

(2004) 11 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No. 17988 of 2003

K.M. Adhvaryu

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Citation : (2004) 11 GUJ CK 0008

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : P.V. Hathi, for the Appellant; Dipen Desai, Ld. AGP for Respondent Nos. 1-3, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule Mr. Desai, learned AGP waives service of rule on behalf of respondents No. 1, 2 and 3 and with the consent of the parties, the matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner is an ex-army man, who was allotted the land for cultivation by the State Government as per the order dated 13.4.1966 admeasuring 8 acre bearing Survey No. 217 at Village Sidsar. The respondent District Collector issued notice on 29.8.2003 for calling upon the petitioner to show cause as to why the land should not be forfeited for breach of the condition on the ground that the land is not actually used for cultivation by himself and on the ground that some portion of the land admeasuring one acre has remained un-utilised and there are doubtful transactions for transfer. It appears that in response to the notice the petitioner remained present and written reply was submitted and it was stated by the petitioner that since the road was passing in between the land, the land was divided into two parts and the small portion had remained unutilized for some time, and with a view to demarcate the boundary, the stones were fixed, but the petitioner was ready to remove the same and he was desirous to utilise the land for agricultural purpose. He also submitted that the land is not transferred or sold. The District Collector

ultimately considered the matter and while passing the order he relied upon the statement of Talati-cum-Mantri and passed the order of forfeiting the land allotted to the petitioner as per the order dated 29.8.2003. It appears that the petitioner carried the matter before the State Government and ultimately in the revision, the State Government rejected it on the ground that the same is not maintainable and under the circumstances, the petitioner has approached this Court by preferring this petition.

3. Heard Mr.Hathi, learned Counsel for the petitioner and Mr.Desai, learned AGP for the respondent State.

4. Mr.Hathi, learned Counsel for the petitioner, has placed on record the affidavit of Kalubhai Jasmatbhai Dapa, who is said to have cultivated the land, but in the said affidavit, it has been stated that he has worked as the labourer and with a view to protect the land he has taken care of the land and he has been doing agricultural labour work and the payment is being made by the petitioner. The said affidavit is taken on record.

5. Upon hearing the learned Counsel appearing for the parties it further appears that the issue arising in this petition are more or less the same as they were considered by this Court in the case of "Kodaji v. State of Gujarat and Ors." in SCA No. 3802/2004 with SCA No. 3803/2004, which has been decided by this Court as per its decision dated 21.9.2004. In the said case of Kodaji v. State of Gujarat", on the basis of the record of Village Forms No. 7 and 12 the holder of the land was issued notice on the ground that as the cultivation is shown by Talati-cum-Mantri of by different persons than the holder of the land and, therefore, the land is transferred. As the land was new tenure land and as there was breach of condition, consequently the land was ordered to be forfeited.

While considering the legality and validity of the order passed by the Revenue Authority of for forfeiting the land, it was observed by this Court at para 6 as under:

" 6. Even if the matter is considered on the substance of the subject matter also, the net effect would be that as there was cultivation shown in the revenue record of village Form 7/12 of the land in question, the Prant Officer proceeded on the basis that the land is transferred in breach of conditions since it was a new tenure land, and therefore, the land is ordered to be forfeited. Merely because the show cause notice has been issued and the owner of the land could not represent the case would not be a sufficient ground to hold that the land is transferred to a third party, may be for cultivation. It is well settled that the village Form 7/12 or revenue record is relevant only for fiscal purposes and merely mutation or other aspect of cultivation is recorded in revenue record, no right which otherwise exists in accordance with law gets altered qua the property in question. If there is any authenticated record in the village panchayat or with Talati-cum-Mantri showing those rights are created by the transfer by the holder of the land in favour of some other party it may stand on different footing. It

appears that there was no record available for altering the rights, possession and/or ownership of the land in question before the Prant Officer. In the absence of such record, the Prant Officer could not have come to conclusion that the land is transferred in breach of conditions. As regards the orders of the State Govt in revision are concerned, it has proceeded on the basis as if the burden is upon the owner of the land to show that he has not transferred. When a statement is made or it is the case of the petitioner that the land is not transferred and is in possession and ownership of the petitioner, it will be for the authority to consider if there is any authenticated record available for transfer. . In the absence of any lawful document for transferring or creating lawful right in the property in question, it could not be even concluded that the property is transferred in breach of conditions. It may be recorded that the person who is alleged to have transferred the land namely Vardhabhai is represented through respondent Nos 4 and 5, Legal representatives of deceased Vardhabhai Prantal. Mr.Goswami, Ld.counsel for respondent Nos 4 and 5 also confirms the position that no transfer whatsoever has taken place. It also appears that before the State Govt in the proceedings of revision the affidavit was also filed for such purpose. Further, it appears that the orders are passed by the Prant Officer simply on the basis of noting in Village Form No. 7/12 of the land in question showing that the cultivation is by other person and not by petitioner and therefore the land is ordered to be forfeited to State. When it is a matter pertaining to taking away the property of any citizen mere reliance upon revenue record of village Form No. 7/12 can not be said as sufficient proof for breach of condition. As such, when such aspect is denied by the holder of the property, it must be examined as to whether concerned Talati-cum-Mantri made such entry on the basis of hearsay or on the basis of so called material which can not be relied upon or on some extraneous consideration and, if yes, then such entry in village Form No. 7/12 can not assume value authorising for concluding the breach and consequential forfeiture of the property. . There must be cogent, authenticated and lawful material for altering the rights in immovable properties for such breach. Moreover, even if it is established that there is a breach, and if the authority is to take action of forfeiture, then it should also be examined as to whether the breach was due to circumstances beyond the control of the holder of the property and, if yes, then in that case, harsh action of forfeiture of the property would not be required but the authority will have to consider the matter for imposition of forfeiture considering the gravity of the breach, including the period for such breach. If it is a matter resulting into action of forfeiture of land, then principles of natural justice to its full extent considering the facts and circumstances of the case will be required to be followed. Therefore, only entry in village Form No. 7/12 can not be said as sufficient material attracting the power of authority for forfeiture of the land to the State Government.

6. Therefore, in view of the aforesaid, reliance placed by the District Collector upon the statement of Talati-cum-Mantri as it was, can be said as not proper and it was required for the District Collector to give opportunity to the petitioner to

meet with the revenue record and statements of Talati-cum-Mantri and thereafter to consider the matter.

7. However, Mr.Desai, learned AGP submitted that it came on record that the land was cultivated by the petitioner through one another person namely a person belonging to the Koli Community of Village Hatab and, therefore, it can be said as breach of the condition. Mr.Desai, learned AGP also submitted that the land admeasuring 1 acre on the Eastern side of the road over which the stones were fixed, can be said as unutilised for agricultural purpose and, therefore, he submitted that it cannot be said that the Collector has committed error in finding that there is breach of the conditions.

8. In this regard, merely because the land is given for agricultural purpose to an Ex-army man as back as in the year 1966, it cannot be said that it is obligatory on the part of the concerned holder of the land to himself cultivate and he cannot engage any agricultural labourer or he cannot take assistance of anybody for the purpose of agricultural cultivation. If the said interpretation is made to the condition for cultivation, it would result into absurd situation. With the development of science it is always open to agriculturist to cultivate the land either by himself or through the person who are experts in cultivation and while doing so he can take assistance of the other agency also. In any event, the engagement of agricultural labourer was not prohibited even during the earlier days when the agriculturist had to undertake the activity of agriculture. With the advancement of science it is always not necessary for the agriculturist to cultivate through manual labour or bullock cart but he can get it cultivated through tractor or other scientific instrument, either himself or through labourers or through any agency which can be said as expert in undertaking such agricultural operations with a view to exploit maximum crop/income by the utilisation of the land for agricultural purpose. Under such circumstances, the aspect which may be required to be considered is as to whether such has been done at the instance of holder of the land and whether the holder of land can be said as principally responsible and whether holder of the land is finally to get the income or not. If the answer of the aforesaid is in affirmation, it cannot be said that the holder of the land has not cultivated or used the land for agriculture for himself or family members. In any case, there cannot be exhaustive list for the method or manner of such agricultural activities and thereby to earn more or to get maximum yield from the agricultural land and any attempt or activity in this regard by holder of the land cannot be said as breach of condition warranting forfeiture of land. I find it proper to leave the matter at that stage, without further examining the said aspects, more particularly because it has come on record by way of affidavit that the person who was engaged by the petitioner was engaged as agricultural labourer for cultivating the agricultural land. Therefore, I find that the conclusion arrived at by the District Collector that the land is not utilised for agricultural purpose by the petitioner is without properly considering the relevant aspects and there is jurisdictional error committed. The aforesaid is coupled with the aspect that the agricultural cultivation through

other person had transpired in the statement of Talati-cum-Mantri, for which no opportunity of hearing has been given to the petitioner before taking final decision of forfeiting the land in question.

9. So far as the small area of the land situated on Eastern side of the road which as per the authority has remained uncultivated is concerned, in view of the above referred decision of this Court in the case of "Kodaji v. State of Gujarat and Ors." (supra) it was obligatory for the District Collector to examine as to whether the land has remained uncultivable or is not utilised for cultivation for the reasons beyond the control of the holder of the land or not and it was also required for the District Collector to examine as to whether the penalty would be sufficient or the extreme step of forfeiture of the land is required. It appears that neither of the aspects is considered by the District Collector and merely on the basis of the statement of Talati-cum-Mantri, the order of forfeiture is passed. As against the same, the petitioner has submitted that, in his statement, he declared before the District Collector that because of the small portion, it could not be used for agricultural purpose for one-and-a-half years, but it was declared by the petitioner before the Collector that the stones would be removed and the land will be used for agricultural purpose. Therefore, considering the said aspects, it was not proper for the District Collector to pass an order for forfeiture of the whole of the land admeasuring 8 acres, merely because for the circumstances mentioned by the petitioner the land admeasuring 1 acre could not be used for agricultural purpose for one-and-a-half years. It was required from the District Collector to take lenient view allowing the petitioner to utilise the land for agricultural cultivation keeping in view that the land was allotted by the State Government to the petitioner in capacity as Ex-army man for earning his livelihood.

10. So far as the order passed by the State Government is concerned it has proceeded without there being material on record that the land is transferred for residential purpose and is given for cultivation on sharing basis. In view of the reasons recorded hereinabove, the observations made by the State Government in its order dated 27.11.2003 cannot be sustained in the eye of law.

11. In view of the aforesaid the order passed by the Collector dated 29.8.2003 and its confirmation thereof by the State Government as per the order dated 27.11.2003 (Annexure "C" and "G" respectively) are quashed and set aside. However, it is clarified that in case as per the Revenue authority it is found at any point of time that the petitioner has committed any breach of the conditions of allotment including for breach for not using the land for agricultural purpose or the land is transferred, it will be open to the Revenue Authority to take action in accordance with law.

12. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.