(1996) 03 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No. 6511 of 1990, etc.

Kalpataru Land Development Private Limited — APPELLANT

Vs

The Assistant Collector and Others — RESPONDENT

Date of Decision : 14-03-1996

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 135, 211, 37(2), 37(3)
Constitution of India, 1950 — Article 226, 227
Gujarat Land Revenue Rules, 1972 — Rule 106, 107, 108, 108(5), 108(6)

Citation : AIR 1996 Guj 205 : (1996) 2 GLR 600

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : S.K. Zaveri, P.H. Thakkar and Y.N. Oza, for the Appellant; K.C. Shah, Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—In this batch of petitions under Articles 226 and 227 of the Constitution of India, common questions are involved. Therefore, they are being disposed of by this common judgment.

2. There are 22 petitions and facts are almost common and therefore, the facts in Special Civil Application No. 6511 of 1990 are mentioned. The petitioner is a company, incorporated and registered under the Companies Act, 1956. One Balvantrai P. Vyas was the owner of part and parcel of land situated at village Abhava bearing survey number 506 (original survey number 400) in Surat District admeasuring approximately 1138 acres of land.

3. By mutation entry No. 861, dated 15-1-1985 pursuant to the order recorded in Revision. No. TEN A.S. 8/74 and also pursuant to the order passed by the Civil Judge (S.D.) Surat and also by the Gujarat Revenue Tribunal dated 8-4-1976, name of the Balvantrai P. Vyas came to be entered as owner of part of survey number 506 admeasuring about 1138 acres-8 gunthas.

4. Thereafter, by mutation entry No. 987 recorded on 10-10-1988 pursuant to a consent decree dated 12-9-1986, passed by the High Court of Bombay in Original Suit No. 2466/ 86, the said Balvantrai P. Vyas sold the land by executing sale deeds for sale in respect of his Hissa Nos. 1 to 21, 28, 29, 36, 37 and 48 to 51 out of survey number 506-part, admeasuring 700 acres. It appears from the record that Balvantrai Vyas had also sold remaining area of the said survey number 506 in the year 1987 to one Shantilal Prabhudas Patel and others. The petitioner in other petitions are the purchasers of various plots and parcels of land of survey number 506.

5. The Assistant Collector of Choryasi Prant, Surat had issued show cause notice to the said Balvantrai P. Vyas for cancellation of entry No. 861 dated 15-1-1988. Thus Balvantrai Vyas was called upon to show cause why the said entry should not be cancelled. The petitioner in the first petition and some of the petitioners in other petitions were not even served with show cause notices. In fact, in the first petition, the petitioner has sold a part of the disputed land and mutation entry No. 987 dated 10-10-1988 was carried out in the name of the petitioner company. Despite this fact, notice was not issued to the petitioner. It is also the grievance that many other petitioners in this batch of petitions were not issued show cause notices.

6. The Assistant Collector, Choryasi Prant, Surat, after hearing Balvantrai Vyas, vide an order dated 31-12-1989 held that entry No. 861 dated 5-1-1985 made in respect of the disputed land bearing survey number 506 is improper and, therefore, it was ordered to be cancelled. Thus, the said entry is ordered to be cancelled by the Assistant Collector. It is the case of the petitioner in the first petition and also by some of the petitioners in other petitions that respondent No. 1 had never communicated passing of the said order. The petitioners having come to know about the said order had approached the concerned authority on or about 16-7-1990. The petitioners in other petitions had also not received notice u/s 135 of the Bombay Land '' Revenue Code, 1879 ("BLR Code" for short). Consequent upon the impugned order of respondent No. 1 who cancelled the mutation entry No. 861, respondent No. 2, Talati-cum-Mantri proposed to cancel the mutation entry. The petitioners being aggrieved by the impugned order of respondent No. 1 and proposed action of cancellation of mutation entry No. 861 by respondent No. 2, have come up before this Court challenging its legality and validity.

7. The contention of the petitioners is that the impugned order is without jurisdiction and is illegal.

8. The land in question is bearing revenue survey number 506 (old survey number 400) and whole admeasuring 2763 acres-20 gunthas. The entry in question was proposed on the order passed by the GRT in Appeal No. TEN 8/74 decided on 8-4-1976. It was an appeal under Rule 9 of the Gujarat Land Revenue Rules, 1972 which was filed on 2-7-1974 against the decision of the Mamlatdar, Choryasi, Surat passed in formal inquiry No. 2/72 on 5-4-1974 u/s 37(2) of the

BLR Code. It was held by the Mamlatdar in the said inquiry that the disputed lands are not properties of private ownership and further held that the same are of the ownership of the Government. The GRT allowed the appeal and the order of the Mamlatdar dated 5-4-1974 passed in formal inquiry No. 2/72 was set aside and the petitioners were held to be owners of the land holding that no portion of survey number 506 (old survey number 400) in dispute belonged to or had ever vested in the Government under any of the provisions of the Personal Inam Abolition Act. It was also observed that land bearing survey number 506 became of occupancy and ownership of the Inamdar whose Inam rights came to be abolished under the Personal Inam Abolition Act.

9. It may also be mentioned that being aggrieved by and feeling dissatisfied with the judgment and order of the GRT dated 8-4-1976, Special Civil Application No. 1232 of 1987 was filed by some of the private parties under Articles 226 and 227 of the Constitution of India which came to be rejected on 27-11 -1988. It was observed by this Court that u/s 37(3) of the BLR Code, if any, person is aggrieved by an order passed by the "GRT, a suit is required to be instituted within the stipulated time. It was argued on behalf of the petitioners in that petition before this Court that on account of delay the suit will not be maintainable at that stage. This Court had, therefore, observed that, whether the suit is maintainable or not could not be gone into and decided in the petition.

10. After filing of this petition, State of Gujarat-respondent No. 3 had also filed Special Civil Application No. 4876 of 1992 challenging the legality and validity of the judgment of the GRT passed on 8-4-1976 in the aforesaid appeal which also came to be rejected on 30-7-1992. A xerox copy of the said order passed by this Court in the said petition is produced on record. There is no dispute that it appears that he appeal No. 8/74 is wrongly mentioned as appeal No. 5/74 in the said order. It was observed by this Court in the order that there was inordinate delay of 16 years in filing the writ petition. There was no satisfactory explanation for the inordinate delay. It was also found by this Court that even after such inordinate and unexplained delay, if the petition is entertained by this Court, it would create several complications and interests in the property in question which might have got settled and/or transferred would be adversely affected and many complications may arise.

11. Respondent No. 1-Assistant Collector, Surat passed the impugned order in suo motu revision cancelling the entry No. 861 which was recorded on 15-1-1985 in respect of land bearing survey No. 506. The impugned order came to be passed on 31-12-1989. The first contention is about jurisdiction and maintainability of the revision before the Assistant Collector, in that, it was contended that the Assistant Collector has committed illegality in taking suo motu revision. Thus, a contention is advanced that the impugned order passed by the Assistant Collector is without jurisdiction and not maintainable in view of the provisions of Rule 108 of the Gujarat Land Revenue Rules, 1972 and the provisions Section 211 of the BLR Code.

12. Section 211 of the BLR Code reads as under:

"211. The State Government and any revenue officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officer may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held, namely Mamlatdar, a Mahalkari, an Assistant Superintendent of Survey and an Assistant Settlement Officer.

If in any case, it shall appear to the State Government, or to such officer aforesaid, that any decision or order or proceedings so-called for should be modified, annuled or reversed, it or he may pass such order thereon as it or he deems fit.

Provided that an Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit."

13. The contention raised on behalf of the petitioners is well founded. The submission is raised on behalf of the respondents that there was no formal inquiry and, therefore, the Assistant Collector is empowered and authorised to take the matter in suo motu revision. It could very well be seen from the aforesaid provisions that the proviso prescribes that the Assistant Collector or even the Deputy Collector would not pass any order in revision in any manner in which formal inquiry has been held. In such a situation, it is provided that the Assistant Collector or Deputy Collector should submit record for information of the Collector who shall pass such order thereon, as deemed fit.

14. Revisional powers may be exercised by the Commissioner (now, in view of the changed circumstances -- Government). It is, therefore, not open for the Assistant Collector to take the matter in suo motu revision and cancel the entry which is based on a decision after a formal inquiry held by the Mamlatdar and confirmed by the GRT. There is no dispute about the fact that the disputed entry which came to be cancelled by the impugned order of the Assistant Collector is based on the judgment and order of the Mamlatdar recorded on 5-4-1974 in formal inquiry case No. 2/74 which came to be confirmed in appeal No. 8/74 by the GRT on 8-4-1976. Thus, it was a formal inquiry conducted by the Mamlatdar and it was certified and later on, which was confirmed by the GRT. It would be also interesting to refer to the provisions of Rule 108 of the GLR Rules which read as under:

"108. (1) Disputes entered in the register of disputed cases shall ordinarily be disposed of by the Mamlatdar''s First Karkun or by the Mamlatdar but may be disposed of by the District Inspector of Land Records or by any revenue officer of superior rank to that of First Karkun.

(2) The enquiry shall ordinarily be made in the village in which the land is situate or where the interested parties reside.

(3) The officer making the enquiry shall record his order disposing of the dispute in the said register and shall then make such entry in the Diary of mutations as may be necessary.

(4) Such officer shall certify the entry in the diary of mutations to be correct.

(5) An appeal against an order under this rule shall, if the order has been made by the Mamlatdar, the District Inspector or Revenue Officer of lower rank than that of a Deputy Collector, lie to the Sub-Divisional Officer, or to an officer appointed by the State Government in this behalf, and if the order has been made by the Sub-Divisional Officer, the Superintendent of Land Record Officer of a rank not lower than that of a Deputy Collector, to the Collector, such appeal shall be presented within sixty days from the date on which the copy of the order was served on the appellant or was otherwise intimated to him:

Provided that the appellate authority may after recording its reasons in writing admit an appeal after the aforesaid period of sixty days if it is satisfied that the appellant had sufficient cause for not presenting the appeal within such period.

Subject to the provision of Sub-rule (6) the decision of the appellate authority shall be final. There shall be no appeal against the order of the Collector. No second appeal shall lie in any case.

(6) The Commissioner may call for and examine the record of any enquiry or the proceedings of any subordinatee revenue officer held under Rs. 106, 107 and Sub-rules (1) to (5) of this rule for purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings.

If, in any case, it shall appear to the Commissioner that any proceedings so-called for or any decision or order made in such proceedings should be modified, annulled or reversed, he may pass such order thereon as he deems fit.

(7) If the appellate order or the order passed in a revision by the Commissioner confirms the previous decision it shall be noted in the remarks columns against the entry which is confirmed. If it alters it, the change shall be entered as a fresh, but not disputable, mutation."

15. It could very well be found from the aforesaid provisions included in Chapter 15 of the Rules that specific provisions are made as to who can hear and decide the revision under Sub-rule (6) of Rule 108. The expression ''Commissioner'' has to be now read as ''Government'' about which there is no dispute in this group of petitions. Rule 108 is incorporated in Chapter 15 which deals with record of

rights. In case of any change or mutation in a disputed case, formal inquiry is required to be conducted. After the inquiry is conducted, it will have to be certified. Provision of appeal is made in Rule 108 (5); whereas, provision is made for revision in Sub-rule (6) of Rule 108. It is amply clear from the bare perusal of provisions of Rule 108(6) of the Rules that the Government may call for and examine record of inquiry or proceedings of any subordinate revenue officer held under the Rules for the purpose of satisfying as to regularity, legality or propriety of the proceedings or decision. It is not a case that power to hear revision is delegated to some authority under the Rules. Therefore, the impugned order is illegal and is contrary to the provisions of Section 211 of the BLR CODE and Rule 108(6) of the Rules.

16. In Evergreen Co-op. Society v. Special Secretary, Revenue Department, Gujarat State 32(1) GLR 113 (sic), this Court has also taken a similar view. It was held that only the State has power to call for record of inquiry or proceedings under Sub-rule (6) of Rule 108 and to hear and entertain a revision. In light of the facts of that case also, it was observed that the orders of Collector and Additional Chief Secretary were without jurisdiction in view of the aforesaid provisions. In view of the facts and circumstances and the aforesaid provision and decision of this Court, the impugned order is required to be quashed on the ground that it is without jurisdiction.

17. Since all the petitions have common questions pertaining to the same subject matter of survey number 506, all of them are required to be allowed on the ground that he impugned order is contrary to the provisions of Section 211 of the BLR Code and also the provisions of Sub-rule (6) of Rule 108 of the Rules and, therefore, it is illegal and without jurisdiction.

18. In view of the aforesaid finding, two other contentions raised on behalf of the petitioners are not required to be examined and adjudicated upon as the entire group of these petitions can be allowed on the ground that the impugned order is without jurisdiction. Therefore, they are not required to be dealt with.

19. Having regard to the facts and circumstances and the aforesaid proposition of law, the impugned order of the Assistant Collector under suo motu revision is contrary to the provisions of the relevant law and is based on misconception of relevant legal proposition. All the petitions are therefore, required to be allowed on the sole ground that the impugned order is passed by the authority who is not competent under the law and the same is without jurisdiction. In the circumstances, the impugned orders of the Assistant Collector in all the petitions are quashed and set aside. Rule is, therefore, made absolute in each of the petitions. However, there shall be no order as to costs.