(2002) 04 GUJ CK 0028

In the Gujarat High Court

Case No : Special Civil Application No. 810 of 1993

Kalidas Rupabhai APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211
Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 — Section 9
Constitution of India, 1950 — Article 14, 226, 227
Urban Land (Ceiling and Regulation) Act, 1976 — Section 27

Citation : (2002) 04 GUJ CK 0028

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Kalpana Brahmbhatt, for the Appellant; B.Y. Mankad, AGP for Respondent No. 1 and D.F. Amin, to 10, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—The petitioner, in this petition under Articles 226 and 227 of the Constitution of India, has challenged the direction given by the Additional Secretary, Revenue Department (Appeals), Government of Gujarat, Ahmedabad, to the competent authority to initiate eviction proceedings against the petitioner under Sec. 9 of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947,(hereinafter referred to as "the Act") while exercising the powers u/s 211 of the Bombay Land Revenue Code (hereinafter referred to as "the Code") at the time of deciding the revision application filed by the respondents No. 2 to 10.

2. The facts, as are emerged from the petition, are that one Somabhai Zenabhai, father of respondents No. 2 and 7 and the husband of respondent No.6, and respondents No. 2 to 4 were the co-owners of the land bearing Survey No. 561+562 situate in the outskirts of the Village Jahaj. The said respondents have sold the land admeasuring 425 sq.mtrs. out of the said land to the petitioner and

the petitioner was put in the actual possession of the said land. The respondents No. 1 to 4 have thereafter executed the registered sale deed on 5.9.85 in favour of the petitioner.

3. It is further submitted that the respondents No. 2 to 5 have thereafter tried to disturb the petitioner''s possession of the same land and hence Regular Civil Suit No. 317 of 1985 was filed by the petitioner. It is further submitted that a compromise was arrived at between the parties in the said suit and compromise decree was passed on 11.12.85.

4. It is further submitted that on the basis of the sale deed dated 5.9.85, mutation entry No. 1655 dated 8.1.86 was made in the mutation register, Village Form No.6. The respondents No. 2, 4 & 5 had raised their objections against the said entry. The Mamlatdar thereafter had heard the parties and passed the order on 5.1.87 setting aside the said mutation entry.

5. It is further submitted that being aggrieved by the said order of the Mamlatdar, the petitioner preferred R.T.S. Appeal No. 27/87 before the Prant Officer and the said appeal was dismissed by him, vide his order dated 30.11.1987. Being further aggrieved by the said order of the Prant Officer, the petitioner preferred R.T.S. Revision Application No. 57/88 before the Collector at Kheda, who had also dismissed the Revision Application by his order dated 12.9.1988. Being further aggrieved by the said order, the petitioner preferred a revision before the Additional Secretary, Revenue Department (Appeals), who has, vide his order dated 25.5.1990 partly allowed the revision and remanded the matter to the Collector for deciding the same afresh.

6. It is further submitted that the Collector thereafter heard the parties and allowed the Revision Application filed by the petitioner by his order dated 22.11.1991 and set aside the order passed by the Prant Officer in R.T.S. Appeal No. 27/87 dated 30.11.1987 and also the order of Mamlatdar dated 5.1.1987 and passed the order to certify the Entry No. 1655.

7. It is further submitted that being aggrieved by the said order of the Collector, the respondents No. 2 to 10 preferred the Revision Application No. 7/92 before the Additional Secretary, Revenue Department (Appeals) and he vide his order dated 5.9.1992 partly allowed the revision and directed the competent authority to initiate proceedings against the petitioner under Sec. 9 of the said Act. It is this order, giving direction under Sec. 9 to the competent authority, is challenged by the petitioner in this petition.

8. I have heard ld. advocate, Ms. Brahmbhatt appearing for the petitioner and Mr. Mankad appearing for the respondent No.1. Though Mr. D.F. Amin, ld. advocate has filed his appearance on behalf of the respondents No. 2 to 10 he is not present when the petition was called out twice. The ld. advocate has challenged the impugned order mainly on two grounds, namely the order was passed ex-parte though application for adjournment was given and secondly the respondent No.1 has acted without authority in law in exercising the powers

under the said Act, at the revisional stage and in directing the competent authority to initiate eviction proceedings against the petitioner under Sec. 9 of the said Act. It is further submitted on behalf of the petitioner that by exercising the power, not vested in him by law, while deciding the Revision Application filed by the respondents No. 2 to 10 under Sec. 211 of the Code, the respondent No.1 has not only acted ultra vires the provisions of the Statute and without any authority in law but has also acted arbitrarily and in violation of the fundamental rights guaranteed under Article 14 of the Constitution of India inasmuch as the respondent No.1 has assumed the powers not vested in him by law and has tried to deprive the petitioner of his possession by foreclosing the issue and defence of the petitioner by exercising his suo motu power.

9. A strong reliance was placed by Ms. Brahmbhatt, ld. advocate for the petitioner on the decision of this Court in the case of Evergreen Apartment Co-op. Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 32 (1) GLR 113, wherein it is held that:

"It is quite possible that an Officer of the Revenue Department may be occupying different capacities under different enactments. That, however, would not empower him to exercise any power under one enactment while proceeding under another enactment. So far as the proceedings under Rule 108 of the Rules, popularly known as RTS proceedings, are concerned, it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by competent authorities under special enactments. Independently, the Revenue Authorities, as mentioned in Rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. Thus on this second ground also the orders of the Collector and the Additional Chief Secretary appear to be beyond their jurisdiction. The Additional Chief Secretary has held that the sale by auction was not consistent with the provisions of Sec. 27 of the Urban Land (Ceiling and Regulation) Act. Section 27 relates to prohibition of transfer of urban land with a building thereon. Apart from legal position that Sec. 27 has been struck down as ultra vires, it is quite obvious that no such question of transferring urban land with a building thereon has ever arisen in the present case. Thus, the order of the revisional authority has proceeded on a misconception of relevant legal provision. (Para 12)."

On the basis of the aforesaid decision, it is urged by Ms. Brahmbhatt, learned advocate that the respondent No.1 is not justified in giving direction under Sec. 9 of the Act to the competent authority to initiate eviction proceedings against the petitioner.

10. Mr. Mankad, learned Asst. Govt. Pleader appearing for the respondent No.1 has supported the order passed by the respondent No.1. No submissions were made as no one appears on behalf of the respondents No. 2 to 10 at the time of hearing of this petition. It is recorded by this Court in its order passed on 7.4.1993 that Mr. D.F. Amin, ld. advocate for respondents states that his name does not appear on board though he has filed his affidavit. However, from the record, it appears that no affidavit is filed and hence in absence of any affidavit-in-reply as well as in the absence of ld. advocate appearing for the respondents No. 2 to 10, this Court is constrained to pass the present order in the second round.

11. I have gone through the pleadings made in the petition as well as I have heard the ld. advocate appearing for the petitioner as well as the ld. AGP appearing for the respondent No.1 at length. While reading the order passed by the respondent No.1 filed at Annexure "G" with the petition, it is clear that he was exercising his revisional powers under Sec. 211 of the Code, and while exercising his powers, it is not open for him to give directions to the competent authority under Sec. 9 of the Act as those proceedings were neither before him nor he was supposed to express any opinion on that issue. If he was to call upon to decide any matter which arose under that Act, the directions so given by him were held to be justified. The revisional authority cannot take the parties by surprise by giving directions which may not germane from the proceedings pending before him. This Court has also taken the same view in the case of Evergreen Apartment Co-op. Housing Society (Supra).

12. In view of the above facts and circumstances and in view of the legal position as found hereinabove, I am of the view that the respondent No.1 is not justified in giving the aforesaid direction u/s 9 of the Act. I, therefore, quash and set aside the order of respondent No.1 marked at Annexure ''G'' to the petition to the above extent, and allow this petition. Rule is, therefore, made absolute to the above extent. However, there will be no order as to costs.

