

(2011) 02 GUJ CK 0194

In the Gujarat High Court

Case No : Special Civil Application No. 1407 of 2011

Kirankumar Premjibhai Maivaiya

APPELLANT

Vs

Rajesh Keshavlal Visaparmar and Others

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Citation : (2011) 2 GLR 966 : (2011) 8 RCR(Civil) 1994

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : K.D. Vasavada, for the Appellant; Abhaykumar P. Shah, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—The Petitioner is before this Court being aggrieved by judgment and order dated 6-1-2011 passed below Appeal Application No. TEN/AK/1/2010 passed by learned Judge, Gujarat Revenue Tribunal at Annexure-A to this petition. Besides, it is also prayed to quash and set aside the impugned order and judgment dated 27-7-2010 passed below Application No. 36/15/2009 by learned Joint Charity Commissioner, Rajkot at Annexure-B to this petition.

2. Heard learned Advocate Mr. H.D. Vasavada for the Petitioner.

3. Learned Advocate for the Petitioner invited attention of the Court to the facts of the case from Paragraph 3 of the said judgment and order. The facts of the case are that the Petitioner got an agreement to sell executed in his favour from the trust on 21-1-2006. It was agreed to sell the property of the trust which was in possession of one Shri Kansara Popatbhai Jadavji as a tenant. It was agreed that the property will be sold for amount of Rs. 13,11,000/-. It is also mentioned that out of that, Rs. 3 lakhs were paid by the Petitioner on 21-1-2006 in cash and remaining amount was agreed to be paid after permission obtained from the concerned Government office and for that, the date was fixed to be 21-5-2006. It is also recorded that the amount paid by the Petitioner of Rs. 3 lakhs was paid by

the trust on 27-3-2006 to the tenant of the premises-Kansara Popatbhai Jadavji for giving up his right as a tenant.

3.1. It is further recorded in the order that thereafter there was change in the "trustee board" and the trust applied for "grant of permission to sell this property" before learned Joint Charity Commissioner on 6-1-2009. Learned Joint Charity Commissioner, Rajkot gave public notice inviting tenders for sell of the property and also objections on 15-4-2010. In response to this public notice, no offer was received, but the Petitioner filed his objections on 20-4-2010 wherein the Petitioner brought to the notice of learned Joint Charity Commissioner the factum of "agreement to sell" having been executed in his favour. In light of that, he registered his objections against selling of this property to anybody else. He also requested that according to that agreement to sell, the trust should be directed to execute the sale-deed in favour of the Petitioner.

4. Learned Joint Charity Commissioner, Rajkot by order dated 27-7-2010 permitted the trust to sell this property for an amount of Rs. 33,21,000/-.

5. This order of learned Joint Charity Commissioner was challenged by way of an appeal before the Hon''ble Gujarat Revenue Tribunal and the Hon''ble Gujarat Revenue Tribunal, after considering rival contentions of the parties, dismissed the appeal. This judgment and order was pronounced in the open Court on 6-1-2011. The Hon''ble Gujarat Revenue Tribunal was pleased to confirm the order passed by learned Joint Charity Commissioner.

6. Certified copy is produced at Annexure-A to this petition and it bears a rubber stamp which shows that certified copy was applied on 10-1-2011, copy was delivered on 13-1-2011 and the Petitioner has approached this Court on 2-2-2011. Respondent No. 2 herein filed caveat on 12-1-2011. Despite the fact that Hon''ble Gujarat Revenue Tribunal had not granted any stay against its own judgment and order or for that reason against the judgment and order of learned Joint Charity Commissioner, learned Advocate for the Petitioner did not get this matter heard and did not obtain any order. It was on 11-2-2011 that matter was notified on regular admission. On that day, learned Advocate Mr. K.D. Vasavada had filed sick note, and therefore, the matter was kept today. Learned Advocate for Respondent No. 2 placed for perusal a sale-deed executed on 15-1-2011. In view of that, present petition has become infructuous.

7. However, learned Advocate for the Petitioner submitted that order stands vitiated on account of fraud having been committed by the trust with the Petitioner, and therefore, the petition is required to be entertained and relief as prayed for is required to be granted. In support of his submission, learned Advocate for the Petitioner relied upon a decision of the Hon''ble Apex Court in the matter of A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, Learned Advocate for the Petitioner invited attention of the Court to the Head Note "C" of the said judgment wherein the observations made by the Hon''ble Apex Court in Paragraphs 38, 39 and 40 are quoted. These observations

read as under:

All orders passed by the Courts/authorities below merge in the judgment of Supreme Court and after such judgment, it is not open to any party to the judgment to approach any Court or authority to review, recall or reconsider the order. The above principle, however, is subject to exception of fraud. Once, it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non-est and cannot be allowed to stand. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the Court of first instance or by the final Court. and it has to be treated as non-est by every Court, superior or inferior.

Where in proceeding for determination of surplus land it was pleaded by land owners that possession of land was taken by beneficiary of land acquisition proceedings in year 1972, and therefore, it could not be declared surplus land under Land Ceiling Act, and therefore, authorities under Act declared land owners to be non-surplus land-holders and writ petition and SLP against same were also dismissed. However, it was subsequently found by the High Court that earlier orders was obtained by exercising fraud by land owners in collusion with officers of beneficiary, inasmuch as possession as alleged by land-owner was not taken over by beneficiary as it was in possession of tenant, the order of High Court in recalling its earlier order would be proper.

8. The said decision of the Hon"ble the Apex Court will have no application to the facts of the present case inasmuch as in the present case, the Petitioner has got an agreement to sell executed in his favour from the Board of Trustees without any permission having been obtained. It is settled law that trustees hold the property of the trust not as their own and they cannot deal with the property without obtaining necessary permission for the same. In the present case, it is an admitted fact that earlier "Board of Trustees" did not obtain any permission before executing agreement to sell, and therefore, that agreement to sell was non-est in eye of law, and therefore, there is no question of any fraud having been committed on the Petitioner by anybody. If at all anybody is to be blamed, it is the Petitioner who wanted to grab the property of the trust by taking the trustees in confidence. This fact can be seen from the circumstances of the case. The property which was agreed to be purchased by the Petitioner for Rs. 13,11,000/-, later on, came to be sold for Rs. 33,21,000/-. Not only that, if the sale-deed was got executed on 21-1-2006, what prevented the Petitioner from taking recourse to the remedy available under the law. The Petitioner was waiting for time to lapse so as to then plead that right of the Petitioner has ripen, but all these facts are sufficient to hold that the Hon"ble Gujarat Revenue Tribunal or learned Joint Charity Commissioner has not committed any error in passing the order challenged in this petition. The petition is, therefore, dismissed.