

(2020) 01 GUJ CK 0139

In the Gujarat High Court

Case No : R/Special Civil Application No. 7451 Of 2017

Manhar Lalji Monani

APPELLANT

Vs

State Of Gujarat & 5 Other(s)

RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Gujarat Land Revenue Rules, 1972 — Rule 108(5)

Gujarat Tenancy (Vidharbha Region And Kutch) Area Act, 1958 — Section 2(3), 2(11), 2(12)

Gujarat Land Revenue Code, 1879 — Section 72

Citation : (2020) 01 GUJ CK 0139

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Vimal A Purohit, Sahil Trivedi

Final Decision : Disposed Of

Judgement

A.S. Supehia, J

1. Rule. Learned AGP waives service of rule for the respondent nos.1 to 4.

2. In the present writ petition, the petitioner has, inter alia, prayed for the following relief:

"A. Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside the order dated 28.11.2016 passed by the learned District Collector in Appeal/Revision Land Revenue Code 211 Case No.11 of 2012 as well as order dated 27.12.2011 passed by the learned Deputy Collector, Mundra as well as order dated 26.09.2007 passed by the learned Special Mamlatdar and further be pleased to remand the matter back to the Ld.Mamlatdar, Bhuj for fresh adjudication."

3. The brief facts of the case leading to filing of the present writ petition are as under:

3.1. The land bearing Survey No.109 as well as Survey No.333 of Village Kotadi Mahadevpuri, Taluka Mandvi, District Kachchh was in occupation of the father of the petitioner. The father of the petitioner was cultivating the aforesaid land in question in the capacity of the tenant. Though the land in question is in occupation and possession of the petitioner, the concerned authorities had never initiated any proceedings for deciding the tenancy rights of the petitioner over the land in question.

3.2. On 21.02.2007, the petitioner preferred an application before the Special Mamlatdar, Bhuj, whereby it was stated that since the land in question was cultivated by the father of the petitioner in the capacity of tenant and, therefore, the petitioner preferred the aforesaid application for declaring him as a tenant of the land in question as well as for deciding the occupancy price with respect to the land in question.

3.3. After receiving the aforesaid application, the Special Mamlatdar has registered the same as KEN Case No.853 of 2007 and issued notices to the private respondents. The aforesaid notices were returned back as the concerned private respondents were not residing in the aforesaid village.

4. Learned advocate Mr.Vimal Purohit appearing for the petitioner has submitted that the impugned order passed by the Special Mamlatdar is without jurisdiction since he has made the observations by invoking the provisions of the Gujarat Land Revenue Code, 1879 (for short "the Code") with regard to the application filed by the petitioner under the provision of the Gujarat Tenancy (Vidharbha Region and Kutch) Area Act, 1958. (for short "the Tenancy Act, 1958"). He has submitted that thereafter being aggrieved, the petitioner approached Deputy Collector, Mundra-Bhuj by filing an appeal, who by the order dated 27.12.2011 rejected the appeal filed by him.

4.1. Learned advocate Mr.Vimal Purohit for the petitioner has further invited the attention of this Court to the order dated 30.11.2016 passed by the Collector, Kachchh-Bhuj in Consolidated Appeal/Revision/L.R.C. S.211/ Case No.11 of 2012 and has submitted that the District Collector has traveled beyond the scope of the application and has made the observations with regard to the provisions of the Bombay Inami (Kutch Area) Abolition Act, 1958. He has submitted that the said revision application is not maintainable against him and hence, it could not be entertained. Thus, he has submitted that the authorities below right from the Mamlatdar upto the District Collector have confused the issue raised before them and the petitioner had made only a simple application for declaring him as a tenant. Thus, he has submitted that the impugned orders may be set aside and the matter may be remanded to the appropriate authority for reconsideration.

5. Per contra learned AGP Mr.Sahil Trivedi has submitted that the impugned orders may not be disturbed as admittedly the same have been passed after proper verification of the parties. He has submitted that since the Mamlatdar has found that the concerned land being Survey No.109 did not satisfy the provisions

of the Tenancy Act, 1958, the Mamlatdar has precisely passed the order of vesting the land to the State Government. Thus, he has submitted that the orders may be confirmed and the same may not be disturbed.

6. I have heard the learned advocates appearing for the respective parties.

7. The genesis of the dispute lies in the application made by the petitioner dated 21.02.2007 to the Special Mamlatdar, Bhuj. A perusal of the application made by the petitioner reveals that he is claiming to be cultivating the land since last 50 years. He has further submitted that his father was also doing the cultivation and he is the legal heir and hence, he may be declared as tenant of the land bearing Survey No.109 as well as Survey No.333. The application reveals that the same is bereft of any provisions of law under which he is claiming to be a tenant. However, learned Advocate Mr.Purohit has stated that the same was filed under the provisions of the Gujarat Tenancy (Vidharbha Region and Kutch) Area Act, 1958. Special Mamlatdar, Bhuj by the order dated 26.09.2007 has carried out the necessary inquiry under the said Act, and has held that the petitioner does not satisfy the definition of sections 2(3), 2(11) and 2(12) of the Act, since the ownership of the said land bearing Survey No.109 is not established and hence, the same is required to be vested in the State Government under section 72 of the Code.

8. Thus, the Mamlatdar was only required to decide the application with regard to the status of the petitioner as per the application dated 21.02.2007, however he has exceeded his powers by invoking the provisions of the Code, and further ordered the land of Survey no.109 to be vested in the name of the State Government. Thus, the same was beyond the scope of issue which was raised by the petitioner and hence, deserves to be set aside.

9. It appears that being aggrieved by the aforesaid order, the petitioner filed an appeal being No.J.M.N. 108(5)/ Case No.Mandvi-16/2011 before the Deputy Collector under the provision of Rule 108(5) of the Gujarat Land Revenue Rules, 1972, which came to be dismissed by the order dated 27.12.2011.

10. Thereafter, the petitioner approached the District Collector by filing Consolidated Appeal/Revision/L.R.C. S.211/ Case No.11 of 2012, which was also rejected vide order dated 30.11.2016 on the ground that the same is not maintainable under the provision of the Bombay Inami (Kutch area) Abolition Act, 1958.

11. Thus, the Mamlatdar has treated the application of the petitioner under the provisions of the Gujarat Tenancy (Vidharbha Region and Kutch) Area Act, 1958 and vested the land of Survey No.109 in the State Government under the provision of section 72 of the Code. Section 72 of the Code refers to the "Intestate occupancy or holding to be sold", which is reproduced as under:

"SECTION 72 : Interstate occupancy or holding to be sold

If an occupant who is either a Hindu, a Mohammedan, or a Buddhist dies

interstate and without known heirs, the Collector shall dispose of his occupancy by sale, subject to the provisions of this Act or of any other law at the time in force for the sale of forfeited occupancies in realization of the land revenue, and the law at the time in force concerning property left by Hindus, Mohammedans or Buddhists dying interstate and without known heirs shall not be deemed to apply to the said occupancy but only to the proceeds of such sale after deducting all arrears of land revenue due by the deceased to the Government and all expenses of the said sale."

Thus, the Mamlatdar has invoked the aforesaid provisions without proper application of mind and has vested the land in the Government by declaring the petitioner as unauthorized occupant. The Mamlatdar has no power to pass such order of vesting the land in the name of the State Government, but it empowers the concerned District Collector to dispose the occupancy of land by sale in case the occupant dies intestate. Thus, the impugned order of the Mamlatdar suffers from absolute non-application of mind and hence, deserves to be set aside.

12. Since, the aforesaid order was passed by invoking the provisions of the Code, the petitioner filed an appeal under section 108(5) of the Gujarat Land Revenue Rules before the District Collector, who dismissed the same. The petitioner preferred revision before the District Collector, who has dismissed the same on the ground that it is not maintainable under the provisions of the Bombay Inams (Kutch Area) Abolition Act, 1958. As per the case of the petitioner, his application was as such to be treated to be filed under the Gujarat Tenancy (Vidharbha Region and Kutch) Area Act, 1958 and not under the Bombay Inami (Kutch Area) Abolition Act, 1958 and, therefore, the observations and findings of the District Collector are unwarranted.

13. The conspectus of the aforesaid facts would reveal that the application of the petitioner dated 21.02.2007 before the Special Mamlatdar, Bhuj is absolutely silent with regard to the provisions of law under which he is claiming tenant. The Mamlatdar treats his application under the provisions of the Gujarat Tenancy (Vidharbha Region and Kutch) Area Act, 1958 and treats him as an illegal occupant and vests the land of Survey No.109 in the State Government under the provision of Section 72 of the Code. His appeal is rejected by the Deputy Collector, and his revision application is also rejected by the District Collector as not maintainable in view of the Bombay Inami (Kutch area) Abolition Act, 1958. Thus, the provisions of three Acts are invoked on the application of the petitioner. The Mamlatdar, before passing any order on the application should have called upon the petitioner to explain his claim with regard to the provision of law under which he is claiming to be the tenant. After holding an inquiry, he could have either rejected or allowed his application, but it was not open for him to pass any order under section 72 of the Code for vesting the land to State Government. The subsequent orders confirming the order of the Mamlatdar also suffer from non-application of mind, hence all the impugned orders are liable to be quashed and set aside.

14. Under the circumstances, all the impugned orders are hereby quashed and set aside and the petitioner is also directed to file a fresh application before the concerned Mamalatdar . The same shall be decided in accordance with law. If such an application is made by the petitioner the same shall be decided by the authority within a period of 03 (three) months after hearing the concerned parties.

15. The present petition stands disposed of qua land situated at Revenue Survey No.109 of Village Kotadi Mahadevpuri, Taluka Mandvi, District Kachchh in aforesaid terms. Rule is made absolute to the aforesaid extent.