

(1996) 01 GUJ CK 0026
In the Gujarat High Court

Kanjibhai Vithaldas Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 08-01-1996

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 27(b), 5, 6, 7, 9
Constitution of India, 1950 — Article 226

Citation : (1996) 2 GLR 62

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Judgement

Rajesh Balia, J.—The facts leading to the petition may be noticed in brief. The petitioner purchased lands in Block No. 753 (Survey Nos. 511/1 and 511/2) admeasuring 1 A. 19 Gs. in the sim of village Delavada, Taluka Vijapur, District Mehsana on 13-7-1963 for the consideration of Rs. 5,000/-. The sale was certified and the entry was mutated at No. 706 on 1-5-1966. The entry was sanctioned on 7-6-1966. Thereafter, respondent No. 5 Patel Kuberdas who is the holder of the adjoining land lodged a complaint that the land in question was notified as a fragment within the meaning of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 which could not have been transferred by the holder to any one except to the owner of a contiguous holding. This fact is not disputed that the land in question is registered as a fragment being less than the standard area u/s 5 and entered in the record of rights u/s 6 at entry No. 397. The transferees admitted before the concerned Officer that notice of such determination was duly served on them

2. In the first instance, the application of the respondent No. 5 was dismissed on 31-7-1970. However, the order of the Assistant Collector dated 31-7-1970 was set aside and the matter was remanded by the State Government by its order dated 31-8-1971 for examining the case on merit. Again, by order dated 31-1-1912, the Deputy Collector approved the sale and ordered that no action is required to be taken u/s 9 of the Act. On the revision being preferred by

respondent No. 5, the State Government again set aside the order of the Deputy Collector on 29-4-1972 and remanded the case back to the Deputy Collector with a direction that action u/s 9 be taken against the petitioner, as Section 27(b) of the Act is applicable. The petitioner challenged this order dated 29-4-1972 by way of Special Civil Application No. 1879 of 1972. The Court dismissed the Special Civil Application on 9-9-1977 as it was only against an order of remand and the Court was not inclined to interfere under Article 226 at that stage. However, no order on merit was made. Thereafter, in proceedings u/s 9, the District Collector, Mehsana on 17-3-1979 passed an order against the petitioner for summary eviction holding the sale to be void and imposed a fine of Rs. 250/-. The order was affirmed on revision by the State Government by the impugned order dated 28-9-1979. Hence, this petition challenging the two orders dated 17-3-1979 and 28-9-1979.

3. The first contention of the learned Counsel for the petitioner has been that in view of amendment in Section 31 vide Amendment Act of 1978 saving the transfers made of entire holdings from the consequences of transfer having been made in contravention of the Act, where such transfer has taken place between 19th February 1969 and the date of commencement of Bombay Prevention of Fragmentation and Consolidation of Holdings (Gujarat Amendment) Act, 1978, the present transfer also must be deemed to have been saved inasmuch as it is a case of transfer of entire holdings by the previous owner, and has not resulted in any division of holding already held by the transferee.

4. On a careful examination of the provisions of the Act, the contention cannot be accepted. Section 7 clearly puts a total embargo on transfer of any fragment in respect of which a notice has been given under Sub-section (2) of Section 6 except only to a contiguous holder. The consequence of a transfer in breach of Section 7 has been stated to be void u/s 9 of the Act; which also subject of the owner of the land so transferred to fine not exceeding Rs. 250/- and it also provides for summary eviction of the person in possession of such holding under void transfer by holding him to be in wrongful possession.

5. Section 31 on which reliance has been placed has no application to a transfer of fragment. It only applies to holdings allotted under the Act under a scheme of consolidation carried out under the Act. No allotment of a fragment or allotment of land leaving a fragment to any person is envisaged under the Act. Therefore, the transfer to which Section 31 refers cannot be related to transfer of a fragment dealt under Sections 7 and 9 of the Act. It is also clear from the fact that Sub-section (2) of Section 31 on which reliance has been placed speaks of saving only such transfers which does not create any fragment and also does not result in partition of existing holding except by way of shares to be allotted to heirs on the death of the owner. Moreover, the saving is only from the operation of Sub-section (1) of Section 31 and not from the operation of any other provision of the Act. Therefore, the amendment brought about by the Gujarat Amendment Act, 1978 is of little assistance to the petitioner.

6. It was then urged by the learned Counsel for the petitioner that even otherwise the petitioner's land would not fall within the mischief of Section 7 read with Section 9 of the Act because the land which was sold to the petitioner was a block entailing no partition and the said lands were irrigated by holder from a tube well prior to the date of sale which under the existing instruction prevailing at the time of sale were kept outside the purview of the operation of the aforesaid provision. It was contended that it was because of this reason two earlier orders were passed in favour of the petitioner after the application was moved by respondent No. 5 reaffirming the approval accorded to the sale made in favour of the petitioner by the Assistant Collector/District Deputy Collector as the case may be. The order by which the sale was approved was not considered by the revisional authority and so also by the authority taking proceedings from summary evictions u/s 9 of the Act.

7. The orders passed prior to the impugned order have not been placed on record. However, Mr. S.N. Shelat, learned Counsel for the respondent states that there is no objection if the matter is sent back for deciding the question afresh by the State Government in accordance with law to consider the aforesaid contention within the time fixed by this Court.

Accordingly, the petition partly succeeds. The order of the State Government dated 28-9-1979 is set aside and respondent No. 1 is directed to decide the revision of the petition afresh in accordance with law after giving an opportunity of hearing keeping in view the aforesaid contentions and observations in view within a period of six weeks from the date of service of this writ on it. There shall be no order as to costs. Direct service permitted. Rule made absolute accordingly.