

(2002) 09 GUJ CK 0032

In the Gujarat High Court

Case No : Special Civil Application No. 11490 of 1994

Mahendrasinh Ranmalsinh and Another

APPELLANT

Vs

J.R. Patel and Others

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 76, 76(1)

Citation : (2003) 23 GLH 126 : (2003) 1 GLR 89

Hon'ble Judges : Akshay H. Mehta, J

Bench : Single Bench

Advocate : Zankhana A. Bhatt and Trusha K. Patel, for A.J. Patel, for the Appellant; D.M. Bharati, for Respondent Nos. 1 to 3 and 6, for the Respondent

Final Decision : Allowed

Judgement

Akshay H. Mehta, J.—This petition is essentially under Article 227 of the Constitution of India challenging the judgment and order passed by the Gujarat Revenue Tribunal ("the Tribunal" for short) dated 20th September, 1994 in Revision Application No. TEN-B.A. 9/1994. Vide the said judgment the Tribunal has allowed the Revision Application of the present respondent and has set aside the judgment of the Deputy Collector, (Appeals), District Kheda at Kheda.

1.1. According to the petitioners, they were inducted on the land bearing Survey No. 254 of village Vadod in Taluka Anand, District Kheda admeasuring 0.24 gunthas in the year 1972 and since then they have been cultivating the said land. It is their say that their names were entered into the revenue records maintained by the Revenue authorities in the year 1979-80. It is further stated by the petitioners that proceedings u/s 320 of the Bombay Tenancy & Agricultural Lands Act, 1948 ("the Act" for short) were initiated in view of the application made by the petitioners requesting for determining the purchase price of the said land. The proceedings came to be numbered as Tenancy Case No. 26 of 1991 before the Mamlatdar and Agricultural Land Tribunal at Anand. During the course of hearing petitioners produced the relevant documentary

evidence in support of their say. This evidence included extract of the village Form No. 7/12, affidavits of two ladies namely Savitaben, widow of Arvindbhai and Pushpaben Nathubhai. Over and above, the petitioners also examined two witnesses in support of their case. It is the case of the petitioners that at the end of the said proceedings the Mamlatdar and A.L.T. came to the conclusion vide judgment dated March, 1993 that the petitioners were not the tenants of the land in dispute i.e. Survey No. 254 and as a result thereof he dropped the proceedings u/s 32O read with Section 32G of the Act.

1.2. The petitioners on being aggrieved by the decision of the Mamlatdar and A.L.T. preferred appeal under the provisions of Section 74 of the Act before the Deputy Collector (Appeals) at Kheda. In the appeal, the Deputy Collector re-appreciated the entire evidence on record and came to the conclusion that the evidence adequately proved that the petitioners were in possession of the land in dispute and they were cultivating the same. He also came to the conclusion that the finding given by the Mamlatdar that considering the fact that the petitioners would be aged 13 years in the year 1973 and at that age he could not be cultivating the land in dispute, was not proper as according to the appellate Court even when at that age i.e. round about 12 years a person could engage himself in agricultural operations. The Deputy Collector also came to the conclusion that the petitioners were having license to grow tobacco crop on the disputed land since the year 1974 issued by the competent authority under the Excise Act which shows that they were in possession of the land atleast since 1974. He also did not agree with the conclusion that the finding of the Mamlatdar for the land in dispute was fragmented under the provisions of Fragmentation Act on the ground that it was irrigated land and by virtue of the order issued by the Government, such land is not covered under the Fragmentation Act, and it does not come in the way of the tenant to purchase such land. The Deputy Collector also held that the findings of the Mamlatdar were erroneous because he had not taken into consideration that Sections 32M, 32N, and also Sections 32P and 32Q and 32R would apply to the proceedings u/s 32O of the Act also. The Deputy Collector, therefore, by judgment dated 7th October, 1993 allowed the appeal and set aside the aforesaid order of the Mamlatdar and A.L.T.

1.3. Against the judgment of the Deputy Collector, the present respondent preferred the aforesaid Revision Application before the Tribunal at Ahmedabad. As stated above, it set aside the judgment of the Deputy Collector. Hence, this petition.

2. Ms. Zankhana A. Bhatt, learned Counsel appearing for Mr. A. J. Patel for the petitioners has submitted before me that the judgment and order of the Tribunal are erroneous and they are required to be quashed and set aside. She has submitted that the Tribunal has not properly appreciated the provisions of the Act and that has led the Tribunal to arriving at erroneous conclusions. She has further assailed the judgment of the Tribunal on the ground that under the Act even if concerned person does not make the application to the Mamlatdar for

expressing him his intention to purchase the land and to determine the purchase price the Mamlatdar and A.L.T. is required to suo motu carry out such exercise and determine the purchase price. In fact, according to her in the instant case, a letter has been addressed by the petitioner for this purpose and the same has been treated as application under the Act. The finding given by the Tribunal is that no such application has been made, and therefore, it is not in consonance with the evidence produced on record. She has also submitted that the Tribunal, while deciding the Revision application has transgressed its limits and it has embarked upon the fact-finding exercise by appreciating the entire evidence afresh which is not permissible under the provisions of Section 76 of the Act. She has submitted that while exercising the revisional jurisdiction the scope of the Tribunal is very limited and except for the grounds mentioned in that Section, the Tribunal cannot upset the findings given by the authorities below. As second limb of this argument, she has submitted that before entering upon the fact-finding exercise the Tribunal was required to come to the conclusion that there was an error committed by the appellate Court in appreciating the important evidence which had resulted into miscarriage of justice. Since, no such finding has been given by the Tribunal, it was not permitted under the law to base its judgment on the questions of fact. In support of her contentions, she has relied on several decisions of the Apex Court as well as this Court which will be referred to in due course.

2.1 Mr. Bharti submits that there is transaction of mortgage and the relation between the parties are that of mortgagor and mortgagee. In support of that the petitioners are trying to take this advantage of the situation and thereby to wrongly deprive all the respondents of their right to have the land.

3. I may first consider the last submission of Ms. Bhatt which is based on the provisions of Section 76 of the Act. Section 76(1) of the Act reads as under :-

"Section 76(1) :-

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 [except an order u/s 32P or an order in appeal against an order under Sub-section (4) of Section 32G 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 (or that there has been failure to take evidence or error in appreciating important evidence) which has resulted in the miscarriage or justice."

3.1. If the judgment of the Tribunal is perused it amply reveals that it is mainly based on the re-appreciation of the evidence produced by the petitioners, oral as well as documentary, and the Tribunal has thereafter, come to the conclusion that

the judgment of the Deputy Collector is erroneous and it is required to be set aside. Considering the provisions of Section 76(1) of the Act, the Tribunal is entitled to interfere with the judgment of the appellate authority only under three circumstances namely that when the order of the Collector is contrary to law or when the Collector has failed to determine the same material issued on law or that there was substantial defect in following the procedure or there was failure to take evidence or committed error in appreciating important evidence which had resulted into miscarriage of justice. In the entire judgment of the Tribunal, it is nowhere stated that the Tribunal was required to interfere with the order of the Collector on account of any of the grounds that have been stated in Section 76, Sub-section (1) of the Act. The Tribunal's judgment does not indicate that the order of the Deputy Collector was contrary to any particular law nor does it indicate that there was any failure on the part of the Deputy Collector to follow the procedure prescribed under the Act properly or that there was failure on the part of the Deputy Collector to take necessary evidence on record or that the Deputy Collector committed error in appreciating important evidence. Moreover, as stated above, the entire judgment of the Tribunal is based upon re-appreciation of the factual data appearing in the proceedings. Obviously, such exercise was not permissible unless the Tribunal had first come to the conclusion that there was error committed by the Deputy Collector in appreciating the important evidence, and secondly such want of appreciation had resulted into miscarriage of justice. If no such findings are given by the Tribunal its judgment and order based on the re-appreciation of the evidence would be against the provisions of Section 76(1) of the Act.

3.2. When no such clear finding has been given in this case by the Tribunal, I have considered the judgments of the Tribunal as well as of the Deputy Collector keeping in view provisions of Section 76(1) of the Act. I find that the appreciation of evidence by the Deputy Collector was proper and he was totally justified in drawing the conclusions which have been set aside by the Tribunal. By no stretch of imagination his appreciation of evidence can be said to be erroneous. The judgment of the Deputy Collector shows that he has considered the evidence produced by the parties before the Mamlatdar and A.L.T. in detail and after examining the pros and cons thereof he has come to the conclusion that the petitioners were the tenants of the land in dispute as claimed by them and the Mamlatdar and A.L.T. was in error in dropping the proceedings u/s 320 of the Act, on the ground that the petitioners had failed to establish that they were the tenants of Survey No. 254. The judgment of the Deputy Collector clearly shows that the extract of the revenue records produced by the petitioners and in particular the village Form No. 7/12, which is in respect of Survey No. 254 shows that their names appeared in the said record since 1978-79. This finding cannot be said to be erroneous as these documents adequately support the say of the petitioners. Further the Deputy Collector has also taken into consideration the accounts produced by the petitioners in respect of Survey No. 254 and has held that since the same has not been challenged by the other side they were

required to be accepted. He has also taken into consideration the cess paid by the petitioners and their deceased father and he has come to the conclusion that it was in respect of the land in question and that fact clearly establishes that the petitioners and their ancestors were cultivating this land as tenants. While considering the question regarding the payment of cess, the Deputy Collector has also taken note of the fact that such documentary evidence has not been properly analysed or appreciated by the Mamlatdar and A.L.T. The Deputy Collector has further found that though on the tiller's day the petitioners may not be cultivating the land in question, were cultivating the said land subsequently, they were carrying on agricultural operations on this land which fact was adequately supported by the contemporary record. Over and above this, he has also taken into account the oral evidence of the witnesses.

3.3. If these are the facts and if the conclusions drawn by the Deputy Collector are found to be in order there was no reason for the Tribunal to re-appreciate the evidence on record and upset the conclusions drawn by the Deputy Collector. As stated above, the findings given by the Deputy Collector are absolutely in consonance with the facts brought on the record of the proceedings by the parties and they are such that any reasonable person upon appreciating the evidence would come to the said conclusion. Therefore, there is no error committed by the Deputy Collector in appreciating the evidence much less important evidence on record which has resulted into miscarriage of justice. Ms. Bhatt has rightly submitted that from the judgment of the Tribunal it appears that the Tribunal has first come to the conclusion that the petitioners are not the tenants, and thereafter, in light of the pre-determined conclusion, it has re-appreciated afresh the entire evidence. It is a well settled principle of law that while exercising the revisional jurisdiction the authority should not act as if it was sitting in appeal. It is also a settled principle of law that such authority, while sitting in appeal, might have reached to different conclusion but that is not the criteria in upsetting the appellate forum's judgment while exercising the revisional jurisdiction. The Tribunal has exactly done what law prohibits it to do.

3.4. At this juncture, the decisions cited by Ms. Bhatt in support of her contentions can be referred. She has placed reliance on the decisions of the Apex Court rendered in the case of Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by Lrs. and Another, . While considering the scope of Section 76 of the Act, the Apex Court has held as under :-

"There is no abstract principle that whatever will appear in the record of rights will be presumed to be correct when it is shown by evidence that the entries are not correct."

3.4.1. The second decision which has been relied on by Ms. Bhatt is that of the Apex Court rendered in the case of Maruti Bala Raut Vs. Dashrath Babu Wathare and Others, . The Apex Court has held as under :-

"On a reference u/s 70(b) of the Act, the Mamlatdar came to the conclusion that

one M was tenant in possession on the particular date, but his order was reversed in appeal by the Special Deputy Collector. There was elaborate discussion of the evidence in the decision of the Special Deputy Collector. The Revenue Tribunal in revision, however, went into the evidence and after discussing the evidence set aside the order of the appellate Court.

Held that the Tribunal acted in complete disregard of its power and proceeded as though it were either dealing with the matter as a Court of first instance or as an appellate Court. While the Special Deputy Collector dealt with the Mamlatdar's order as an appellate authority, and was therefore, entitled to appreciate the evidence and come to his own conclusion, the Tribunal while exercising its powers u/s 76 had no such power. Decision of Bombay High Court affirmed."

3.4.2. She has also cited decisions of this Court. The first of which is reported in 1976 GLR 689 rendered in the case of Raj Madhavsang v. Ranchhodbhai. It has held as under :

"The jurisdiction of the Revenue Tribunal under Sub-section (1) of Section 76 of the Bombay Tenancy Act is inter alia confined to the correction of an error in appreciating important evidence which has resulted in the miscarriage of justice. Correction of an error in appreciating important evidence which has resulted in the miscarriage of justice cannot be equated with the power to re-appreciate the entire evidence."

3.4.3. In the case of Balchandra Jambusaria v. Ramlubha Nanjibhai rendered in Special Civil Application No. 1579 of 1975 dated 20th November, 1975. The learned single Judge of this Court (Coram : N. H. Bhatt, J.) has observed as under :-

"To me, it appears that the Revenue Tribunal has exceeded its jurisdiction by embarking upon the re-appreciation of evidence under the guise that there was error in appreciating important evidence. However, a close perusal of the Tribunal's judgment along with the judgment of the Deputy Collector's, Annexure-B, would show that the Tribunal stepped beyond its jurisdiction u/s 76 of the Act. The Tribunal, it seems, "felt" that the respondent was a tenant and consequently started finding reasons to support that conclusion. The Tribunal should have first shown where the final Court of facts, namely, the appellate authority, had gone wrong. It is necessary first of all for the Tribunal to find out by a valid process of reasoning as to how the lower final authority has gone wrong in appreciating important evidence and then this error must be such as must appear to the Tribunal to have caused miscarriage of justice. This is the first condition of the Tribunal's exercise of the jurisdiction and unless this is done, it is not open to the Revenue Tribunal to play the role of an appellate authority."

3.4.4. In case of Ratilal Bhogilal Dave v. Dahyabhai Chaiurbhai Baria rendered by the learned single Judge of this Court (Coram : A. N. Divecha, J.) in Special Civil Application No. 618 of 1987 dated 1/4 October, 1993 in respect of scope of

Section 76 has held as under :-

"The Tribunal has no power to re-appreciate the evidence on record unless it comes to the conclusion that there was failure to take the evidence on the part of lower Forum or Forums or that there was error in appreciating important evidence which resulted in miscarriage of justice."

4. All these aforesaid decisions have crystallized the scope of Section 76(1) of the Act. So far the appreciation of evidence is concerned it is permitted only if the Tribunal reaches to the conclusion that there is error committed in appreciating the important evidence resulting into miscarriage of justice. The other grounds mentioned in that section for interference of the Tribunal are not relevant for the purpose of present petition, and therefore, the same are not required to be discussed here. The ratio laid down by the aforesaid decisions clearly states that the Tribunal cannot normally re-appreciate the evidence while exercising revisional jurisdiction. If at all the Tribunal intends to interfere with the decision of the Collector on facts, it has first to record that there is error committed by the Collector in appreciating the important evidence. The ratio further lays down that the Tribunal is also required to give its finding that such error has resulted into miscarriage of justice. If these are the requisite preconditions for the Tribunal to interfere with the Collector's order on the questions of facts it is incumbent upon the Tribunal to give its finding in accordance with the requirement of Section 76(1) of the Act with regard to error committed by the Collector in not properly appreciating the important evidence or not taking it into consideration at all. The Tribunal can not simply ignore it and proceed to re-appreciate the evidence as if it was sitting in appeal over the judgment of the Collector. In the present case, precisely that has happened. The Tribunal has taken each piece of evidence into consideration and has upset the finding of fact given by the Collector based on that evidence. The Tribunal has at no point of time recorded that the evidence which was being re-appreciated by it was important evidence and the Deputy Collector had committed error in appreciating it which had resulted into miscarriage of justice. The Tribunal, in view of the clear prohibition imposed by the provisions of the Section 76(1) of the Act, could not have embarked upon the fact-finding exercise and interfered with the findings given by the Deputy Collector. As stated above, the text of the judgment clearly shows that the Tribunal has first come to the conclusion that the petitioners were not the tenants of the disputed land, and thereafter, it has got support from different pieces of evidence and in support of its conclusion this is clearly in violation of provisions of Section 76(1) of the Act. For these reasons alone, the judgment of the Tribunal is required to be quashed and set aside.

4.1. It may be noted here that the Tribunal has observed in its judgment that petitioners had not preferred any application in expressing their intention to purchase the land and requesting the Mamlatdar and A.L.T. to determine the price of the land in question. It has also said that the present proceedings cannot be termed as proceedings u/s 320, but it would be an inquiry u/s 70(b) of the

Act, since there is no application from the petitioners for establishment of their rights as tenants nor there is any dispute raised by the respondents denying the tenancy of the petitioners this finding is factually not correct. Apart from that in the decision rendered by this Court in the case of Maneksha Beramsha v. Mochibhai P. Khodo reported in 1994 (1) GLH 400, it has been laid down as under :-

"In the case of Rasulmiya Rehmanmiya Vs. Patel Lalbhai Shankerbhai, , this Court while dealing with the provisions of Bombay Tenancy Act, held that the Mamlatdar has been advisedly entrusted with suo motu power by the Legislature, to entertain any appropriate case u/s 32(1B) even if the aggrieved tenant might not have applied within time for redress of his grievance. Section 32(1B) is a beneficial provision enacted with a view to protect the rights of illiterate and ignorant tenants who might have been duped by their lands contrary to the provisions of the Tenancy Act. Such tenants might skip the period of one year's limitation as provided by the statutory rules (Rule 15(A) of the Bombay Tenancy and Agricultural Land Rules, 1956). However, they are given a locus penitentiae in the form of invocation of suo motu powers of the Mamlatdar for getting justice. Their time-barred applications seek to do nothing else but to inform the Mamlatdar about the injustice done to them. Once, convinced the justness of the grievance put forward by such a tenant, if the Mamlatdar proceeds to deal with the case u/s 32(1B) on merits, only interference that can follow from such a course adopted by the Mamlatdar is that he has thought it fit to invoke his suo motu powers which are not subject to any period of limitation. The Legislature in its wisdom has not put any time-limit to the exercise of suo motu powers by the Mamlatdar u/s 32(1B), By no process of judicial interpretation such a time-limit can be engrafted in the Section. Only safely value can be that such powers should be exercised within reasonable time."

4.2. Similarly, in the case of Kalabhai (Since Decd.) Through His Heirs Shantaben Kalabhai and Others Vs. Taraben and Others, . It has been laid down that suo motu powers can be exercised by the Mamlatdar and A.L.T, In such case application of the tenant is not at all required more particularly when provisions of Section 32 alongn with certain other provisions are made applicable to purchase u/s 32O of the Act. Therefore, it clearly appears that the decision of the Tribunal is erroneous and it is required to be quashed and set aside.

4.3. So far Mr. Bharati's contention is concerned there is nothing on record which may support that there was transaction of mortgage between the parties. Even before the authorities below such dispute is not raised. In that view of the matter, contention of Mr. Bharti cannot be accepted.

5. The petition, is therefore, allowed. The impugned orders at Annexures- H & J are hereby quashed and set aside and the judgment and order at Annexure- I is restored. Rule is made absolute with no order as to costs.