law. A show-cause notice thereupon came to be issued to each petitioner sometime during May, June and September 1983. A copy of the show-cause notice is at Annexure B to each petition. Thereafter, by the order passed sometime during August/September 1983, the Deputy Collector set aside the mutation entry certified by the Mamlatdar, Vaghodia in each case. A copy of the aforesaid order passed by the Deputy Collector is at Annexure D to each petition. Each aggrieved petitioner carried the matter in revision before the Collector of Baroda under Rule 108(6) of the Gujarat Land Revenue Rules, 1972 (the Rules for convenience) framed under the Bombay Land Revenue Code, 1879 (the Code for brief). By his order passed sometime in February and March 1984, the Collector of Baroda rejected it. Its copy is at Annexure E to each petition. Each aggrieved petitioner carried the matter in further revision before the respondent under Rule 108(6A) of the Rules. By the order passed by and on behalf of the respondent on 11th January 1988, each revisional application came to be rejected.

Its copy is at Annexure F to each petition. Each aggrieved petitioner has thereupon approached this Court by means of each one's respective petition under Article 226 of the Constitution of India for questioning the correctness of the orders at Annexures D, E and F to each petition.

4. Learned Government Counsel Shri Anand for the respondent has raised a preliminary contention regarding maintainability of these petitions under Article 227 of the Constitution of India. Thereupon learned Counsel Kum. Shah for the petitioners has orally applied for leave to convert this petition as also under Article 226 of the Constitution of India. Such oral request is accepted and each petition is ordered to be treated as also under Article 226 of the Constitution of India on condition of payment of the deficit Court-fees, if any, within two weeks from today.

5. Learned Counsel Kum. Shah for the petitioner has submitted that the mutation entry could not have been set aside in exercise of the revisional powers after expiry of the reasonable period of 3 months from the date of its certification in view of the binding ruling of the Supreme Court in the case of *State of Gujarat v. Patel Raghav Natha and Ors.* reported in 1969 GLR 992 (SC). She has further urged that the Deputy Collector had no jurisdiction to examine whether or not the transaction was hit by any provision contained in any other enactment. According to her, if the transaction was in contravention of any other statutory provision contained in some other enactment, the competent officer named therein could have initiated action for annulment of such transaction but that could not be decided in any collateral proceeding. Kum. Shah for the petitioner has further urged that, in view of the scheme of the Rules, the Deputy Collector has no revisional powers for examining correctness of any mutation entry made under the relevant provisions contained in Chapter 10A of the Code. As against this, learned Government Counsel Shri Anand for the respondent has urged that, when the transaction on the basis of which a mutation entry is effected in the

revenue records is found to be in contravention of a statutory provision, it would be open to the revenue authorities to refuse to certify such transaction and if it is certified and it is brought to the notice of the higher authority, he has power to cancel it in exercise of his revisional jurisdiction. Learned Government Counsel Shri Anand for the respondent has further urged that the Deputy Collector has been empowered under the Rules to exercise revisional jurisdiction over the mutation entries certified by the Mamlatdar. It has also been urged by learned Government Counsel Shri Anand for the respondent that, when the transaction on the basis of which a mutation entry is sought to be made and certified is found to be illegal, invalid, null or void, it would be open to the revenue authorities to cancel the entry within the reasonable period of time which could be beyond a period of one year.

6. In the aforesaid binding ruling of the Supreme Court in the case of Patel Raghav Natha (supra) it has been held that the revisional powers u/s 211 of the Code cannot be exercised beyond a reasonable period of 3 months. The aforesaid ruling of the Supreme Court is binding to this Court. It cannot be distinguished on the ground that it was in the context of what is popularly known as the N.A. permission and provisions regarding mutation entries were not considered therein in view of the binding ruling of the Supreme Court in the case of Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur, .

7. A reference also deserves to be made to the Division Bench ruling of this Court in the case of Bhagwanji Bawanji Patel v. State of Gujarat and Anr. reported in 1971 GLR 156. It has been held therein that the revisional powers u/s 211 of the Code have to be exercised within the reasonable period of one year from the date of the order or action complained of. Sitting as a single Judge, the aforesaid Division Bench ruling of this Court is binding to me. Even otherwise, I am in respectful agreement therewith.

8. It cannot be gainsaid that revisional powers under the relevant provisions contained in Rule 108(6) of the Rules are akin to those contained in Section 211 of the Code. What applies to Section 211 of the Code would apply with equal force to Rule 108(6) of the Rules.

9. In each petition the revisional powers have been exercised by the Deputy Collector beyond one year after the concerned mutation entry was made and certified by the concerned Mamlatdar. This he could not have done in view of the aforesaid binding ruling of the Supreme Court in the case of Patel Raghav Natha (supra) and the aforesaid Division Bench ruling of this Court in the case of Bhagwanji Bawanji Patel (supra). In that view of the matter, the impugned order at Annexure D to each petition cannot be sustained in law. An order affirming an illegal and invalid order is of no consequence. In that view of the matter, the impugned orders at Annexures E and F to each petition affirming impugned order at Annexure D to each petition cannot be sustained in law.

10. That brings me to the submission to the effect that the revenue authorities

have no jurisdiction to decide whether or not a transaction is in contravention of any statutory provision contained in any other enactment. It may be noted that revenue authorities with respect to mutation proceedings in the revenue records popularly known as RTS proceedings are invested with limited powers regarding maintenance of revenue records for fiscal purposes and making mutation entries therein on certain contingencies. Relevant provisions are found in Chapter 10A of the Code. It is not necessary to refer to the entire scheme of that Chapter. The relevant provisions contained therein are Sections 135C, 135D, 135E, 135J and 135L. Section 135C thereof requires reporting of acquisition of rights in properties in revenue record. Section 135D requires maintenance of the register of mutations and the register of disputed cases. In Sub-section (3) thereof it has been provided that, if any objection to any mutation entry is made in writing to village accountant, it has to be entered in the register of disputed cases with necessary particulars. Sub-section (4) thereof requires recording of orders disposing of such objections in the register of mutations. Section 135E casts obligation on persons to furnish the requisite information with respect to properties reflected in revenue records. Section 135J raises presumption of correctness of entries in revenue records. Section 135L(2) is relevant. It reads:

The correctness of the entries in the record of rights and register of mutations shall be inquired into and the particulars thereof revised, by such revenue officers and in such manner and to such extent and subject to such appeal as the State Government may from time to time by Rules prescribe in this behalf.

Its bare perusal clearly goes to show that what is to be inquired is the correctness of the entries in the record of rights and the register of mutations in accordance with the Rules framed in that regard. It thus becomes clear that revenue authorities exercising powers with respect to RTS proceedings are invested with limited powers. They cannot assume to themselves certain powers not conferred on them by law. An authority having a limited jurisdiction cannot obviously expand its jurisdiction nor can assume jurisdiction not conferred on it by law. In that view of the matter, it has no power to decide the validity of a transaction on the touchstone of a statutory provision occurring in some other enactment.

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 Section 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.

12. I am supported in my view by the ruling of this Court in the case of

Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State, . In that case, a mutation entry was cancelled on the ground that the transaction in question was in contravention of Section 27 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Ceiling Act for brief). While declaring such cancellation of the mutation entry to be invalid, it has been held by this Court therein that the invalidity of the transaction in question on the aforesaid ground has to be found by following the procedure of the Ceiling Act by the authority empowered thereunder and not by the revenue authorities in RTS proceedings. Sitting as a single Judge I am bound by the aforesaid ruling of this Court in the case of Evergreen Apartment Co-operative Housing Society Ltd. (supra). Even otherwise, I am in respectful agreement with it. It provides a complete answer to the contrary submission urged before me by learned Government Counsel Shri Anand for the respondents to the effect that it would be open to the authorities to take into consideration the invalidity of the transaction if it is found to be in contravention of some statutory provision in some other enactment.

13. Since I am taking this view of the matter, it is not necessary to deal with the submission urged before me by learned Counsel Kum. Shah for the petitioner to the effect that, under the scheme of the Rules, the Deputy Collector has no power of revision qua the entries certified by the Mamlatdar.

In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures D, E and F to each petition cannot be sustained in law. They have to be quashed and set aside.

14. In the result, each petition is accepted. The impugned orders at Annexures D, E and F to each petition are quashed and set aside. This judgment of mine shall not preclude the concerned authority to take action according to law for examining the validity of the transaction in each case if it is so permissible and desirable after so many years. Rule on each petition is accordingly made absolute with no order as to costs.