

(1999) 09 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 7837 of 1996

Khalifa Jusab Sher Mohamed

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 2(16), 2(20), 6(1), 6(3B), 6(3C)

Citation : (2000) 2 GLR 193

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : C.H. Vora, for the Appellant; Haresha Devani, A.G.P. for Respondent No. 1 and M.T.M. Hakim, for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—The petitioner, through this petition, has prayed for quashing the Judgment and order Annexures : A, C & E respectively passed by the Mamlatdar, Deputy Collector and the Land Revenue Tribunal in Ceiling Case arising under the Gujarat Agricultural Land Ceiling Act.

2. The case has a chequered history which is clearly indicated in the order of the Gujarat Revenue Tribunal, Annexure : E. Petitioner submitted revised form No.2 on 28.6.1976 under the Agricultural Land Ceiling Act showing that he had in his possession 144 Acres - 6 gunthas of land. After inquiry the Mamlatdar declared 94 Acres - 06 gunthas as surplus land with the petitioner on 7.10.1981 in Ceiling case No.29 of 1976. The petitioner preferred Appeal before the Assistant Collector. The Appeal was allowed and the matter was remanded to the Mamlatdar in Ceiling Appeal No.9 of 1981. The Mamlatdar reheard the matter and through his order dated 31.12.1982 again declared 94 Acres - 06 gunthas as surplus land with the petitioner. The petitioner again preferred Ceiling Appeal No.2 of 1983 and the Deputy Collector dismissed the said Appeal on 20.6.1983. A revision was preferred before the Gujarat Revenue Tribunal which was allowed on 6.6.1983 and the matter was remanded to the 1st Authority, namely, the

Mamlatdar for rehearing the matter after issuing Notices to all interested parties. In compliance of this order the Mamlatdar through order dated 15.4.1985 in Ceiling Case No.25 of 1983 held that no land of the petitioner could be held as surplus land. Feeling aggrieved with this order revision was filed by the Deputy Collector which was allowed and the order of the Mamlatdar was set aside. The matter was again remanded to the Mamlatdar. The Mamlatdar declared 148 Acres - 6 Gunthas land as surplus with the petitioner in Ceiling case No.1 of 1987 on 8.8.1988. Again the matter was taken in revision and it was remanded to the Mamlatdar vide order dated 3.12.1990. The Mamlatdar again conducted hearing in the matter through Ceiling Case No.1 of 1992 and through order dated 27.2.1993 declared 98 Acres - 6 gunthas land as surplus with the petitioner. The petitioner filed Appeal before the deputy Collector, who rejected the same on 30.11.1993. Thereafter Revision was again filed before the Gujarat Revenue Tribunal which was dismissed on 4.4.1996. Thus, these three last orders are under challenge in this Writ petition.

3. Learned Counsel for the petitioner and the learned A.G.P. were heard.

4. The first contention of the learned Counsel for the petitioner was that the provisions of Section 6(3B) of the Gujarat Agricultural Land Ceiling Act, 1960 (for short "the Act") were not properly considered and appreciated and the additional benefit which is permissible under this section was not given to the land holder and if proper and admissible benefit would have been given there would have been no surplus land with the petitioner. Another contention has been that the benefit of Section 6(3C) of the Act was also not given and the last contention has been that since the ration card produced was not properly considered and appreciated it is a matter where after quashing the aforesaid judgment and order the matter may be remanded again to the 1st Authority, namely, the Mamlatdar for further inquiry.

5. I propose to discuss the third suggestion and argument of the learned Counsel for the petitioner first. As indicated in the foregoing portion of the Judgment the matter has been remanded several times by one or the other authority and now further remand of the matter is hardly necessitated. If the matter can be decided on the material on record and in the light of the provisions of Section 6(3B) and Section 6(3C) of the Act, there would not arise any occasion for remanding the matter again to the Mamlatdar. Thus, the last contention of the learned Counsel for the petitioner cannot be accepted.

6. The second contention of the learned Counsel for the petitioner regarding benefit of Section 6(3C) also cannot be considered. Section 6(3C) of the Act provides that where a family or a joint family irrespective of number of members includes a major son then such major son shall be deemed to be a separate person for the purpose of Sub. Section (1). There is clear finding of the authorities below that on the relevant date there was no major son of the petitioner, consequently no benefit could be given to the petitioner on account of his having major son on the specified date, namely 1.4.1976. This matter was

properly dealt with by the Authorities and the contention to the contrary cannot be accepted.

7. The only point for consideration which is now left is whether the Authorities below have not appreciated the provisions of Section 6(3B) of the Act and have failed to apply the same correctly.

8. Section 6(3B) of the Act provides that where a family or a joint family consist 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 a 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;

A bare perusal of this sub. section makes it clear that in order to avail of the benefit of enlargement of the ceiling area two conditions must be satisfied, viz.

(i) that the family should consist of more than five members and (ii) and it should have amongst it the categories of members mentioned in the three sub-clauses. If a family does consist of more than five members, but not amongst it any of the members mentioned in the three sub-clauses it will not be entitled to the benefit of enlargement of the ceiling area. The benefit of enlargement of the ceiling area will be available only when the family consists of more than five members and amongst them are members belonging to the categories mentioned therein.

9. There are thus two requirements, firstly number of family members should exceed five and that the persons so exceeding five in number should fall in one of the three sub-clauses, namely they are either minor son or widow of a pre-deceased son or minor son or unmarried daughter of a pre-deceased son where his or her mother is dead. These two conditions cannot be truncated. Similar interpretation was taken regarding Section 6(3B) by this Court in the case of *Nathekhan Sojalkhan Bihari Vs. Mamlatdar and Others*, .

10. The Honourable Supreme Court has also interpreted Section 6(3B) of the Act in the case of *State of Gujarat v/s. Jat Laxmanji Talasji*, reported in AIR 1988 SC 825. It has been held by the Apex Court that the landholder, his wife and his offspring consisting of three minor sons and three minor daughters would certainly constitute a family even if the mother of the landholder is excluded from consideration. Thus in any view the family of the landholder consisted of 8 members including himself, his wife, three minor sons and three minor daughters. It could not be said that the family consisted of not more than 5

members. The plea that the landholder, his wife and his three minor sons are the only five persons of the family for the purpose of Section 6(3B) would not be sustainable as S.6(3B) could not be read in said artificial and truncated manner. According to the Apex Court on a plain reading, Section 6(3B) is attracted where a family consists of more than five members "comprising a person" and other members belonging to all or any one of the following categories mentioned in this sub-section. The family also includes persons of one of the specified categories, viz. the minor sons. For claiming benefit of Section 6(3B) the test which must be satisfied is a twofold test. First, whether the claimant's family consists of more than five persons and the second is that such family must also comprise of one of individual and other members besides himself who must belong to all or any of the three specified categories.

11. The word "family" has not been defined under the Act. The joint family appearing in Section 6(3B) has been defined u/s 2(16) of the Act which means an undivided Hindu family and in the case of other person group or unit the members of which by custom or usage are joint in estate or residence. Thus, from this definition of the word "joint family" it means in cases of Hindus undivided Hindu family and for other persons it means a group or unit, the members of which by custom or usage are joint in estate or residence. The petitioner is a Mahomedan and as such concept of joint Hindu family is not applicable to this case. If he is considered to be other person within the meaning of Section 2(16) of the Act it had to be established by him that under the custom or usage the other members were joint in estate or residence on the relevant date, namely, 1.4.1976. From the three impugned judgments it appears that there was no pleading to this effect. This ground was also not taken specifically in the writ petition. The assertions in the writ petition are that two brothers and four sisters of the petitioner under the Mahomedan Law are entitled to equal share and as such they were entitled to hold independently and if this is so then no land could be considered to be surplus land. It is significant to mention that this plea was taken at several places in the writ petition and there was argument to this effect as well. However, this plea was repelled by the Authorities below. The Tribunal has observed that the land has been entered vide entry No.357 dated 2.6.1970 in the record of rights in the name of petitioner as having hereditary character. However, Senior Revenue Clerk on 4.7.1971 made entry No.11 for hereditary and certified for entering the names of six heirs. Subsequently, through entry No.409 dated 1.3.1972 all the remaining heirs had withdrawn their rights from the land in question and hence the same was registered in the name of the petitioner. It is also mentioned that only the name of the petitioner was entered. Annexure : D to the writ petition is Memo of Revision preferred before the Tribunal on which the impugned judgment was rendered by the Tribunal. It is mentioned in this Memo that the land in question was given to the applicant by his maternal uncle Khalifa Janmohmed Valimohmad by will. The xerox copy of the will was also filed. The name of petitioner was first entered in the revenue Record and thereafter the petitioner got this land entered

in the joint names of his two brothers Khalifa Lalmohmed Shefmohmed and Khalifa Ramzan Shermohmed and four sisters Khatabai, Fatamabai, Jenubai and Aminabai and thus got the entry made in joint names of seven persons.

12. From this admission it is clear that the petitioner got the land under will from his maternal uncle. Thus other persons were excluded. It is not shown from the record that the two brothers and four sisters were also beneficiaries under the Will. Thus, on the basis of the will the name of the petitioner alone could be entered in the record of right and subsequent action of getting the name of his two brothers and four sisters was unjustified and uncalled for. More over this action of getting the entry in joint names of seven persons was taken on 4.7.1971 i.e. after the prescribed date, namely, 24.1.1971. As such the entry dated 4.7.1971 has no relevance and it will be deemed to be an action to frustrate the provisions of the Act. If the petitioner got the land through will from his maternal uncle he alone will be considered as land holder or owner within the meaning of Section 2(20) of the Act. He cannot be said to be the tenant of any person thereof. Consequently u/s 6(1) of the Act the petitioner could not hold land in excess of the ceiling area. Since the ceiling area applicable to the petitioner is 54 Acres, he can not hold land more than the ceiling area.

13. It is now to be seen whether the two brothers and four sisters of the petitioner would be entitled to hold any land. As observed earlier they did not get any right under the Will. The action of the petitioner in getting their names entered in the revenue record after the prescribed date was nothing but an action to frustrate the provisions of the Act. They were therefore not entitled to hold any land, namely, disputed land in their names. The Authorities below, therefore, did not commit any illegality in excluding the claim of the two brothers and four sisters of the petitioner. It is significant to mention at this stage that this claim was made only by the petitioner. The two brothers and four sisters never appeared either before the Mamlatdar or before the Deputy Collector or before the Tribunal in series of litigation in respect of this case under the Ceiling Act to claim their right title or interest in any portion of the land. Even the petitioner did not make them respondent before the Mamlatdar, the Deputy Collector or before the Tribunal. As such belated stand of the petitioner is nothing but to frustrate the provisions of the Act.

14. The next contention of the learned Counsel for the petitioner has been that the Authorities below did not consider properly the entries in the ration card showing the names of the family members of the petitioner. As such the matter may be remanded to the Mamlatdar for fresh consideration. I have already indicated above that there is no necessity to remand the matter again to the Mamlatdar. Ration card is not conclusive evidence of the number of family members nor it is clinching evidence regarding ages of the persons whose names are found in the ration card. Normally ages are mentioned in the form for ration card on the basis of declaration of the owner of the house. No reliable evidence regarding date of birth of the son and minor daughter of the petitioner was

brought on record. The ration card was not filed at the earliest opportunity. It was obtained in the year 1981. It was not filed earlier before the petitioner got himself examined and cross examined. It was filed at the time of his re-examination. There are various contradictions in the statement of the petitioner and the entries in the ration card. These contradictions have been noticed in the Judgment of the Tribunal. The tribunal has mentioned that the petitioner in his statement, recorded on 5.9.1994 before the Mamlatdar, stated the names of his five sons and one daughter and while stating their names he stated that all the children were below 12 years. From this statement it follows that the petitioner was having five sons and one daughter. He further stated that his wife was also member of family and in this way his family members were eight in number. As against this in the ration card produced during re-examination of the petitioner, it was mentioned that there were 10 family members in which there are three sons of the ages of 7, 8 and 3 years and one daughter who is shown to be aged one year. It was not clarified as to how the number of family members exceeded from 8 to 10. Before the Mamlatdar the petitioner has stated that he had five sons and one daughter whereas in the ration card prepared in the year 1981 entry was found in respect of three minor sons and one minor daughter of the petitioner. Thus the claim of the petitioner that he had five sons appears to be contradictory and unreliable. In the absence of explanation how the number of family members increased in the ration card from 8 to 10 no weight can be attached to the ration card. If there were only 8 members in the family of the petitioner and in the ration card it is shown that the petitioner had three minor sons and one minor daughter besides himself and his wife, it can be said that there were in all six members in the family of the petitioner and not eight. Out of six persons one daughter aged one year could not be born on 1.4.1976. Likewise the minor son aged 3 years shown in the ration card of 1981 could not have been born on 1.4.1976. If these two minors are excluded from consideration then there could be only four members in the family of the petitioner, namely, himself, his wife and two minor sons aged 7 & 10 years who could have been alive on the specified date i.e. on 1.4.1976. Thus, if family members of the petitioner did not exceed 5, then no further benefit of Section 6(3B) of the Act could be given to the petitioner. Consequently it is difficult to accept the contention that on facts as well as in law the authorities below did not properly appreciate the provisions of Section 6(3B) of the Act.

15. It is also incorrect to say that the Appellate Authority had not considered the ration card. In the Judgment of the Appellate Authority (Annexure : C) it is clearly mentioned in Para : 3 that the ration card was on the record and it was considered by him.

16. The Authorities were justified in ignoring the sale deed executed by the petitioner in favour of other person after 24.1.1971. The Sale Deeds were executed in the year 1972, 1973 and the petitioner did not obtain declaration u/s 8(1) of the Act. Consequently lands which were subject matter of the Sale Deeds were rightly considered to be the land of the petitioner for the purposes of the

Act.

17. In the result it is found that there has been no error of calculation in determining the surplus land nor in doing so any provision of the Act was violated. I also do not find force in the contention that the ration card was not considered by the Authorities. In a petition under Article 226 of the Constitution of India, the findings of fact of the Authorities below cannot be reversed simply because different view can be taken from the evidence on record. More over as pointed out earlier in this judgment that the ration card is no clinching evidence or reliable evidence on the strength of family members or their ages or their date of birth it could not be held on the basis of the ration card that the petitioner was entitled the benefit of Section 6(3B) of the Act.

18. The result of the foregoing discussion is that no substance is found in this writ petition, which is liable to be dismissed and is hereby dismissed with no order as to costs.