

(1993) 10 GUJ CK 0012
In the Gujarat High Court

Maganlal Harjivandas Patel	Vs	APPELLANT
State of Gujarat and Another		RESPONDENT

Date of Decision : 05-10-1993

Acts Referred:

Constitution of India, 1950 — Article 227
Gujarat Agricultural Lands Ceiling Act, 1960 — Section 18, 20, 36, 37, 38

Citation : (1994) 1 GLR 114

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The order passed by the Mamlatdar and Agricultural Lands Tribunal (Ceiling) at Bharuch ("the first authority" for convenience) on 24th August, 1983 in Ceiling Case No. 7 of 1983 as affirmed in appeal by the order passed by the Assistant Collector at Bharuch on 27th February, 1984 in Ceiling Appeal No. 2 of 1984 as further substantially affirmed in revision by the Gujarat Revenue Tribunal ("the Tribunal" for convenience) by its decision rendered on 9th October, 1985 in Revision Application No. TEN. B.A. 700 of 1984 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, the first authority declared the petitioner's holding to be in excess of the ceiling area by 43 acres 36 gunthas and in revision the Tribunal found the petitioner's holding to be in excess of the ceiling area by 41 acres 23 gunthas.

2. The facts giving rise to this petition move in a narrow compass. The petitioner was found to be holding certain parcels of land in all admeasuring 100 acres 15 gunthas in village Alva, taluka Hansot, district Bharuch. The ceiling area fixed under the Gujarat Agricultural Lands Ceiling Act, 1960 ("the Act" for brief) for that area is 42 acres. The necessary inquiry was thereupon undertaken by the first authority u/s 20 of the Act. It appears that the decision taken by the first authority, on conclusion of the inquiry, was challenged before the higher forum and the matter was remanded to the first authority for his fresh decision according to law. Thereupon it came to be registered as Ceiling Remand Case No.

7 of 1983. During the course of inquiry, it was found that the petitioner had one major son and he was holding certain parcels of land in all admeasuring 27 acres 21 gunthas situated in villages Alva and Uttaraj in taluka Hansot, district Bharuch. In that view of the matter, the first authority found the total holding of the petitioner to be to the tune of 127 acres 36 gunthas. Since the petitioner had one major son in the family, one more unit was given for the purposes of the ceiling area under the Act. As pointed out hereinabove, the ceiling area for one unit under the Act fixed for that area is 42 acres. The petitioner was found entitled to hold 84 acres of land in all together with one unit for his major son. The petitioner's holding was thus found to be in excess of the ceiling area by 43 acres 36 gunthas. The first authority by his order passed on 24th August, 1983 in Ceiling Remand Case No. 7 of 1983 declared so and carved out some 43 acres 31 gunthas of land for declaration as surplus and vesting in the State Government free from all encumbrances. Its copy is at Annexure "A" to this petition. The aggrieved petitioner carried the matter in appeal. His appeal came to be registered as Ceiling Appeal No. 2 of 1983. By his order passed on 27th February, 1984 in the aforesaid appeal, the Assistant Collector at Bharuch dismissed it. Its copy is at Annexure "B" to this petition. The petitioner thereupon invoked the revisional jurisdiction of the Tribunal by means of his Revision Application No. TEN. B. A. 700 of 1984. It may be mentioned at this stage that no revision was preferred by or on behalf of respondent No. 1 questioning the correctness of the appellate order at Annexure "B" to this petition. By its decision rendered on 9th October, 1985 in the aforesaid revisional application, the Tribunal came to the conclusion that the petitioner was not entitled to have a separate unit for his major son as the latter was holding lands separately independently of the former. The Tribunal however accepted the petitioner's case to the effect that his family consisted of more than 7 members including 2 minor sons and for each minor son the petitioner would be entitled to the 1/5th of the ceiling area to be added to his holding. In that view of the matter, the Tribunal declared the petitioner's holding to be in excess of the ceiling area by 41 acres 23 gunthas as against declaration by both the lower authorities to the tune of 43 acres 37 gunthas. A copy of the aforesaid decision of the Tribunal is at Annexure "C" to this petition. The aggrieved petitioner has thereupon invoked the extra-ordinary jurisdiction of this Court under Article 227 of the Constitution of India by means of this petition for questioning the correctness of the order at Annexure "A" to this petition as affirmed in appeal by the appellate order at Annexure "B" to this petition as substantially affirmed in revision by the decision at Annexure "C" to this petition.

3. There is substance in the submission urged before me by Shri Vyas for the petitioner to the effect that the Tribunal could not have upset in part the order at Annexure "A" to this petition as affirmed in appeal by the appellate order at Annexure "B" to this petition to the extent the petitioner was permitted to hold his lands to the extent of the two units of the ceiling area in absence of any challenge thereto by or on behalf of respondent No. 1 herein. According to Shri

Vyas for the petitioner, the Tribunal is not empowered to exercise any suo motu revisional powers u/s 38 of the Act against any order of the Collector passed either u/s 36 or 37 thereof. Shri D.N. Patel for the respondents has, on the other hand, submitted that once the revisional jurisdiction of the Tribunal is invoked, the entire matter is at large before it and it would be open to the Tribunal to examine the correctness or legality of the order under challenge before it. In that view of the matter, runs the submission of Shri Patel for the respondents, the impugned decision at Annexure "C" to this petition calls for no interference by this Court in this petition.

4. In order to appreciate the rival submissions urged before me, it would be quite proper to look at the relevant provisions contained in Section 38 of the Act. It reads:

Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1957, an application for revision may be made to the Gujarat Revenue Tribunal constituted under the said Act against any order of the Collector on the following grounds only-

- (a) that the order of the Collector was contrary to law;
- (b) that the Collector failed to determine some material issue of law; or
- (c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

(2) In deciding applications under this Section the Gujarat Revenue Tribunal shall follow the procedure which has been prescribed by rules and regulations made under the Bombay Revenue Tribunal Act, 1957.

A bare perusal of the aforesaid statutory provision makes it clear that an application for revision has to be made to the Gujarat Revenue Tribunal for questioning the correctness of any order of the Collector on certain specified grounds. It thus becomes clear that the Tribunal would get jurisdiction to exercise its revisional powers only when an application is made against any order of the Collector and not otherwise. No order of the Collector can ever be examined by the Tribunal in exercise of its revisional powers u/s 38 of the Act without any application being made challenging its correctness or legality.

5. The aforesaid view of mine finds support from the wordings of Section 37 of the Act. That provision confers suo motu revisional powers on the Collector against any order passed by the first authority thereunder. The limitation on exercise of such suo motu revisional powers is that it should be exercised not after the expiry of one year from the date of such order and no such order need be upset in any manner unless an opportunity of hearing is given to the interested parties. In contrast Section 38 does not refer to any suo motu powers. It contemplates an application to be made for the purpose of invocation of the revisional jurisdiction of the Tribunal. Besides, Section 39 prescribes the period of limitation of 60 days for the purpose. The cumulative effect of Sections 38 and

39 of the Act in contrast with Section 37 thereof would be that an application for invocation of the revisional jurisdiction of the Tribunal is a must. Even at the cost of repetition, I reiterate that no revisional powers can be exercised by the Tribunal against any order of the Collector under the Act in absence of any application for revision thereof made to it.

6. In the instant case, as pointed out hereinabove, the first authority, by his order at Annexure "A" to this petition, held the petitioner to be entitled to hold the lands to the extent of the two units of the ceiling area, one for himself and the other for his major son after clubbing the holding of the father and the son together. The order at Annexure "A" to this petition has come to be upheld in appeal by the appellate Court at Annexure "B" to this petition. It is not in dispute that no revisional application was made by or on behalf of respondent No. 1 to the Tribunal to challenge the order passed by the first authority at Annexure "A" to this petition and affirmed in appeal by the appellate order at Annexure "B" to this petition on the ground that the second unit of the ceiling area for the petitioner's major son could not have been granted as the major son was holding his lands separately and independently of his father. In absence of any such revisional application, the Tribunal could not have interfered with the order at Annexure "A" to this petition as affirmed by the appellate order at Annexure "B" to this petition to the extent that the petitioner was held entitled to hold his lands to the tune of the two units of the ceiling area. It appears that the Tribunal has chosen to exercise its suo motu revisional powers for upsetting that part of the order at Annexure "A" to this petition as affirmed in appeal by the appellate order at Annexure "B" to this petition. The Tribunal is thus found to have exercised the jurisdiction not vested in it by the law.

7. The Tribunal has rightly added the one-fifth of the ceiling area for each of the two minor sons to the petitioner's holding for the purposes of the Act. As pointed out hereinabove, the clubbed holding of the petitioner and his major son was to the tune of 127 acres 36 gunthas. The petitioner and his major son would be entitled to one unit of the ceiling area each for the purposes of the Act. The ceiling area fixed under the Act for that local area is 42 acres. The petitioner and his major son would therefore be entitled to hold between them the total lands to the tune of 84 acres. Since the petitioner's family consisted of 7 members including 2 minor sons, the Tribunal was right in adding the one-fifth of the ceiling area for each minor son to the petitioner's holding. The one-fifth of the ceiling area of 42 acres is 8 acres 16 gunthas. The two-fifths thereof would be 16 acres 32 gunthas. Adding that area to 84 acres for the petitioner and his major son, the total permissible holding for the petitioner would be 100 acres and 32 gunthas. The petitioner and his major son would therefore be entitled to hold lands in all admeasuring 100 acres 32 gunthas out of the total holding of 127 acres 36 gunthas. That would leave 27 acres 4 gunthas of lands to be surplus.

7.1. In view of my aforesaid discussion, I am of the opinion that the order at Annexure "A" to this petition as affirmed in appeal by the appellate order at

Annexure "B" to this petition as substantially affirmed in revision by the decision at Annexure "C" to this petition cannot be sustained in law in toto. It requires to be quashed and set aside. The matter is required to be remanded to the first authority for giving the choice to the petitioner for handing over the surplus lands to the tune of 27 acres 4 gunthas.

8. In the result, this petition is accepted. The order passed by the Mamlatdar and Agricultural Lands Tribunal (Ceiling) at Bharuch on 24th August, 1983 in Ceiling Case No. 7 of 1983 at Annexure "A" to this petition as affirmed in appeal by the order passed by the Assistant Collector at Bharuch on 27th February, 1984 in Ceiling Appeal No. 2 of 1983 as substantially affirmed in revision by the decision of the Gujarat Revenue Tribunal at Ahmedabad rendered on 9th October, 1985 in Revision Application No. TEN. B.A. 700 of 1984 is quashed and set aside. It is hereby declared that the petitioner's holding is in excess of the ceiling area by 27 acres 4 gunthas. The matter will have to be remanded to the Mamlatdar and Agricultural Lands Tribunal (Ceiling) at Bharuch for his giving an option to the petitioner for surrendering his surplus lands to the extent of 27 acres 4 gunthas keeping in mind the provisions contained in Section 18 of the Act. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.