
(1993) 07 GUJ CK 0030
In the Gujarat High Court

Jayantilal Tribhovandas Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 15-07-1993

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 135J
Constitution of India, 1950 — Article 227
Gujarat Agricultural Lands Ceiling Act, 1960 — Section 10, 10

Citation : (1994) 1 GLR 757

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

Bench : Single Bench

Judgement

D.G. Karia, J.—The petition under Article 227 of the Constitution of India is directed against the decision dated July 9, 1984 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN.B.A. 2 of 1983. By the impugned decision, the Tribunal confirmed the judgments and orders passed by the Courts below dismissing the revision application of the present petitioner.

2. The petitioner filed the requisite Form No. 2 u/s 10 of the Gujarat Agricultural Lands Ceiling Act, 1960 (for short "the Land Ceiling Act") before the Mamlatdar, stating the lands held by the petitioner. The Additional Mamlatdar and A.L.T., Vadodara, by his judgment and order in Ceiling Case No. 2 of 1976 held that the petitioner held the land, Acres 25 Juntas 28, in excess of the ceiling area. The petitioner being aggrieved by the said judgment of the Mamlatdar, preferred Ceiling Appeal No. 5 of 1982 in the Court of the Assistant Collector, Vadodara. The Assistant Collector by his decision dated October 30, 1982, dismissed the appeal. Thereupon, the petitioner preferred the aforesaid revision application before the Gujarat Revenue Tribunal. The Tribunal also rejected the revision application as aforesaid.

3. Mr. H.M. Parikh, learned Advocate appearing for the petitioner, has raised the following points:

(1) The Courts below, including the revisional authority, committed an error of

law in construction of the provisions of Section 6(3B) of the Land Ceiling Act, inasmuch as there were admittedly 7 members in the family of the petitioner and as such the petitioner was entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of 5, subject to the total holding of the family not exceeding twice the ceiling area.

(2) The land in question was the ancestral property. The sisters of the petitioner have right and share in the property and the Courts below, without issuing the notice to the petitioner's sisters and thus ignoring their rights and share, decided the question as to excess holding. Therefore, the impugned decision was violative of principles of natural justice.

As regards the first point relating to the further holding of the ceiling area for each of the family members in excess to 5, there is substance in the submission of Mr. Pankh. Section 6(3B) of the Land Ceiling Act provides that where a family or a joint family consists of more than five members comprising a person and other members belonging to all or any of the following categories, namely:

- (i) minor son,
- (ii) widow of pre-deceased son,
- (iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead,

such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so however that the total holding of the family does not exceed twice the ceiling area and in such a case, in relation to the holding of such family, such area shall be deemed to be the ceiling area. In the instant case, there were admittedly seven members in the family of the petitioner as named by the Additional Mamlatdar in his judgment at Annexure "A". As held in the case of Nathekhan Sojalkhan Bihari Vs. Mamlatdar and Others, and in the case of State of Gujarat Vs. Jat Laxmanji Talasji, , a family consisting of more than five members in it and having the category of members mentioned in the three Sub-clauses of Section 6(3B), such family will be entitled to the benefit of enlargement of ceiling area. There is nothing in the sub-section wherefrom it can be inferred that the wife, widowed mother and unmarried daughters were intended to be excluded from the family, i.e., group or unit constituting the family. In the instant case, it is not in dispute that the family of the land-holder consisted of seven members. Therefore, the first condition required to be satisfied in order to attract Section 6(3B) of the Land Ceiling Act is that the family must consist of more than five members. The Additional Mamlatdar, while counting the number of family members of the petitioner, excluded the minor daughters and a minor son and held that there were three members in the family who would be entitled for one unit. This is erroneous in view of the construction of Section 6(3B) of the Land Ceiling Act, inasmuch as the minor sons and daughters of the land-owner cannot be excluded. There being two minor sons in the family consisting of in all seven

members, the petitioner would be entitled to hold land in excess of the ceiling area to the extent of 1/5th of ceiling area for each member in excess of five, subject to total holding not exceeding twice the ceiling area. Thus, the petitioner would be entitled to hold 2/5th of the ceiling area.

4. Mr. Y.F. Mehta, learned Assistant Government Pleader, appearing for the respondent-State, submitted that the point pertaining Section 6(3B) of the Land Ceiling Act was not agitated before the Tribunal, nor the Tribunal has dealt with the same and as such it would not be open for the petitioner to canvass it before this Court. I find no substance in this submission as the point raised is purely a question of law concerning the interpretation of Section 6(3B) of the Land Ceiling Act. The point was very much agitated before the Courts below. Thus, the petitioner being entitled to 2/5th of the ceiling area, subject to the total holding of the family not exceeding twice the ceiling area, the matter requires to be sent back to the Tribunal for proper consideration of the units available to the petitioner.

5. Mr. Parikh next submitted that one of the sisters of the petitioner, Kashiben, had filed a Civil Suit No. 186 of 1982 in the Civil Court at Baroda for declaration of her share in the land in question. The said suit was decreed by a compromise and the compromise decree was placed before the Tribunal at the time of the bearing. The Tribunal, however, did not accept the contention on behalf of the petitioner that the sisters of the petitioner had share in the property, holding that the consent decree was collusive one. Mr. Mehta, learned Assistant Government Pleader, invited my attention to paras 5 and 6 of the judgment of the Tribunal. Mutation entry No. 1234 dated June 7, 1971 is the heirship entry in this case. The said entry was certified after the inquiry by the authorised officer and in that inquiry it was revealed that the sisters of the petitioner had relinquished their respective shares in the land in question and, therefore, the name of the petitioner had been entered as the sole heir of the deceased. It is true that the record of rights has presumptive evidentiary value. The Tribunal held that the Courts below have come to the conclusion that the sisters of the applicant had no interest in the suit land in view of the aforesaid mutation entry. The Tribunal considered the consent decree as a collusive one and, therefore, rejected the claim of the petitioner about the share of his sisters in the property. It cannot be concluded that since the petitioner had admitted the claim of the sisters in the aforesaid Civil Suit No. 186 of 1982, the decree becomes collusive. In fact and in reality, if the sisters of the petitioner had share in the property, he might admit their claim. Mere fact of admission would not make the decree as one passed on collusion. Right or share of the party in the property cannot be decided on basis of the revenue entry. u/s 135J of the Bombay Land Revenue Code, entries in the record of rights shall be presumed to be correct and in the absence of any other evidence, the Court is obliged to be guided by any fact so entered in the record of rights. However, in the instant case, the petitioner has produced a decree passed in Civil Suit No. 186 of 1982 accepting the claim of the sisters in respect of the property in question. In this view of the matter, the issue regarding the

right or share of the sisters of the petitioner, if any, in the property, requires to be inquired or investigated. After the inquiry, the point is required to be determined in accordance with the law. For this also, the matter is required to be remanded.

6. In the above view of the matter, the impugned decision of the Gujarat Revenue Tribunal is quashed and set aside. The matter is remanded back to the Gujarat Revenue Tribunal to decide the point u/s 6(3B) of the Land Ceiling Act and also about the shares of the sisters of the petitioner in the property, in light of the aforesaid observations and in accordance with law.

Rule is accordingly made absolute with no order as to costs.