(2004) 09 GUJ CK 0083

In the Gujarat High Court

Case No : Special Civil Application No. 12547 of 2004

Jayantil Jethalal Soni APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63

Citation : (2004) 09 GUJ CK 0083

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : D.P. Kinariwala, for the Appellant; D.S. Pandit, Ld. AGP for Respondents Nos. 1-3, M.P. Shah and Kruti M. Shah, for the Respondent

Judgement

Jayant Patel, J.—Leave to transpose respondent No. 5 as petitioner o. 2 and Mr. Kinariwala states that the vakalatnama shall be filed within ten days from today.

2. Rule. Ms. Pandit, learned AGP is directed to appear on behalf of respondents No. 1, 2, and 3 and she appears and waives service of rule on behalf of respondents No. 1, 2, and 3. Ms. Shah, learned Counsel, appearing for respondent No. 4 by caveat, waives service of rule. With the consent of the parties the matter is taken up for final hearing today.

3. The question which arises for consideration of the Court is whether the revenue authority, while recording the mutation, could examine the breach of other provisions of the relevant laws or not and if not, then what will be the appropriate course for the authority to be followed ?

4. The short facts of the case are that the petitioner No. 2 was the original owner and petitioner No. 1 is the purchaser of the land bearing survey No. 46 situated at Village Jetpur by registered sale deed dated 27.6.1996, vide registration No. 278. It appears that on the basis of the registered sale deed, on 1.7.1996, the entry bearing No. 2203 was recorded. Respondent No. 4 herein lodged objection

against the entry and the said objections were registered and the matter was treated as disputed case No. 5 of 1996 and the Mamlatdar thereafter considered the objections and ultimately passed the order on 4.6.1997, whereby the entry was certified. The matter was carried in appeal before the Prant Officer being appeal No. 16/1997 and the Prant Officer on 12.3.1998 allowed the appeal and remanded the matter to the Mamlatdar. It appears that the matter was carried before the District Collector being Revision Application o. 62/1998 and in the said revision also it was found by the Collector that it is not inquired by the Mamlatdar as to whether there is any breach of provisions of Prevention of Fragmentation Act or whether the purchaser, Petitioner No. 1 is an agriculturist or the possession is as per Bombay Tenancy and Agricultural Lands Act and, therefore, the Collector ultimately by confirming the order of the Prant Officer dismissed the revision. The matter was carried before the State Government in revision u/s 211 of the Bombay Land Revenue Code and the State Government as per the impugned order dated 21.7.2004 has dismissed the revision and it is under this circumstances the petitioner has approached this Court by preferring this petition.

5. There is no dispute on the point that pending the proceedings before the State Government, status-quo regarding the revenue record as well as the possession of the land in question was ordered to be maintained. However, no stay was granted against the order of remand and it was observed that the Mamlatdar will be at liberty to proceed in accordance with law as per the order of remand and the said position has continued till today, except that the Mamlatdar has issued notice for holding the inquiry, but has not passed any final order in this regard.

6. Mr. Kinariwala, learned Counsel appearing for the petitioner, has relied upon the decision of this Court in the case of Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State, and the decision in the case of " Janardan D. Patel Vs. State of Gujarat, for contending that the revenue authority, while exercising power under Bombay Land Revenue Code (hereinafter referred to as the "Code") could not have examined the provisions of the other enactment, even though the very officer may be holding the power under the other enactment and, therefore, r. Kinariwala submitted that the Mamlatdar exercising power under the Code cannot examine in respect to the other enactment for prohibition of Fragmentation or under the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "the Tenancy Act") and, therefore, he submitted that the order passed by all the authorities for setting aside the entries are illegal and deserves to be quashed and set aside.

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

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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

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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.

10. In view of the aforesaid discussions and considering the facts and circumstances, I find that the order passed by all the authorities i.e. Dy. Collector, Collector as well as the State Government deserve to be modified by observing that the Mamlatdar shall consider the matter in light of the observations made by this Court hereinabove in this judgement and shall take appropriate decision in accordance with law after giving opportunity of hearing to the petitioners as well as to respondent No. 4. The aforesaid exercise shall be undertaken by the Mamlatdar as early as possible preferably within six months

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from the date of receipt of the order of this Court. Until the decision is rendered by the Mamlatdar, status-quo regarding the revenue record of the land in question shall be maintained.

11. The petition is partly allowed to the aforesaid extent. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs. Direct service is permitted.

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