
(2016) 07 GUJ CK 0050

In the Gujarat High Court

Case No : Special Civil Application No. 8928 of 2000

Laxmiben

APPELLANT

Vs

Collector

RESPONDENT

Date of Decision : 21-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Citation : (2016) 4 GLR 3390

Hon'ble Judges : Ms. Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Mr. M.A. Kharadi, Advocate, for the Petitioner Nos. 1 to 1.3; Mr. Venugopal Patel, A.G.P, for the Respondent Nos. 1 to 3

Final Decision : Dismissed

Judgement

Ms. Bela M. Trivedi, J.(Oral) - The petitioner by way of present petition filed under Articles 226 and 227 of the Constitution of India has challenged the order dated 25.04.2004 passed by the Gujarat Revenue Tribunal (hereinafter referred to as the "GRT" for short) as also the order dated 30.07.1998 passed by the Respondent No.1-Collector and the order dated 27.05.1997 passed by the Respondent No.2 Mamlatdar & ALT under the provisions contained in the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as "the Act" for short).

2. The original petitioner Laxmiben, widow of Ranchhodbhai Haribhai having expired pending the petition, her heirs and legal representatives have been brought on record.

3. The short facts giving rise to the present petition are that the original petitioner had filled in the form showing her holdings of agricultural lands as on the specified date i.e., on 01.04.1976 under the provisions contained in the said Act. The Respondent No.2-Mamlatdar and ALT after considering the evidence on record passed the order on 31.08.1981 declaring the petitioner's land ad-

measuring 15 acres and 30 gunthas in "Jirayat" terms as "surplus land". The said order having been challenged before the Deputy Collector by the petitioner, the case was remanded to the Mamlatdar and ALT, Mangrol vide the order dated 26.02.1982. However, the said order having been taken in revision by the Collector and then by the GRT, the GRT had remanded the case to the Mamlatdar-ALT Respondent No.2 to decide the case afresh after obtaining the Canal certificate showing the position of land as on 01.04.1976.

4. After the remand of the case, the Respondent No.2 had passed the order on 27.05.1997 (Annexure-A) declaring 27 acres and 9 gunthas in Jirayat terms as surplus land. The said order was challenged by the petitioner before the Deputy Collector by filing appeal being Ceiling Appeal No.8/1997. The Deputy Collector dismissed the said appeal vide the order dated 30.07.1998 (Annexure-B). The aggrieved petitioner had preferred revision application before the GRT, and the GRT vide the impugned order dated 25.04.2000 (Annexure-C) dismissed the said revision application. Hence, the present petition.

5. The learned Advocate Shri M.A. Kharadi relying upon the decision of this Court in the case of Amratlal Bhikhabhai Patel v. State of Gujarat reported in 1994 (1) GLR 637, submitted that the petitioner was required to be given an opportunity of hearing by the concerned authority while making inquiry about the nature of the land and before issuing the Canal certificate. He further submitted that classification of land made by the Mamlatdar-ALT was not proper, while considering the form of the petitioner. According to him the said order of Mamlatdar has been mechanically confirmed by the Collector and the GRT, without appreciating the evidence on the record and therefore, all the three impugned orders are required to be set aside.

6. However, learned AGP Mr. Venugopal Patel for the respondents submitted that there being concurrent findings of facts recorded by the three authorities, this Court exercising its supervisory jurisdiction under Article 227 of the Constitution of India may not interfere with the same, in absence of gross illegality shown in the said orders.

7. In the instant case, it appears that the matter had travelled twice up to the GRT before the GRT passed the impugned order. Though learned Advocate Shri Kharadi for the petitioner has sought to submit that the petitioner was not heard by the concerned authority before issuing the Canal certificate, no such contention appears to have been raised by the petitioner before any of the respondent authorities. Such contention has also not been raised in the memo of the present petition. On the contrary, it appears that after remand of the matter by the GRT in the first round of litigation, the Canal Officer was thoroughly cross-examined by the petitioner on the certificate issued by him but no such issue was raised. Hence, the decision in the case of Amratlal Bhikhabhai Patel (Supra) relied upon by the learned Counsel Shri Kharadi for the petitioner is not applicable to the facts of the present case.

8. So far as the classification of the lands made by the authority while issuing Canal certificate is concerned, learned Advocate Shri Kharadi had sought to argue that the said classification was not made in consonance with the provisions contained in the said Act. The said submission also cannot be accepted. In this regard, it is pertinent to note that as per the Explanation-II to Section 2(6) of the said Act, the certificate issued by the competent officer in respect of the land whether it is perennially irrigated land or seasonally irrigated land, is the conclusive evidence in that behalf. The officer of the Irrigation Department was also cross-examined by the petitioner in this regard. The Respondent No.2 after elaborately appreciating the said evidence of officer of the Irrigation Department, had passed the impugned order, which has been confirmed by the Deputy Collector and the GRT in their respective orders. There being concurrent findings of facts recorded by the three authorities, this Court is not inclined to interfere with the same while exercising its supervisory jurisdiction under article 227 of the Constitution of India.

9. In that view of the matter, the petition being devoid of merits, deserves to be dismissed and is accordingly dismissed. Rule is discharged.

10. At this juncture, learned Advocate Shri Kharadi for the petitioner requests to continue the interim order passed by this Court for a period of 8 weeks to enable the petitioners to challenge this order before the higher forum. The request is opposed by the learned AGP Shri Patel. Considering the facts and circumstances of the case, the interim order is directed to be continued for a period of 8 weeks.