

(2000) 10 GUJ CK 0080

In the Gujarat High Court

Case No : Special Civil Application No. 4453 of 1991

Madarsing Manaji Rajput

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-10-2000

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 203

Constitution of India, 1950 — Article 227

Gujarat Panchayats Act, 1961 — Section 122, 142, 2(5), 207, 305

Citation : (2001) 2 GLR 1824

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Kusum M. Shah, for the Appellant; I.M. Pandya, Astt. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

H.K. Rathod, J.—Heard Ms, Kusum M. Shah, learned Advocate appearing on behalf of the petitioner and Mr. I. M. Pandya, learned A.G.P. appearing on behalf of the respondents.

2. The present petition, wherein ad interim relief has been granted by this Court on 9th July, 1991 and Rule was issued by this Court on 19th August, 1991 and ad-interim relief has been directed to remain continued.

3. In the present petition, the petitioner has challenged the order passed by the Deputy Secretary, Revenue Department (Appeals), Ahmedabad dated 29th November, 1990 - Annexure-H to the petition. The brief facts of the present case are as under :-

The petitioner had put up a shed (chhapru) on the land admeasuring 15"x15" situated near S. T. Bus Stand and had started a tea stall. The land was a village site (Gamtal) land which had vested in the Gram Panchayat, Vadgam. The petitioner had made application dated 6th January, 1986 - Annexure-A to the

District Development Officer, Palanpur requesting that aforesaid encroachment be regularised and he may be granted the land by charging occupancy price. Pursuant to the aforesaid application, the Gram Panchayat, Vadgam had passed resolution recommending to the District Development Officer to regularise the aforesaid encroachment at that relevant time, the District Development Officer has not taken any decision in respect of the application submitted by the petitioner. The petitioner was not aware that who was the competent authority for regularising aforesaid encroachment, therefore, the petitioner has moved the Mamlatdar, Vadgam and the Collector, Banaskantha requesting that the aforesaid encroachment be regularised. By order dated 1st January, 1987 the Mamlatdar had informed the petitioner that as the land was not gauchar land, this office had nothing to do in the matter and the petitioner should approach the competent authority. Against the said order of the Mamlatdar, the petitioner has approached to the Collector by way of Appeal u/s 203 of the Bombay Land Revenue Code. By letter dated 3rd March, 1987, the appeal was returned to the petitioner and the petitioner was informed that he should claim "in a competent Court" or alternatively prefer an appeal to the Deputy Collector. Thereafter, the petitioner had approached the Deputy Collector by way of appeal which came to be rejected by order dated 28th April, 1987. Against the said order of the Deputy Collector, the petitioner has approached the Collector by way of appeal. During the pendency of this appeal, realizing the fact that the competent authority for regularising such encroachment was the District Development Officer, and therefore, the petitioner has moved the authority under the Gujarat Panchayat and ultimately, by order dated 5th July, 1989, the District Development Officer regularised the encroachment and granted the land to the petitioner for residential purpose. Pursuant to the aforesaid order passed by the District Development Officer dated 5th July, 1989, the petitioner had applied for permission and obtained permission for construction of residential house from the Deputy Executive Engineer, Palanpur and the Gram Panchayat, Vadgam after obtaining such permission, some time in November, 1989, the petitioner had constructed a residential house consisting of three rooms and has invested expenditure about Rs. 40,000/- and the land was granted in favour of the petitioner and has submitted application to the Collector seeking to withdraw the appeal pending before him. However, the Collector has not allowed withdrawal of the appeal but passed order dismissing the appeal on 26th July, 1989 though according to the petitioner, the copy of the said order has not been received by the petitioner.

4. The petitioner has challenged the order passed by the Deputy Secretary (Appeals), Ahmedabad dated 29th November, 1990 in the present petition on the ground that the said authority has no jurisdiction or power to set aside the order of the District Development Officer dated 5th July, 1989 wherein, order of regularization of encroachment of the petitioner has been passed. Learned advocate Ms. Shah has submitted that said authority have no power and jurisdiction because ultimately the land in question belongs to the Panchayat,

and therefore, the District Development Officer is only duly empowered authority to regularise the encroachment and against the order of the District Development Officer, the Deputy Secretary (Appeals), Revenue Department have no jurisdiction, and therefore, show cause notice issued by the Deputy Secretary dated 30th April, 1990 for exercising the revisional powers upon the order passed by the District Development Officer dated 5th July, 1989 is without jurisdiction and subsequently the order dated 29th November, 1990 wherein, the order of the District Development Officer, Banaskantha dated 5th July, 1989 has been cancelled is without jurisdiction. Ms. Shah, learned Advocate for the petitioner has also pointed out that Section 98 of Gujarat Panchayats Act, 1961 provides that subject to the provisions of sub-section (2) no lease shall or other transfer of any immovable property vesting in or acquired by a Panchayat shall be valid unless such lease or sell or other transfer has been made with the previous sanction of the competent authority. It is further provided that in case of a lease of immovable property other than the property vesting in the Panchayat u/s 96, no such previous sanction shall be necessary, if the period of lease does not exceed three years. Ms. Shah, learned Advocate has also submitted that the competent authority has been defined u/s 2(5) of the Act and accordingly, such Government Officer, Panchayat or authority as the State Government may by notification in the Official Gazette appoint to perform the function of the competent authority under such provisions of this Act and in respect of such Panchayat as may be specified in the said notification. For the purpose of sub-clause 5, a Government Officer includes the Government Officer posted under the Panchayat under Sees. 122, 142 or 207 of the Act. According to Ms. Shah by notification dated 1st June, 1972, the Government of Gujarat appointed the District Development Officer as the competent authority for Gram Panchayat and Nagar Palika u/s 98 of the Panchayat Act. Therefore, according to the submissions made by Ms. Shah, learned Advocate for the petitioner, the District Development Officer is the competent authority who can pass the order to regularise the encroachment in respect of the land vested in Panchayat, and therefore, the District Development Officer has rightly passed order dated 5th July, 1989 regularising the encroachment of the petitioner on such conditions. Ms. Shah, learned Advocate for the petitioner has also submitted that in view of provisions under the Panchayat Act, u/s 305 which provides that the State Government may call for proceedings for and examine the record and proceedings of any Panchayat or of any Committee thereof or of any Act of the Officer for the purpose of satisfying itself as to the legality or propriety of the order passed and revised and / or modified the order as it shall deem just. Ms. Shah has submitted that u/s 66 of the Act, State Government by virtue of the delegation in that behalf the Development Commissioner have powers to call for and examine the record and proceedings of any Panchayat and can satisfy themselves as to legality and propriety of any order passed and may modify any order as they deem just. Even as per the decision reported in 4 GLT 3. Therefore, submission of Ms. Shah is that if the order dated 5th July, 1989 passed by the District Development Officer if it is required to be taken into revision then also,

the Development Commissioner is empowered under the provisions of Section 305 of the Panchayat Act, and therefore, the Deputy Secretary (Appeals), Revenue Department have no powers and jurisdiction against the order passed by the District Development Officer under the Panchayat Act. Therefore, according to submission of Ms. Shah, the Deputy Secretary (Appeals), Revenue Department has no jurisdiction and powers, and therefore, that order is illegal and bad and the same is required to be quashed and set aside.

5. As against the aforesaid submissions of Ms. Shah, learned A.G.P. Mr. Pandya submitted that the Deputy Secretary (Appeals), Revenue Department has rightly passed the order as the petitioner has violated the condition No. 6 of the order dated 5th July, 1989 passed by the District Development Officer. The condition No. 6 which imposed a restriction upon the petitioner and accordingly not to use the land for commercial purpose or business purpose but it should have been used for residential purpose. Therefore, according to Mr. Pandya, learned A.G.P., the powers have been rightly exercised by the authority. Mr. Pandya, learned A.G.P. has also submitted that the present petition is filed by the petitioner under Art. 227 of the Constitution, and therefore, reasons given by the Deputy Secretary (Appeals) has rightly appreciated the breach of condition, and therefore, such persons is not entitled to any protection when Condition No. 6 of regularising the encroachment has been clearly violated by the petitioner. Therefore, according to him, the present petition is required to be dismissed.

6. I have considered the submissions of the learned Advocates for the parties. The basic challenge of the petitioner is whether the order passed by the Deputy Secretary (Appeals) dated 29th November, 1990 is within jurisdiction or not, is required to be examined. I have also considered the relevant provisions of Gujarat Panchayats Act, 1961. The District Development Officer a competent authority under the provisions of Section 98 and is empowered to regularise the encroachment of Panchayat land under the provisions of the Gujarat Panchayats Act. The land in question as encroached by the petitioner belongs to the Panchayat land and for that there is no dispute between the parties. Even considering the letter by Mamlatdar, it is also specifically mentioned that the land belongs to the Panchayat. Once the District Development Officer while exercising the powers under provisions of the Panchayats Act, 1961 has passed the order on 5th July, 1989 in favour of the petitioner on such conditions regularising the encroachment of the petitioner, even if any breach of such conditions of the order in question, in such eventuality, the higher authority have powers to take into revision of the order passed by the District Development Officer dated 5th July, 1989. If order of District Development Officer dated 5th July, 1989 is contrary to the Government Policy then the State Government have powers to take into revision while exercising the powers u/s 305 of the Gujarat Panchayats Act, 1961. Considering the relevant provisions of sub-section (5) of Section 2, the competent authority by notification has been specified by the State Government is the District Development Officer as well as the higher authority is the Development Commissioner. Therefore, even if anything is contrary to the policy

of the State Government or the lower authority has committed any error then the State Government is empowered to call for the record and proceedings of such order while exercising the powers u/s 305 of the Gujarat Panchayats Act and such power is with the Development Commissioner, and therefore, considering this aspect and relevant provisions of the Gujarat Panchayats Act, according to my opinion, the Deputy Secretary (Appeals), Revenue Department have no jurisdiction and powers to set aside the order passed by the District Development Officer dated 5th July, 1989 because the matter is not relating to the Bombay Land Revenue Code since initially the powers have been exercised by the District Development Officer under the provisions of the Gujarat Panchayats Act, 1961 and under the provisions of the Gujarat Panchayats Act, the Deputy Secretary (Appeals), Revenue Department has no jurisdiction to set aside any order of authority which has been acted under the provisions of Gujarat Panchayats Act, 1961. Therefore, order passed by the Deputy Secretary (Appeals) dated 29th November, 1990 Annexure-H impugned in the present petition is required to be quashed and set aside and the same is hereby quashed and set aside accordingly. The present petition stands allowed accordingly. Rule is made absolute with no order as to costs.

7. Petition allowed.