

(2008) 01 GUJ CK 0089

In the Gujarat High Court

Case No : Special Civil Application No. 5966 of 1992

Khodabhai K. Mali

APPELLANT

Vs

Rasiklal B. Bhodbunja and Others

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Bombay Land Revenue Code, 1879 — Rule 108
Constitution of India, 1950 — Article 227

Citation : (2008) 1 GLH 543 : (2008) 1 GLR 913

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : N.K. Majmudar, for the Appellant; S.K. Bukhari, for Respondents 1-3 and Falguni Patel, Asst. Government Pleader for Respondent 4, for the Respondent

Judgement

K.M. Thaker, J.—In this petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 29.5.1992 passed by the Secretary (Appeals) in the case registered as SRD-38/86. The petitioner has also prayed that the order dated 13.10.1984 passed by the Deputy Collector may be restored.

2. The facts, on which, the petitioner has based the petition and challenged the aforesaid order, are as follows.

2.1 The petition relates to property bearing Tika No. 9/4, vibhag: A at City Survey No. 40 in taluka and district Vadodara. It is the claim of the petitioner that the property is in his ownership since last about 70 to 75 years. The petitioner, on the basis of the alleged possession of property, claims ownership and title of the property in question.

2.2 The first attempt of the petitioner for the said properties, which was made before City Survey Superintendent by virtue of application before the said authority failed in October, 1983 inasmuch as the said authority passed an order dated 29.10.1983 rejecting the claim of the petitioner and holding, inter alia,

that as per the record the Sanad issued in September: 1947 in respect of the land in question was in the name of one Shri Amrutlal Shankarlal and said Amratlal Shankarlal had sold the land by the registered sale-deed to the father of respondent in September, 1959 and the said transaction also is reflected in the record as per which the name of respondents" father was entered into the record after he purchased the land in 1959. At this stage, it is required to be noted that as per the said order dated 29.10.1983 the names of the respondents were entered into record in September, 1982 after the death of father of respondents. In the said order it is also noted that at that time or within reasonable time thereafter, no objection was raised by the petitioner against that entry.

2.3 The petitioner had never challenged the Sanad and/or the entry in the name of respondents" father pursuant to registered sale-deed and/or entry of names of respondents in September, 1982 after the death of their father. The said authority, for such reasons, rejected present petitioner"s application as untenable.

2.4 The petitioner has heavily relied on an interlocutory/interim order dated 30.9.1964 passed by the 6th Joint Civil Judge (J.D.), Vadodara below Exh. 5 in R.C.S. No. 1154 of 1964, so as to correct that the possession of the land in question is in his hands. It is submitted that the said suit was filed by respondents" father and while passing the said interim order dated 30.9.1964, the learned trial Court recorded that the plaintiff had failed to show his prima-facie possession. On the basis of the said order and the said observations by the learned trial Court, the petitioner has claimed that he is in possession of the land in question.

2.5 The aforesaid order dated 29.10.1983 was challenged by the petitioner before the Deputy Collector who passed the order dated 13.10.1984 whereby he allowed the appeal and set aside the order dated 29.10.1983 passed by the City Survey Superintendent and directed to enter the name of the petitioner in the record, inter alia, on the ground that the petitioner was in possession and was paying the taxes and also on the ground that the petitioner, according to the Deputy Collector also got the right and title in property on account of adverse possession.

2.6 The respondents, upon being aggrieved by the said order dated 13.10.1984, preferred revision application under Rule 108(c) of the Code. After hearing the contesting parties, the Collector passed an order dated 29.10.1985 whereby he partly allowed the revision application and set aside both the orders, one dated 29.10.1983 passed by the City Survey Superintendent and other being an order dated 13.10.1984 passed by the Deputy Collector. The Collector in the said order dated 29.10.1985 directed, inter alia, that the party, who claims ownership of property must get its claim established before the Civil Court of competent jurisdiction and the entry in the record shall be subject to and shall be governed as per the judgment and order by the Court of competent jurisdiction.

2.7 The petitioner felt aggrieved by the said order and, therefore, he preferred another revision application before the Secretary (Appeals), which was registered as SRD-38/86. The Secretary (Appeals) rejected the revision application by an order dated 29.5.1992 confirmed the order dated 29.10.1985 passed by the Collector. It is against the said order that the petitioner has approached this Court.

3. Heard Mr. Suthar, advocate for Mr. N.K. Majmudar, advocate for the petitioner and Mr. Bukhari, advocate for the respondents.

4. Mr. Suthar, learned advocate for the petitioner, in his submissions heavily relied on the order dated 30.9.1964 passed in R.C.S. No. 1154/1964 and submitted that the order passed by the Deputy Collector may be restored. Mr. Suthar, learned advocate for the petitioner, strenuously objected the direction of inquiry u/s 63 and submitted that the said direction is beyond the scope of revision application.

5. On the other hand, Mr. Bukhari, learned advocate, supported the order dated 29.10.1985 as well as the order dated 29.5.1992, however, except supporting the said orders, he has not made any other submissions. Since the respondents have not preferred any proceedings against the said order dated 29.5.1992, even otherwise, it is not permissible or open for the respondents to make grievance or raise objections against the directions in the said order.

6. It is well settled legal position that the entries in the revenue record do not confer any title or rights. If there is dispute as regards the ownership of the land in question, the contesting parties must get it adjudicated and resolved by Court of competent jurisdiction. In light of such settled legal position, the Collector has, in order dated 29.10.1985 directed the parties to get their claims adjudicated by the Court of competent jurisdiction and with the said direction the said authority disposed of the application of present respondents and set aside the orders dated 13.10.1984 and 29.10.1983.

7. In view of the fact that the petitioner has challenged the order dated 29.5.1992 passed by the Secretary (Appeals) whereby the said authority has confirmed the order dated 29.10.1985 and directed inquiry or initiation of proceedings u/s 63 and since the said direction is strenuously objected by the petitioner, it becomes necessary to look into the reasons for passing the said directions. The said authority has in the impugned order, observed and recorded that though the applicant i.e. the petitioner herein, has contended that the property in question came in his hands and possession because he is, as claimed by the petitioner, legal heir of one Shri Sonu Punja but the applicant did not produce any Pedhinama to establish that he is the legal heir of said Shri Sonu Punja and the applicant was also not able to satisfy the authority as to how he got possession of the property in question. In view of such discrepancies, the said authority had, in fact, called for relevant record from the Office of Collector and upon examination of such record also no satisfactory reply or material was

available. The observations in this regard by the said authority in the impugned order would also persuade to take into account the observations and findings recorded by the Collector in his order dated 29.10.1985 inasmuch as even the Collector also has noted certain discrepancies and raised certain queries in the order dated 29.10.1985. The Collector has noted that originally name of Shri Amrutlal was reflected in the record with regard to the land in question and said Shri Amrutlal had sold the land in question by registered sale-deed to the father of the respondents and after the death of respondents' father, the names of the respondents were entered into the record as legal heirs, however, despite such being the position, name of Shri Punja Dhula was mentioned in the property card. In view of such entries in the record, the Collector in the order dated 29.10.1985 noted the discrepancy that if as per the property card the land in question was in the name of Punja Dhula then on what basis name of Amrutlal was entered into record.

8. Shri Sona Punja is said to be the legal heir of Shri Punja Dhula. The petitioner has claimed that he is the heir of said Shri Sona Punja and on that basis he claims title, ownership and possession of the property in question. From the aforesaid discussion and examination of the factual aspects noted by the said two authorities, it becomes clear that the Secretary (Appeals), after having noted the aforesaid discrepancies, considered it appropriate to direct initiation of inquiry/proceedings u/s 63. It is pertinent to note that the Collector also was not satisfied with the discrepancies, however, considering the limitations and scope of the proceedings on his hands, he left the said issue at that stage and proceeded to deal with the issue raised before him and rightly so, because he, probably, being conscious of the limitation of his jurisdiction appreciated that he could not have given any direction beyond the scope of the application. While considering present petitioner's application against the order dated 29.10.1985 by the Collector, the Secretary (Appeals) took note of the discrepancies mentioned by the Collector in his order dated 29.10.1985 and he also noted further discrepancies as well. So as to satisfy himself regarding the said queries, he also called for the relevant records, however, from what was available he could not, it appears, satisfy, himself regarding the discrepancies and therefore, he formed opinion that probably there was unauthorized occupancy and the land in question, in light of the facts and circumstances, probably would vest in government. However, it is at this stage that the said authority lost sight of the limitations on his jurisdiction while entertaining the application preferred by the petitioner. It is settled legal position that while adjudicating a particular application or appeal the adjudicating authority cannot go beyond the scope of the application or appeal under consideration and cannot give directions beyond the scope of application or appeal under direction and that too without putting the contesting parties to notice and affording an opportunity of hearing to the contesting parties. The said authority i.e. Secretary (Appeals) could have either allowed or rejected the application but in the application preferred by present petitioner against the order dated 29.10.1985 passed by the Collector, it was not

proper or permissible for the said authority to issue any directions to the competent authority to initiate inquiry/proceedings u/s 63. The BLR Code prescribes procedure for such eventuality and such situation can be dealt with only by following the prescribed procedure and that too in prescribed manner only. Assuming that in the facts and circumstances of the case such investigation may be called for and justified but the said direction, howsoever justified it may be, could not have been issued in the application preferred by present petitioner against the order dated 29.10.1985 and at the time of adjudicating the said application and that too without putting the contesting parties to notice. The said direction, in this view of the matter and in light of the settled legal position was unwarranted and unauthorized and also beyond the scope of application/appeal under consideration. More so because the contesting parties were not afforded opportunity of hearing in that regard.

9. Mr. Suthar, learned advocate, during his submissions stated that so far as the direction to show the entries in the record as per the direction given by the Collector in the order dated 29.10.1985 is concerned, the petitioner cannot have and does not have any objection, however, the petitioner is agitating against the direction requiring initiation of inquiry/proceedings u/s 63.

10. As noted earlier, the order dated 29.10.1985 is in consonance with the settled legal position as well as justified in the facts of the case. The said order does not suffer from any illegality or infirmity. Consequently, the directions given by the Secretary (Appeals) in the impugned order requiring that the record may reflect the entries as per the directions given by the Collector in the order dated 29.10.1985 are, therefore, legal and proper and do not call for any interference in a petition under Article 227 of the Constitution of India and that therefore, the petitioner's challenge against the said observations and directions in the order dated 29.5.1992 i.e. the impugned order deserves to be rejected and are accordingly rejected.

11. For the reasons mentioned above and in light of the aforesaid discussion, the direction requiring initiation of inquiry/proceedings u/s 63 is unwarranted and untenable and consequently it is set aside and rest of the order dated 29.5.1992 is confirmed. Consequently, the order dated 29.10.1985 passed by the Collector stands confirmed. It is, however, clarified, in view of the aforesaid discussion, that setting aside of the direction requiring initiation of the proceedings u/s 63 is only for and on account of the aforesaid reasons and is not to be construed as restriction against the competent authority to independently look into the matter or to undertake, strictly in accordance with law, such inquiry or proceedings as may be expedient in the facts of the case and as may be permissible in law and strictly in accordance with law and after affording opportunity of hearing to all concerned parties. The impugned order is set aside to the aforesaid limited extent only and rest of the order and directions are confirmed. The petitioner is, consequently, partly allowed. Rule made absolute to the said extent. No order as to costs.