

(2014) 07 GUJ CK 0023

In the Gujarat High Court

Case No : Letters Patent Appeal No. 952 of 2011 In Special Civil Application No. 2185 of 2011

Manharbhai Bhailalbhai Amin

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 6, 6(2), 7
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 07 GUJ CK 0023

Hon'ble Judges : K.S. Jhaveri, J;Abdullah Gulamahmed Uraizee, J

Bench : Division Bench

Advocate : Shital R. Patel, Advocate for the Appellant; Nisha Thakore and M.T.M. Hakim, Advocate for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—This Letters Patent Appeal is filed against the judgment and order dated 05.04.2011 passed by the learned single Judge in Special Civil Application No. 2185 of 2011.

2. Mr. Shital Patel learned counsel for the appellant, original petitioner, submitted that the learned single Judge has failed to appreciate the matter in its proper perspective. He submitted that mandatory provisions u/s. 6(2) & 7 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short, "the Act") have not been followed by the authorities below and therefore, the impugned action is bad in law and erroneous. He drew our attention to the said two provisions, which are reproduced hereunder for ready reference;

6. Entry in the Record of Rights.-

(1).....

(2) Notice of every entry, made under sub-section (1) shall be given in the manner prescribed for the giving of notice under the relevant Code of an entry in the register of mutations.

7. Transfer; and lease of fragments.-

(1) No person shall transfer any fragment in respect of which a notice has been given under sub-section (2) of Section 6 except to the owner of a contiguous survey number or recognised sub-division of survey number :

Provided that, the holder of such fragment may mortgage or transfer it to the State Government or a land mortgage bank or any other co-operative society as security for any loan advanced to him by the State Government or such bank or society as the case may be.

(2) Notwithstanding anything contained in any law for the time being in force or in any instrument or agreement, no such fragment shall be leased to any person other than a person cultivating any land which is contiguous to the fragment.

2.1. Learned counsel Mr. Patel also placed reliance upon the following decisions;

(A) Harijan Parbhubhai Makanbhai V. Joint Special Secretary, Revenue Department reported in 1994(1) GCD 794, more particularly, the observations in para-3(7), which reads as under;

7..... There is nothing on the record to show that any notice contemplated under sub-section (2) of sec. 6 is given much less any entry pertaining to such notice is made in the register of mutation under sec. 135D of the Code. Thus in absence of any proof of notice of an entry made under sub-sec. (2) of sec. 6 of the Act there is no question of any presumption to be drawn for the correctness thereof. Thus in my opinion the authorities have failed to establish that notice contemplated under sub-sec. (2) of the Act is given. As I hold that no notice under sub-sec. (2) of sec. 6 of the Act is given provisions of sub-sec. (1) of sec. 7 of the Act are not attracted and there is no prohibition on the owner of the fragment to transfer the same. Thus the transfer to be petitioner cannot be said to be in contravention of sub-sec. (1) of sec. 7 of the Act. Both the authorities below have therefore erred in holding that the transfer is in breach of sub-sec. (1) of sec. 7 of the Act. The orders of both the authorities are therefore liable to be quashed and set aside.

(B) Pandya Bherulal Vardhaji Vs. State of Gujarat and Others, , particularly, on the following observations made in para-8, which reads as under;

8.....I do not find anything on the record of the case as well as in the orders of both the authorities below to show that any notice contemplated under sub-sec. (2) of sec. 6 of the Act, 1947 is given, much less any entry pertaining to such notice is made in the register of mutations under S. 135D of the Code. The learned counsel for respondent No. 1 fairly conceded that on the record of the case before the authorities below as well as before this Court nothing has been

produced on their behalf to show that notice under S. 6(2) of the Act, 1947 was given to the owner of the fragment. Thus, in the absence of any proof of notice of an entry made under sub-S. (2) of S. 6 of the Act, 1947, there is no question of any presumption to be drawn for the correctness thereof. When the notice u/s. 6(2) of the Act, 1947 was not given or established to be given in the present case to the owners of the land, the provisions of sub-S. (1) of S. 7 of the Act, 1947 are not attracted and as such, there was no prohibition on the owners of the fragment to transfer the same to the petitioner...

(C) Navuji Lalji Vaghela and Others Vs. State of Gujarat and Others wherein, it is held that only a "person aggrieved" can maintain a petition under Art. 226 or 227 and one who has a genuine grievance and who is prejudicially affected can invoke Art. 226 or 227. But, no person can approach the Court under Art. 226 or 227 to take advantage of his own wrong to gain favourable interpretation of law.

3. Mr. MTM Hakim learned counsel for the respondent submitted that any observations that may be made by this Court on the merits of the case may prejudicially affect the rights/interests of the respondents in the suit being Special Civil Suit No. 414 of 2001 pending before the concerned trial Court at Vadodara. He, therefore, requested that if this Court is inclined to allow this appeal by setting aside the impugned orders passed by the authorities below as also by the learned single Judge, then no reasons may be assigned while doing so.

4. We have heard learned counsel for both the sides. Considering the facts and circumstances of the case and the provisions of Sections 6 & 7 of the Act, we are of the opinion that the authorities below have committed serious error in passing the impugned orders, which is confirmed by the learned single Judge. In view of the same, the impugned orders passed by the authorities below as also the judgment passed by the learned single Judge in the captioned petition are quashed and set aside. It is, however, clarified that rights of the parties will be governed by the final decree that shall be passed in the Special Civil Suit No. 414 of 2001 pending before the trial Court at Vadodara in view of the decision rendered in Patel Ratilal Maganbhai and Others Vs. State of Gujarat and Others, . The appeal is accordingly allowed.