

**(2014) 08 GUJ CK 0064**

**In the Gujarat High Court**

**Case No :** Letters Patent Appeal No. 1168 of 2009 In Special Civil Application  
No. 2507 of 1999

Maheerbai

APPELLANT

Vs

State of Gujarat

RESPONDENT

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**Date of Decision :** 08-08-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2014) 08 GUJ CK 0064

**Hon'ble Judges :** V.M. Sahai, J; Abdullah Gulamahmed Uraizee, J

**Bench :** Division Bench

**Advocate :** H M Jadeja, Advocate for the Appellant; N.J. Shah, AGP, Advocate for the Respondent

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## **Judgement**

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Abdullah Gulamahmed Uraizee, J.—We have heard learned counsel Mr. H.M. Jadeja for the appellants and learned AGP Mr. N.J. Shah for the State.

2. The appellants have challenged judgment of the learned Single Judge dated 13/7/2006 in Special Civil Application No. 2507 of 1999 in this appeal under clause 15 of the Letters Patent, whereby the petition of the petitioners came to be dismissed.

3. The brief facts necessary for the disposal of the present appeal are that the Shapurji Mervanji Saher predecessor in the title of an appeal in loan from Gujarat State Co-op. Agricultural and Rural Development Bank, Vansada Branch, creating charge on the land bearing survey Nos. 823, 951 and 952 of village Vandrevela, District. Valsad. The said Shapurji Mervanji Saher defaulted in making the repayment of the loan amount, therefore, the Bank initiated recovery proceeding. The special recovery officer issued notice dated 23/3/1980 for the sale of the aforementioned three parcels of land by public auction. In the public auction, none participated. As a result, the Mamlatdar, Vansada purchased the

land as a representative of Gujarat State. Pursuant thereto, name of the Government came to be mutated vide entry No. 205 in revenue record in place of said Shapurji Mervanji Saher. According to the appellants, though the land came to be mutated in the name of the Government, the Shapurji continued in possession till his death on 22/2/1992 and after his death, the appellants have been in possession of the subject land till today. In the year 1994, Mamlatdar Vansada issued notice to the appellants for taking action under section 61 of the Bombay Land Revenue Code. Thereafter, on 28/3/1994, the appellants made an application to the Collector for allotment of the subject land to them. This application of the appellants came to be rejected by the Collector vide order dated 17/8/1994. The appellants challenged the order of the Collector by filing Revision Application No. 3/95 before the State Government, which was also dismissed. In the meantime, the appellants have paid all the dues of the Bank in the year 1994 and obtained the certificate from the agent of the Bank that there was no outstanding.

4. The appellants challenged the order of the Additional Chief Secretary (Appeals) Revenue department, Government of Gujarat by filing Special Civil Application No. 2507/1999, which is dismissed by the learned Single Judge by impugned judgment. Therefore, this appeals.

5. Learned counsel Mr. HM Jadeja for the appellants has relied upon the judgment of the Supreme Court in case of Ramrao Jankiram Kadam Vs. State of Bombay, to contend that the instance case is the case of illegal auction, therefore, in view of the judgment of the Supreme Court the auction sale in favour of the Government needs to be set aside. He has further contended that all through out despite the so called purchased of the subject land by the State Government and consequent mutation of the name of the Government in the revenue record, the appellants are in possession of the subject land. It is his further contention that despite the purchase of the subject land, the State Government cannot discharge the liability and therefore, the dues of the Bank remained outstanding, which was paid by the appellants on 28/2/1994. He has, therefore, contended that the Collector Vasanda ought to have accepted the application of the appellants for allotment of the land and the Additional Chief Secretary (Appeals), Revenue Department has also committed an error in confirming the order of the appellant, therefore, he has urged that order of the Lower Authority may be quashed and set aside and authorities may be directed to allot the land to the appellants.

6. Learned AGP Mr. N.J. Shah has opposed the present appellants and has contended that the appellants are in illegal possession of the subject land after it came to be purchased by the Government. He has further contended that admittedly, the auction proceeding are never challenged by the deceased Shapurji or the present appellants, therefore, he has urged that orders passed by the lower authorities are just and proper and do not warrant any interference in this appeal.

7. The learned Single Judge has observed as under in para Nos. 7, 8, 9 & 10 while dismissing the writ petition:

7. True it is that in the matter of Ramrao Jankiram Kadam (Supra), the Supreme Court has observed that in absence of other bidders, a purchase by the State Government for a nominal price, would not amount to a sale by public auction under sec. 167 of the Bombay Land Revenue Code. The said judgment, unfortunately, would not help the petitioners, because the auction which was conducted in the year 1980 was not challenged either by deceased Shapurji or the present petitioner. In the year 1994, the petitioner accepting the State Government to be the owner of the property, made an application for allotment of the land. An application for allotment of the land cannot be made to a person who is either in illegal possession or has obtained possession in void sale. An application for allotment would always be made to a person who holds absolute right, title and interest in the property and has power of disposition, transfer and alienation. Petitioners" making of the application on 28/3/1994 would speak against the petitioners and would compel this Court to believe that upto the year 1994, the petitioners did not challenge the correctness, validity and propriety of the auction and accepted that the Government had become owner of the property.

8. So far as the liquidation of the dues by the petitioners in the year 1994 are concerned, the same would also not make any difference, because, nobody knows that what were the total dues or for what the property was sold and whether the State Government accepted complete liability to liquidate the dues. Be that as it may. Once, the property is auctioned, then, the petitioners lost their title and were not entitled to claim anything in the land. Their possession in the year 1980 or upto the year 1994 would also not provide them any solace, because, they would be deemed to be persons in illegal possession.

9. As a last resort, Mr. Jadeja, learned counsel for the petitioners submitted that the matter be remanded to the Collector so that the petitioners may persuade the Collector to allot land in their favour on petitioners" submission that the petitioners have liquidated the dues of the Bank and allotment of the land to the petitioners would not cause any loss to the State Government.

10. In the opinion of this Court, the petitioners have not shown any legal right for allotment of the property for invocation of Article 226 of the Constitution of India. So far as application of Article 227 of the Constitution of India is concerned, this Court does not find any error apparent on the face of the record and for this reason, this Court is unable to interfere in the matter. The Collector was justified in rejecting the application and the revisional authority, for the reasons stated in its order, in the opinion of this Court did not call err in dismissing the revision.

8. The undisputed fact is that the predecessor-in-title of the appellants was the owner of the subject land. He had obtained loan from the Gujarat State Co-

operative agricultural and Development Bank Ltd., Vansada Branch. He could not repay the loan and therefore, the subject land was put to public auction. No bidder turned up at the auction and therefore, the respondent State Government through Collector purchased the land. It is no doubt true that on the basis of this auction purchase land came to be mutated in the name of the State Government. This clearly indicates that though the Government had purchased the land in the auction, it did not discharge the debt of the Bank. It appears from the impugned order dated 17/8/1994 of the Collector for not accepting the request of the appellants to grant the subject land was that they had made the demand for re-grant after twelve years of auction and that application is time barred. It further transpires from the impugned order of the Additional Chief Secretary, Revenue Department (Appeals) Government of Gujarat that even on the date of the order in the Revision Application an amount of Rs. 27,157/- was outstanding and payable to the Bank and therefore, revision came to be dismissed. The findings recorded by the Additional Chief Secretary (Appeals) that Rs. 27,157/- is still outstanding suffers from the total non application of mind. The Gujarat Co-op Agricultural Rural Bank Ltd., Vansada Branch has given certificate, which states that the loan has been fully paid up on 23/3/1994 and charge in favour of the Bank does not remain in force. It may also be mentioned here that the subject land was of the ownership of Shapurji, who was the predecessor in title of the appellants. It also appears that the appellants belongs to poor strata of the Society and subject land seems to be the only source of their livelihood. The mere fact that even after the land being purchased by the Government, the appellants remain in possession of the subject land and therefore, their possession cannot be stated to be illegal because there is nothing on record to indicate that any attempt was made to take possession of the land from them. We are, therefore, of the opinion that the learned Single Judge has fallen in error in rejecting the writ petition on the ground that the auction, which was conducted in the year 1980 was not challenged either by the deceased Shahpurji or the appellants. In our opinion, therefore, the matter should go back to the Collector, Valsad, District-Valsad (respondent No. 2) for fresh consideration in light of the observations made by us hereinabove.

9. For the aforesaid reasons, we allow this appeal. The impugned orders dated 17/8/1994 of Collector, Valsad and the order of 21/12/1998 of the Additional Chief Secretary (Appeals), Revenue Department, Government of Gujarat in SRD/JAMAN/VALAS/3/95 are hereby quashed and set aside. The matter is remanded to the Collector, Valsad (respondent No. 2) for fresh consideration in light of our observations after affording an opportunity of hearing to the appellants. No costs.