

(2009) 07 GUJ CK 0032

In the Gujarat High Court

Case No : Special Civil Application No. 5845 of 2009

Kalpeshbhai Natwarlal Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 32G, 32P, 32P(7)(8), 32P(9)

Citation : (2009) 3 GLH 372

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : Virat G. Popat, for the Appellant; Jirga Jhaveri, AGP for Respondent 1, None for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Mr. D.A. Mehta, J.—This petition challenges order dated 31. 1. 1969 made by Mamlatdar & ALT, Gandhinagar in proceeding bearing No. 199/ 32P/Pethapur as well as order dated 20. 10. 2007 made by respondent No. 1 Authority in Appeal No. MVV/Ganot/ Gadhan/5/04 dated 14. 11. 2007 (20. 10. 2007) in the backdrop of following facts and circumstances of the case. The petitioners are legal heirs of deceased Somabhai Bholidas Patel and have preferred this petition through Power of Attorney Holder, one Shri Prakash Sankalchand Patel who has been given Irrevocable General Power of Attorney executed on 10. 07. 2005. Paragraph No. 4 of the Power of Attorney categorically records that this power is an irrevocable general Power of Attorney with consideration (emphasis supplied). Thus it is apparent that the legal heirs have given up all their rights in favour of Power of Attorney Holder for a consideration. Narration of these facts is necessary for the reasons that shall be recorded hereinafter.

2. It is the say of the petitioners that deceased Somabhai purchased the land bearing survey No. 1270 at Pethapur, District Gandhinagar and deceased was cultivating the said land since 10. 4. 1956. That revenue record carried the name

of one Shri Naranbhai Patel as tenant in the same survey number, though alleged to be on a different parcel of land. That vide order dated 5. 4. 1963 in proceedings u/s 32G of The Bombay Tenancy And Agricultural Lands Act, 1948 (the Act), the Mamlatdar held that as the tenant was not interested in purchasing the land, the land be resumed by the State Government through the Collector. In the petition it is repeatedly stressed that Shri Naranbhai was not in possession of the land stated to have been purchased by the petitioners, but a different part of the same survey number.

3. On 31. 1. 1969 the Mamlatdar is stated to have made an order u/s 32P(7)(8) of the Act directing that deceased Somabhai be granted the said land only for the purpose of cultivation.

4. The petitioners challenged the order made on 5. 4. 1963 by preferring an Appeal before Deputy Collector (Land Reform) Appeal, Gandhinagar on 11. 11. 2002. The said Appeal came to be allowed and the Deputy Collector quashed order dated 5. 4. 1963 vide order dated 23. 10. 2003.

5. The petitioners thereafter, preferred Appeal before respondent No. 1 Authority on 20. 10. 2004 challenging order of Mamlatdar & ALT dated 31. 1. 1969. This Appeal u/s 32P(9) of the Act came to be dismissed. Hence the petition.

6. Heard learned Advocate for the petitioners. It was submitted that proceedings u/s 32P of the Act could not have been taken by the Authority, as firstly, there was no tenant on the land in question, and secondly, deceased father of the petitioners was wrongly treated as a tenant by the Revenue Authorities. It was submitted that once order dated 5. 4. 1963 relating to proceedings u/s 32G of the Act was quashed and set aside by the Deputy Collector by his order dated 23. 10. 2003, no proceedings u/s 32P of the Act could have been initiated, and thus the impugned order made by Mamlatdar & ALT on 31. 1. 1969 restricting the rights of the petitioners, as confirmed by the Appellate Authority vide order dated 14. 11. 2007, should be held to be bad in law, the entire proceedings having been based on an incorrect premise, namely, the deceased father of the petitioners being a tenant over the land in question despite the fact that the land had been purchased by the deceased father under a sale-deed before the appointed day under the Act as provided in Section 32 of the Act.

7. The petition does not merit acceptance for the reasons that follow hereinafter. It is an accepted position that both the orders made on 5. 4. 1963 and 31. 1. 1969 respectively, under Sections 32G and 32P of the Act, were made against deceased Somabhai and though the exact date of death of the said gentleman is not available, the said orders were never challenged by deceased Somabhai during his life time. Apparently when the petitioners wanted to part with the property they realised that the orders made in 1963 and 1969 respectively, would not permit them to transfer the property in favour of third party, the rights of deceased Somabhai having been held to be limited, after the land had been resumed by the Authority by passing an order in 1963.

8. Therefore, the petitioners challenged the order of 1963 by preferring an Appeal on 11. 11. 2002 which was admittedly belated by a period of nearly 40 years. The Deputy Collector found that the Appeal could not be entertained as the same was barred by limitation. Therefore, the Appeal which is said to have been preferred on 11. 11. 2002 without an application seeking condonation of delay was thereafter sought to be supported by an application seeking condonation of delay, which application was filed on 23. 1. 2003. The Deputy Collector, without deciding the said application as to existence or otherwise of sufficient cause for delay proceeded to decide the Appeal on merits by observing that a decision on the delay shall be rendered at the time of deciding the Appeal finally and thus issued notices to the parties for hearing of the Appeal. On going through entire order dated 23. 10. 2003 it becomes apparent that at no stage has any finding been recorded as to the delay being condoned and thus an Appeal which is admittedly, even as per say of the Deputy Collector, barred by limitation has been heard and decided on merits without recording any finding as to whether the Appeal could be admitted.

9. Armed with order dated 23. 10. 2003 the petitioners preferred an Appeal before respondent No. 1 Authority on 20. 10. 2004 challenging order dated 31. 1. 1969 on the ground that as the order made under the provisions of Section 32G of the Act did not exist, there was no question of any proceedings u/s 32P of the Act which are consequential in nature. In so far as this set of proceedings are concerned, at the cost of repetition, it is required to be noted that deceased Somabhai, in whose presence order dated 31. 1. 1969 was made had never challenged the same during his life time and it was only on 20. 10. 2004 that for the first time the petitioners filed the Appeal challenging order made in 1969. Unfortunately for the petitioners in the second round of proceedings, relating to proceedings u/s 32P of the Act. they could not succeed in obtaining a favourable order.

10. In the aforesaid set of facts and circumstances of the case, it becomes apparent that earlier order dated 23. 10. 2003 made by Deputy Collector, one Shri B. G. Patel, is an order which has been made apparently for collateral reasons and not on the basis of merits of the controversy. The said Authority ought to have posed a question to itself as to how the heirs of deceased Somabhai could have challenged an order which was made during life time of deceased Somabhai and was not challenged by deceased Somabhai. Having noted the fact that there was gross delay of nearly 40 years in preferring the Appeal, the Deputy Collector could not have proceeded to decide the Appeal on merits after recording in his order that the aspect as to whether the delay should be condoned or not shall be dealt with as and when the order is made finally. The entire order reveals that no such finding is recorded at any stage except for recording the contention of the petitioners as to the lame excuse tendered for delay in preferring the Appeal. One of the grounds is that order dated 5. 4. 1963 was never in the knowledge of the petitioners. There was no question of the knowledge of the petitioners because the order had been made during life time

of deceased Somabhai and if any such averment could have been made it was the said gentleman who had in fact never complained of such a lapse during his life time. Therefore, it is apparent that the Deputy Collector found it inconvenient (not possible) to record any finding on the application for condonation of delay and thus opted to gloss over the said issue.

11. The law is well settled that in case where a statutory time limit is prescribed for initiating remedial action, the aggrieved person is bound by the said time schedule and in the event the remedy is invoked beyond the statutory period of limitation, the Authority cannot entertain the proceeding on merits before first recording a decision as to whether the delay which has occasioned in instituting the proceeding has been explained or not. In the facts of the present case, in absence of any such decision by the Deputy Collector, the order dated 23. 10. 2003 is bad in law having been made without jurisdiction to entertain the Appeal on merits.

12. A faint attempt during course of hearing was made on behalf of petitioners that as the order was made on merits one can presume that the delay has been condoned. This submission cannot be countenanced. As recorded here-in-before, the order was made in 1963 when deceased Somabhai was alive and right to challenge the same was available to the said gentleman. Deceased Somabhai having not raised that challenge within prescribed period of limitation the law assumes that the cause was abandoned by the aggrieved person. The Law of Limitation is very clear that once a cause has been abandoned the aggrieved person has to be put to strict proof for explaining the delay in question as consequential rights in favour of the other side would come into existence by then, i. e., at the end of the period of limitation. In the present case, the contention that the delay would not cause prejudice to anyone, also does not merit acceptance. The land in question having been resumed by the State Government and then granted to deceased Somabhai only for the limited purpose of cultivation, there is no question of accepting that no prejudice is caused to anyone. The land having been resumed by the State Government is thus a property held by the State Government for and on behalf of and for the benefit of public at large and it cannot be stated that no prejudice would result in so far as anyone else is concerned. Therefore this contention cannot be accepted 08. 07. 2009.

13. As noted, the second transaction, namely, second challenge is in relation to proceedings u/s 32P of the Act, namely, order dated 31. 1. 1969 made by Mamlatdar & ALT as confirmed by respondent No. 1 Authority vide order dated 20. 10. 2007/14. 11. 2007. In the said case the challenge is based only on the footing that proceedings u/s 32G of the Act having been quashed and set aside by order dated 23. 10. 2003 by the Deputy Collector, proceedings u/s 32P of the Act cannot be initiated and thus the subsequent order dated 31. 1. 1969 and proceedings in continuation thereof are bad in law. At the cost of repetition, it is required to be noted and reiterated that even this order of 31. 1. 1969 was not

challenged for a period of 35 years from the date of the order and the Appeal came to be filed for the first time only on 20. 10. 2004. For the self same reasons, namely, the gross delay which has occurred in challenging order dated 31. 1. 1969, the petitioners are not entitled to any relief. In the event deceased Somabhai, against whom the proceedings u/s 32P of the Act were conducted, was aggrieved, he would have himself taken steps to challenge the order made in 1969. In the present case also there are no grounds for explaining the period of delay of as many as 35 years. It is apparent that till order dated 5. 4. 1963 was in existence, the petitioners could not have challenged order dated 31. 1. 1969 and therefore only after the order was made on 23. 10. 2003 by the Deputy Collector the petitioners filed Appeal challenging order dated 31. 1. 1969 u/s 32P of the Act. Therefore, on this limited count the challenge to this order should fail. Even otherwise, no infirmity exists in the order dated 20. 10. 2007/ 14. 11. 2007.

14. As recorded hereinbefore, earlier order dated 23. 10. 2003 made by Deputy Collector, on which strong reliance was placed by the petitioners, has been found to be an order which is without jurisdiction, and hence, the existence of the said order cannot be read in law so as to entitle the petitioners to challenge the proceedings u/s 32P of the Act. In other words, till point of time, order u/s 32G of the Act dated 5. 4. 1963 holds the field, no infirmity can be found in order dated 31. 1. 1969 made by the Mamlatdar & ALT and the petitioners cannot have any right to challenge the said order dated 31. 1. 1969 independently.

15. The submission that deceased Somabhai was the owner of the land in question and could not have been treated as a tenant would have merited consideration provided such a challenge had been raised by deceased Somabhai at an appropriate point of time, i. e. within the period of limitation. With the passage of time stale issues cannot be permitted to be reactivated without the persons raising the issue explaining the delay which has occurred in raising the appropriate challenge. In other words, why the remedy was not invoked within the period of limitation.

16. Hence, there is no infirmity in law in the order made on 31. 1. 1969 by the Mamlatdar & ALT in Case No. 199/32P/ Pethapur as confirmed by the Appellate Authority on 20. 10. 2007/14. 11. 2007 so as to warrant interference.

17. To summarise:

Proceedings u/s 32G of the Act dated 5. 4. 1963 having attained finality, in absence of challenge within the period of limitation, consequential proceedings u/s 32P of the Act cannot be successfully challenged, and that too without explaining the gross delay which has occurred in challenging both the sets of proceedings, and a finding being recorded by the Appellate Authority first condoning the delay.

18. The facts which have come on record categorically indicate that the conduct of Deputy Collector Shri B. G. Patel is one which cannot be termed to be in

exercise of powers vested in the Authority under the provisions of the Act and requires scrutiny and inquiry for initiating appropriate action in accordance with law. The conduct is not in consonance with the relevant requirement of the Service Rules. Hence, the Registry is directed to forward a copy of this judgment and order to the Principal Secretary, Revenue Department for initiating appropriate inquiry in this regard and take consequential action.

19. As recorded at the outset, the petitioners claim to be the heirs of deceased Somabhai Bholidas Patel, but the petitioners have alienated their right, title and interest in the property in favour of one Shri Prakash Sankalchand Patel, resident of A/9, Tulsi Bungalows, Opp: Gulab Tower, Sola Road, Ahmedabad under irrevocable General Power of Attorney executed on 10. 7. 2005 wherein paragraph No. 4 categorically records that not only is the power irrevocable but the same is with consideration (emphasis supplied). Thus it is apparent that prima facie an immovable property is shown to have changed hands without complying with the requisite provisions under the Bombay Stamp Act, 1958 (Schedule I, Article 45(f)) as well as Registration Act, relating to transfer of an immovable property. The document does not reveal the amount of consideration. This would have an impact in so far as the provisions under the Income Tax Act, 1961 are concerned. Hence, the Registry is directed to send a copy of judgment and order to each of the following authorities for initiating appropriate inquiry and consequential action under the respective law in this regard.

(1) Chief Controlling, Revenue Authority, Gandhinagar.

(2) (i) The Commissioner of Income Tax, Gandhinagar, 1st Floor, Nature View Building, Nr. H. K. House, Ashram Road, Ahmedabad.

(2) (ii) The Joint Commissioner of Income Tax, Gandhinagar, Block No. 14, 5th Floor, Udyog Bhavan, Sector -11, Gandhinagar - 382 011 -

Considering the fact that the petitioners are resident of Pethapur, District Gandhinagar and the land falls within the limits of the said village bearing Revenue Survey No. 1270.

20. In the circumstances, for the reasons recorded hereinbefore, the petition does not merit acceptance on any of the grounds pleaded and urged at the time of hearing. The petitioners had claimed, during course of hearing that the petitioners were within their rights to raise challenge even on equitable ground as rights of the petitioners in the land were incorrectly restricted. Assuming any such restriction was placed, the same was placed at the point of time when the predecessor in title, deceased Somabhai, was alive and the said gentleman having accepted such restriction on the rights in the land the heirs cannot claim a better title at this length of time. Therefore, even on equity the petitioners are not entitled to any relief. In light of what is stated hereinbefore and in the facts and circumstances of the case, the petition does not merit acceptance and is accordingly rejected.