

(2016) 02 GUJ CK 0194

In the Gujarat High Court

Case No : Special Civil Application No. 30703 of 2007

Manrao Rasiklal Jaiswal

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, Section 32(O),
Section 32G, Section 32P, Section 43, Section 43C, Section 76, Section 76A, Section
78, Section 84C, Section 84-C
Constitution of India, 1950 — Article 226, Article 2

Citation : (2016) 2 GCD 1167

Hon'ble Judges : K.J. Thaker, J.

Bench : Single Bench

Advocate : Megha Jani, Advocate, for the Appellant; Rutvik Oza, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

K.J. Thaker, J.—1. By way of this petition under Article 227 of the Constitution, the petitioner has prayed for the following reliefs:

A) That the Hon"ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside order dated 28.11.2007 passed by the Gujarat Revenue Tribunal, Ahmedabad (Annexure-A) to the extent it gives direction for regularising transactions being four registered sale deed dated 14.10.1999 in favour of the respondents No. 5 to 10 herein with respect to land admeasuring 20 acre and 20 gunthas bearing Revenue Survey No. 707 situated at Vadodara Kasba, District Sub-District Vadodara.

B) That pending the hearing and final disposal of this petition, the Hon"ble court be pleased to stay the execution, operation and implementation of the order dated 28.11.2007 passed by the Gujarat Revenue Tribunal, Ahmedabad to the extent it gives direction for regularising transactions being four registered sale

deeds dated 14.10.1999 in favour of the respondents No. 5 to 10 herein with respect to land admeasuring 20 acre and 20 gunthas bearing Revenue Survey No. 707 situated at Vadodara Kasba, District Sub District Vadodara.

C) That pending the hearing and final disposal of this petition the Hon''ble Court be pleased to restrain the respondents from taking any steps pursuant to the order dated 28.11.2007 with respect to the land admeasuring 20 acre and 20 gunthas bearing Revenue Survey No. 707 situated at Vadodara Kasba, District Sub District Vadodara.

D) That pending the hearing and final disposal of this petition, the Hon''ble Court be pleased to direct the respondents to maintain status quo with respect to nature, holding and possession of land with respect to the land admeasuring 20 acre and 20 gunthas bearing Revenue Survey No. 707 situated at Vadodara Kasba, District Sub District Vadodara.

2. After the change of roster, it was requested that the matter be treated as part-heard by Mr. R.S. Sanjanwala learned senior counsel, but Ms. Jani learned advocate had her reservation, and therefore, it was requested by the undersigned to Hon''ble the Acting Chief Justice for doing needful in the matter. Therefore, the office has placed this matter before Hon''ble the Acting Chief Justice for passing necessary orders for placing the matter and Hon''ble the Acting Chief Justice vide order dated 14.8.2015 directed the office to place this matter before this Court, and thereafter, the matter was listed before this court. Several adjournments were granted to explore the possibility of a via-media solution/settlement, which failed. The wife of petitioner sought herself to be impleaded in 2015 which was granted. The children through mother also sought impleadment which was also granted. The brothers of petitioner, who were not supporting the petitioner, stated orally supporting through Mr. Malkan learned advocate for change of advocate. They now support the petitioner. This prelude and skeletal facts, which are necessary for this petition, are narrated, as there is SLP pending for compromise decree.

3. The brief facts leading to the filing of this petition are as under:

3.1 The dispute pertains to land admeasuring acre 20 - 20 gunthas i.e. 8,00,000 sq. ft. bearing Revenue Survey No. 707, Vadodara Kasba, District Sub-District Vadodara, which was owned by Rasiklal Tilakram Jaiswal-father of the petitioner. The Mamlatdar & ALT, Vadodara vide order dated 6.7.1079 in Tenancy Case No. 3467 of 1977 declared Rasiklal Tilakram Jaiswal to be the tenant of the land under sec. 32(O) of Bombay Tenancy and Agricultural Land Act, 1948. The father of petitioner passed away in 1987. Thereafter, the land was owned by his legal heirs i.e. petitioner and respondents No. 11 to 17 herein. That on 4.3.1991 the petitioner and his family members entered into a banakhat with partners of "Satyanarayan Traders" namely Rameshbhai Chaturbhai Prajapati and Nimeshbhai Ambalal Amin agreeing to sell the land as per the terms and conditions of the agreement. On 4.3.1991, the original owners executed a power

of attorney in favour of one Manubhai Nathabhai Patel with respect to the land. The power of attorney was given powers to represent the owners in the proceedings pertaining to Urban Land Ceiling Act, 1976 and with respect to development of the land but no authority was given to the power of attorney to sell the land or execute a sale deed. On 4.3.1997, the owners also executed development agreement in favour of Banakhat holders. In 1993, the Banakhat right holders filed Civil Suit No. 641/1997 for specific performance, which resulted in passing of consent decree on 7.11.1993. It was agreed that the owners will execute a sale deed pursuant to permission under sections 20 and 21 of ULC Act, 1976. The decree mentions that the remaining amount of consideration was to be paid within a period of 5 years from 4.3.1991. The Banakhat holders have not paid any further amount to the owners as per the content terms. As mentioned in decree, a power of attorney was executed by the owners in favour of Manubhai Nathabhai Patel on 19.10.1993. The aforesaid agreement also does not give any authority to the power of attorney to execute a sale deed. The purchaser under the Banakhat dated 4.3.1991 did not steps for closure of the Banakhat. Neither the payment was made nor permission from the competent authority under the ULC Act, 1976 was received as stipulated. The power of attorney holder Manubhai Nathabhai Patel had filed an application under section 70(O) of the Tenancy Act. The Mamlatdar and Krushipanch, Vadodara vide order dated 4.3.1998 held that the restriction under sec. 43 of the Tenancy Act does not apply to the land. The litigation before the Mamlatdar and Krushi Panch was pursued by the power of attorney holder and the petitioner was not aware about the said litigation culminating in an order on 4.3.1998 and power of attorney holder sold the land by 4 registered sale deed dated 14.10.1999 for consideration of Rs. 4,47,584/-. In the meanwhile, the order passed by the Mamlatdar and Krushipanch dated 4.3.1998 was taken in revision by Deputy Collector (Land Reforms) Vadodara, who vide order dated 26.6.2000 set aside the order dated 4.3.1998. It is the case of the petitioner that the land was all throughout in possession of the petitioner and the owners. It was when the petitioner came to know from the office of the Mamlatdar that the land revenue will not be accepted from the petitioner and thereafter the petitioner realized that Manubhai wrongly posing himself as a power of attorney holder had sold the land. The purchasers had not given any notice seeking title clearance certificate before purchasing such a valuable piece of land. Thereafter, the owners filed Special Civil Suit Nos. 391, 391, 393 and 394 of 2001 for declaration, permanent injunction and prayed that the sale deeds dated 14.10.1999 be declared null and void and not binding to the plaintiffs. Original owners also filed Regular Civil Suit No. 792 of 2001 for a declaration to the effect that the acts and deeds done by Manubhai Nathabhai Patel on the basis of the Power of Attorney were without authority and that the said attorney is not authorised to take any action which would be binding on the owners. The owners also filed an application for injunction restraining Manubhai Nathabhai Patel from acting as attorney of the owners. The learned Civil Judge (SD), Vadodara vide order dated 21.6.2001 granted ad-interim injunction restraining Manubhai

Nathabhai from acting as attorney of the plaintiffs. In 2007, the intending purchasers contacted the owners and started negotiations. The intending purchasers promise to pay Rs. 7,50,00,000/- to each of the owners in 20 monthly installments. To show their bona fide, first installment of Rs. 37,50,000/- was paid to each of the owners by cheque on 9.4.2007. Thereafter, the petitioner filed an application in Special Civil Suit Nos. 391, 392, 393 and 394 of 2001 declaring that no settlement was arrived at between the parties and that the petitioner be permitted to deposit Rs. 37,50,000/- with the Nazir. Though, an application was filed for consent decree on 9.2.2007 for withdrawal of aforesaid four Civil Suits, all the suits are pending and the petitioner has not touched Rs. 37,50,000/- which is invested in a term deposit receipt with the State Bank of India. The plaintiff also filed Regular Civil Suit No. 373 of 2007 declaring that the defendants No. 1 and 2 thereof are not attorneys of the plaintiffs and for declaring that the defendants are not authorised to enter into any transactions as attorneys of the plaintiff. In the meanwhile, the power of attorney had filed Revision Application No. 319 of 2000 before the Gujarat Revenue Tribunal, Ahmedabad challenging order dated 26.6.2006 passed by Deputy Mamlatdar, Vadodara in Revision Case No. 77/1998. The respondents No. 5 to 10 herein claiming to be purchasers of the land gave an application on 17.7.2007 before the Gujarat Revenue Tribunal, seeking permission to join as parties. The petitioner came to know about the pendency of the proceedings when he was served with an application for joining as parties. The petitioner appeared and contested the petitioner. The Tribunal, vide order dated 28.11.2007 held that the land was of restricted land tenure and the restriction imposed by Section 43 of the Tenancy Act applied to the land. However, 4 transactions in favour of the respondents No. 5 to 10 dated 14.10.1999 was regularized on payment of premium. It is the case of the petitioner that the father of the petitioner was declared to be tenant of Devsthan Vitthal Mandir Trust as per order dated 6.7.1979 passed in Tenancy Case No. 3467 of 1977 by Mamlatdar and ALT, Vadodara as confirmed by the order dated 23.10.1985 passed by the Deputy Collector (Tenancy Appeals), Vadodara in Tenancy Appeal No. 19 of 1979 and by order dated 25.1.1990 passed by the Gujarat Revenue Tribunal in revision application. The aforesaid order was challenged by the Devsthan Vitthal Mandir Trust in SCA No. 2805 of 1981, which came to be dismissed by this Court vide order dated 20.4.2006 and held that the authorities below were right in declaring deceased Rasiklal Tilakram Jaiswal tenant and deemed purchaser under section 32(O).

4. Being aggrieved and dissatisfied with the order dated 28.11.2007 passed by the Gujarat Revenue Tribunal, Ahmedabad in Revision Application No. TEN/BA/319/2000, the petitioner has filed this petition.

5. Heard Ms. Megha Jani learned advocate for the petitioner, Mr. Malkan & Naynesh Gondkar learned advocates for Ms. Khushboo V. Maklan and Dharita P. Malkan for respondent No. 17, Mr. Rasesh Sanjanwala learned senior counsel with Mr. Parthiv B. Shah learned advocate for respondents No. 5 and 10 and Mr.

A.J. Patel learned advocate for respondents No. 6, 8 and 9.

6. Learned advocate Ms. Jani appearing for the petitioner has submitted that the Tribunal has held that the land is of restricted tenure and that the restriction imposed by section 43 of the Tenancy Act applied to the land. In spite of coming to the aforesaid finding, the Tribunal ought not to have passed direction regularizing the 4 sale transactions which are ostensibly in the teeth of section 43 of the Act. Ms. Jani learned advocate has further submitted that the Tribunal has failed to appreciate that the owners have filed Civil Suit No. 391, 392, 393 and 394 of 2001 challenging four registered sale deeds dated 14.10.1999 and the issue of legality and validity of the sale deeds is thus, sub-judice and the Tribunal ought not to have passed the order regularizing the sale transaction which would amount to non suiting the plaintiffs in the four suits. Ms. Jani learned advocate has further submitted that the Tribunal has failed to appreciate that Manubhai Nathabhai Patel had no authority to enter into sale deeds. She has further submitted that the petitioner and other owners were under no obligation to sell the land to the intending purchasers. She also submitted that Manubhai Nathabhai Patel has acted hands in glove with the intending purchasers and has sold away valuable land keeping the petitioner and other owners in dark and without any authority to execute such sale deeds and the Tribunal ought not to have entered into issues, which are beyond the scope of its jurisdiction. Ms. Jani learned advocate further submitted that the Tribunal has failed to appreciate that the jurisdiction of the Tribunal under Tenancy Act is limited to decide matter arising under Tenancy Act. She submitted that the Tribunal does not have any inherent jurisdiction under which it can pass an order on the basis of equity, and therefore, the impugned order is passed in excess of its jurisdiction and is required to be quashed and set aside.

7. Ms. Jani learned advocate appearing for the petitioner has submitted that the Tribunal has failed to appreciate that the value of the land as in 2007 is not less than Rs. 96 crores, and therefore, no owner would agree to sell the land worth Rs. 96 crores for Rs. 3 crores and hence, the Tribunal ought to have appreciated that Rs. 37,50,000/- was not the consideration at which the land could have been conveyed. She submits that the petitioner has not touched the said amount and she further submitted that the Tribunal has erred in holding that acceptance of Rs. 37,50,000/- amount of rectifying sale transactions dated 14.10.1999. She further submitted that the Tribunal has failed to appreciate that the Civil Suit No. 391 to 394 of 2001 are pending and the Tribunal has erred in holding that the owners have confirmed the sale transactions. She further submitted that the Tribunal has erred in not referring to Civil Suit No. 397 of 1997 filed by the petitioner, in spite of the said fact being part of the record before the Tribunal and the Tribunal has also erred in holding that the respondents No. 5 to 10 are bona fide purchasers, which is contrary to the facts on record. Ms. Jani learned advocate further submitted that the Tribunal has failed to appreciate that the land is of restricted tenure. Moreover, the validity of the said transactions of 1999 is pending before the Civil Court. Ms. Jani further submitted that in the

circumstances, the Tribunal has erred in giving directions regularizing the sale deed by payment of premium. Ms. Jani further submitted that the Tribunal has failed to appreciate that it is the conduct of the respondents No. 5 to 10 and Manubhai Nathabhai Patel that is mala fide. She submitted that respondents No. 5 to 10 have failed to establish that Manubhai Nathabhai Patel had any authority to sell the land to them or that the said illegal action was ratified by the owners by acceptance of consideration and the impugned order results in endorsing the illegal and mala fide conduct of respondent No. 5 to 10. Ms. Jani further submitted that the Tribunal has erred in holding that the regularization of sale transaction will not have any adverse effect on the suits. It is submitted by Ms. Jani learned advocate that once the sale transactions are regularized under section 43 by charging premium, it will result in almost non-suiting the plaintiffs of Civil Suit Nos. 391 to 394 of 2001. Ms. Jani learned advocate has further submitted that the impugned order passed by the Gujarat Revenue Tribunal is clearly without jurisdiction and contrary to law. She further submitted that when the dispute regarding validity of sale deeds is pending before the Civil Court and Civil Court has issued an order of injunction against the power of attorney holder who has sold the land, the Tribunal has acted in excess of its jurisdiction, unreasonably and illegally by regularizing the very same sale transactions. Ms. Jani learned advocate has placed reliance on the decisions of the Bombay High Court in the case of Shri Sopanrao Rama Kaspate vs. Shri Namdeo Ram Kaspate since deceased by his legal heirs & Ors., reported in , 1999 (3) Bom. CR 153. Ms. Jani learned advocate has also placed reliance on the decision of the Apex Court in the case of (1) Ritesh Tewari and another vs. State of Uttar Pradesh and Others, reported in , (2010) 10 SCC 677, (2) Shabbir (D) By LRS. and Ors. vs. Abdul Sattar and others, reported in , (2000) 7 SCC 323, (3) Keshabo and another vs. State of M.P., reported in , (1996) 7 SCC 765, (4) Satyanarayan Laxminarayan Hegde and others v. Mallikarjun Bhavanappa Tirumale reported in , AIR 1960 SC 137 (1), (5) State of Jharkhand and others vs. Ambay Cements and another, reported in , (2005) 1 SCC 368 and the decision of this Court in the case of Patel Kamalbai Sharadbhai v. State of Gujarat, reported in , 2011 (0) GLHEL_HC 225176 and in the case of State of Gujarat & Ors. v. Maganbhai V. Desai & Ors., reported in , 2015 (2) GLR 1140.

8. Mr. Malkan learned advocate appearing for the respondent No. 17 has raised the following issue:

"Whether or not a donee of a power of attorney executed by parent guardian on behalf of a minor, has authority under law to act as a power of attorney of the minor, after he attains majority within the meaning of section 3 of the Indian Majority Act?"

9. Mr. Malkan learned advocate appearing for respondent No. 17 has submitted that when the power of attorney was executed, he was minor and unless he executes a fresh power of attorney, the power of attorney had no authority without there being any new power of attorney executed by him or similar of

who were minor had become major and when they have not executed any power of attorney or had not given any authority, the power of attorney Manubhai Nathabhai Patel, at his own executed the sale-deed, cannot be bound to respondent No. 17, and therefore, the sale deed executed by the Power of attorney holder cannot be said from the facts emerging from the record to be legal and valid sale deed executed by him. Mr. Malkan learned advocate also supported the arguments advanced by Ms. Jani and adopted the same.

10. On the other hand, Mr. R.S. Sanjanwala learned senior counsel appearing with Mr. Parthiv B. Shah learned advocate for respondents No. 5 and 10 and submitted that the sale-deed was not executed, and therefore, a suit for specific performance was filed in the year 1993 being Civil Suit No. 641/1993. The parties negotiated the matter and settlement was arrived because of which, a fresh power of attorney was executed on 19.10.1993 which also gave a rise before the consent terms are recorded. Mr. Sanjanwal further submitted that by way of compromise, the respondents No. 5 to 10 have paid Rs. 3 crores by cheque and over and above the said amount, number of times consideration has been received by the petitioner and his family members. In spite of the same, only with a view to extort more money from the private respondents, the petition is filed by the petitioner. Mr. Sanjanwala learned senior counsel further submitted that it is a settled proposition of law that after taking advantage of his own action, no person can be permitted to plead that the transaction, is in breach of statutory provisions of the Act, after pocketing the money and having executed the sale deed. In the present case also, the petitioner and his family members have executed the sale deed through power of attorney holder in the year 1999. Thereafter, a compromise came to be executed in the year 2007. If the said compromise is perused, it is admitted fact that number of documents are executed in the year 2007. If the said compromise is perused, it is admitted fact that number of documents are executed by the petitioner and his family members and all the parties to the proceedings have executed separate declarations, power of attorney and possession receipt in favour of the purchaser i.e. respondent No. 5 to 10. Mr. Sanjanwala further submitted that the said declarations and possessions receipts are not under challenge before any competent authority or civil court. It is not even the case of the petitioner that the signatures of the petitioner and his family members were obtained by fraud. Mr. Sanjanwala learned counsel further submitted that being aggrieved by the said order of Civil Court in not recording the compromise in the civil suit, in view of the same being a new tenure property and it being hit by sec. 23 of the Contract Act, the purchasers of the property filed Special Civil Application No. 9400/2009 and allied matters before this Court and this Court vide order dated 28.4.2011 has rejected the plea of the purchasers. Mr. Sanjanwala submitted that against order dated 28.4.2011, the purchasers filed SLP before the Hon''ble Apex Court and the Hon''ble Apex Court vide order dated 13.9.2013 was pleased to list the matter for final hearing on 12.11.2013 and since then, the matter is pending before the Hon''ble Apex Court. It is pertinent to note here that

immediately after purchasing the property, the present respondents applied for mutation of Entry in the record of rights and the competent authority had mutated Entry No. 13453 in the revenue record on 16.10.1999. He further submitted that being aggrieved by the same, the present petitioner and his family members preferred RTS Appeal before the Deputy Collector and the Deputy Collector vide order dated 16.4.2002 rejected the said appeal. That being aggrieved by the said order dated 16.4.2002, the petitioner and his family members preferred Revision Application No. RA/35/2002 before the District Collector, and the District Collector vide order dated 24.6.2003 rejected the said revision application and confirmed the order of Deputy Collector, against which, the petitioner and his family members preferred revision application before the Special Secretary, Revenue Department being Revision Application No. 47/2003, which was also rejected vide order dated 5.10.2013. Against the said order dated 5.10.2013, the petitioner has filed SCA No. 16102/2013 before this Court, which is pending adjudication before this court. In the said petition, this Court has issued notice and granted stay, against which, one of the purchaser has preferred LPA No. 1315/2013 and the Division Bench of this Court has admitted the said LPA and issued Rule and granted ad interim relief in Civil Application No. 11747/2013 preferred along with the LPA. Mr. Sanjanwala learned senior counsel has further submitted that looking to over all facts and circumstances, after pocketing the money, only one family member is continuously contesting the litigation and all other family members have chosen to support the present petitioner. Mr. Sanjanwala further submitted that after pocketing the amount after signing the consent deeds before the Civil Court, though the present respondents paid twice the consideration, even as on this date, the present respondents are not in a position to enjoy the fruits of the sale deed executed in the year 1999 in their favour. It is submitted that when the property was purchased by the present respondents, the said property was declared as retainable land in view of order passed by the Mamlatdar & Krushi Panch in Tenancy Case No. 62/1994. After the sale deed was executed on 14.10.1999, the Dy. Collector on 26.6.2000 declared the property as a restricted tenure property under sec. 43 of the Tenancy Act. Thus, before the Competent Authority whose order is under challenge, the present respondents shown their readiness and willingness to pay the conversion tax as may be determined. Mr. Sanjanwala further submitted that when the sale deed was executed, the present respondents did not had any knowledge that the proceedings of Dy. Collector were initiated, and therefore, the present respondents are bona fide purchasers of the land in question and therefore also the order passed by the Tribunal is just, legal and proper and does not call for any interference of this Court. Mr. Sanjanwala learned counsel has placed reliance on the decisions of this court in the case of (1) Subhashbhai Premji v. State of Gujarat & Ors., reported in 2003 (4) GLR p. 3457, (2) Man Mandir Co-operative Housing Society v. State of Gujarat & Ors., reported in , 2007 (2) GLR p. 1111, (3) Chandulal Gordhandas Ranodriya & Ors., vs. State of Gujarat & Ors., reported in , 2013 (2) GLR 1788, and (4) State of Gujarat & Ors. v. Maganbhai V. Desai & Ors., reported in , 2015

(2) GLR p. 1140 and submitted that the issue involved in the present petition is squarely covered by these decisions of this Court and prayed that the petition be dismissed.

11. Heard the learned counsels appearing for the parties at length and perused the papers. By way of this petition, the petitioner, who had never objected to the sale nor had ever raised any objection that there was violation of provisions of section 43 of the Tenancy Act, has now felt aggrieved after the Gujarat Revenue Tribunal passed the order, whereby, it has permitted the purchasers to apply to the Collector. Be that as it may. The short preamble is the focal point of this petition. It is to be noted that the petitioner and the supporting respondents, except respondents No. 5 to 10, whether the pleadings raised in the petition under Article 227 of the Constitution, were ever pleaded before the Tribunal or authorities below. There was no answer to it. However, I am deciding the same as it goes to the root of the matter. It was submitted by Ms. Jani that the matter is before the Apex Court, and therefore, this Court should not decide this issue as it would damage the proceedings before the Hon'ble Apex Court. Prima-facie, I was also feeling the same, but after going through the entire record, I feel that the substratum of this petition is not based on the said submission as there are distinguished aspects as the appeal relates to whether the person can get consent decree from the trial court and trial court can refuse to pass a decree on an objection raised by one of the heirs. This would be clear from the further discussion, and therefore, I have decided to decide this matter on its own merits. The S.L.P. Filed is on different factual aspects and this decision will not come in way of Civil Court in deciding the Civil Suits.

12. The submission of Ms. Jani learned advocate for the petitioner based on the decisions of the various authorities will not bring home her case in light of the latest decision of this court cited by Mr. Sanjanwala learned counsel for respondents No. 5 to 10 in the case of State of Gujarat & Ors. vs. Maganbhai V. Desai & Ors., reported in , 2015 (2) GLR 1140, which would squarely apply to the facts of this case. Para-10 and 11 reads as under:

"10. Now, to deal with the contention raised by the learned Assistant Government Pleader for the appellant that the proceedings under sec. 84C of the Act is pending before the Mamlatdar and A.L.T. and if an order against the respondent Nos. 1 to 14 herein is passed in those proceedings, the subject land would be vested in the State Government and the question of payment of premium would not arise, and therefore, the learned Single Judge ought not to have directed the State Authority to fix the premium of the subject land, we are of the opinion that the learned Single Judge has clearly and categorically dealt with this issue in para 15 of the impugned judgment.

11. Now, so far as the contention raised by Mr. Pujara, learned Assistant Government Pleader for the appellant that the respondent Nos. 3 to 14 entered into an agreement to sale with respondent Nos. 1 and 2 in breach of sec. 43 of the Act is concerned, we are of the opinion that the learned Single Judge has not

committed any error while directing the appellant herein to fix the premium on the subject land as per the existing policy of the State Government and in accordance with law by treating the subject land to be that of new tenure and the State Authority will not have to suffer any loss."

13. The factum of challenge before the Hon"ble Supreme Court as to the finding of acts whether section 43C of the Act applies or not, is not entered into by this Court as they are writ large before the Hon"ble Supreme Court of India. However, the sale transaction was not hit by section 43C of the Act as it was at a time when the embargo of section 43C was no longer there because of the Mamlatdar's order. The submission of Ms. Jani that the order of Deputy Collector would revert tack to the entry cannot be sustained in light of the decision of this court.

14. This is an answer to all the submissions made by Ms. Jani learned advocate which I do not think require to be elaborately discussed as one fact whether the suit could have been settled or not, is still pending before the Hon"ble Apex Court.

15. This petition being a petition under Article 227 challenging the order of the Tribunal despite the fact that the scope is very narrow as held by this Court as well as catena of decisions, on which I do not wish to delve in as I am deciding the matter in large compass and not in that narrow compass of Article 227. Even under that compass, when there are no pleading before the Tribunal as to nullity of the order of Mamlatdar, can it be now raised, is the question and the answer is "no", and therefore, the next issue which arises for my consideration can it be said that there is error apparent on the face of record. The Hon"ble Apex Court in the case of Satyanarayan Laxminarayan Hegde and others vs. Mallikarjun Bhavanappa Tirumale, reported in , AIR 1960 SC 137 (1), which reversed the decision on which Ms. Jani learned advocate has placed reliance is also an answer to this proposition, and therefore, in the limited scope of Article 227 of the Constitution, when no such pleadings were before the Tribunal or Mamlatdar or the Deputy Collector, despite that, this Court has ventured threadbare look into all the aspects without curtailing any of the submissions which were not even germane in the matter. However, I do not think that all those submissions required to be decided as that might prejudice the petitioner in suits which are pending. The submission of Mr. Malkan also cannot be countenance in light of the fact that the subsequent sale-deed was executed by his client when he has already become major.

16. The submission that sec. 84C proceeding issue is there. The same is answered by the Division Bench of this Court, and therefore, it would not now be opened for the State Authority to contend that they can initiate proceedings under sec. 84C of the Act, after such a long period. I am fortified in my view by the decisions which are not cited at the bar by Ms. Jani learned advocate. The decision cited by Ms. Jani learned advocate in the case of Keshabo and another v. State of M.P. and others, reported in , (1996) 7 SCC 765, are of no avail and it is

on different factual scenario. The decision in the case of Shabbir (D) by LRS., and others vs. Abdul Sattar and others, reported in , (2000) 7 SCC 323 is also of no avail, and the undivided share is not sold as its entire land which has been sold.

17. The provisions of section 43C reads as under:

"43C. Certain provision not to apply to municipal or cantonment areas.

Nothing in sections 32 to 32R (both inclusive) and 43 shall apply to land sin the [areas which on the date of the coming into force of the Amending Act, 1955 are within the limits of]:-

[(a) * * *]

(b) a municipal corporation constituted under Bombay Provincial Municipal Corporations Act, 1949.

[(c) * * *]

(d) * * *]

(e) a cantonment, or

(f) any area included in a Town Planning Scheme under the Bombay Town Planning Act, 1954:

Provided that if any person has acquired any right as a tenant under this Act on or after the 28th December, 1948, the said right shall not be deemed to have been affected by the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1952, notwithstanding the fact that either of the said Act has been made applicable to the area in which such land is situate."

18. The submission of Ms. Jani that this transaction violates section 43 and 76 as held by this Court, is her main plank of submission.

The provisions of Section 76 reads as under:

"76. Revision.

(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 under section 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 of justice.

(2) In deciding applications under this section the [Gujarat Revenue Tribunal] shall follow the procedure which may be prescribed by rules made under this Act after consultation with the [Gujarat Revenue Tribunal].

19. Ms. Jani submitted that all these facts coupled with each other are interwoven, and therefore, the order is contrary to the provisions of section 43 of the Act and 76 also and the finding of fact of this Court. She has relied on the decision of Hon"ble Supreme Court in the case of State of Jharkhand and others vs. Ambay Cements and another, reported in , (2005) 1 SCC 368 and the decision in the case of Ritesh Tewari and another vs. State of Uttar Pradesh and others, reported in , (2010) 10 SCC 677 and submitted that the sale is absolutely illegal, and therefore, the same should be set aside.

20. The banakhat was entered into and even the parties have entered into the settlement in Civil Suit No. 614/1993 and the property to be conveyed, and therefore, during that period, the restrictions of the new tenure ceased and came to be old tenure land before 4.3.1998. Even before the authorities, there is no contention that the sale is bad. The suo motu powers exercised by the Mamlatdar, it is submitted that they were approved by the Tribunal and the Tribunal, therefore, could not have passed the alternative contrary order. I am afraid, I am unable to accept this submission in light of the decision of this Court in the case of State of Gujarat & Ors. vs. Maganbhai V. Desai & Ors., reported in , 2015 (2) GLR 1140.

21. While going through the entire record, three things emerge. One that the purchase was during the window period when there was no embargo of section 43, second that once there was no embargo, the tenant who was in possession of the said property since long had a right to enter into power of attorney, and third, the power of attorney had a right to enter into sale deed, and therefore, this sale deed was never questioned though now belatedly questioned after a long period, and therefore also, this challenge cannot be sustained as there is no substratum even before the Tribunal raised by any of the petitioner or his brothers or the mother, as she then was, and therefore, the submission of Ms. Jani that section 76A and 78 would cause an embargo read with section 43.

22. This petition being a petition under Article 227 of the Constitution. The contents and the prayers in the writ is distinct under Article 227 and 226 of the Constitution. Therefore, this petition can be said to be a petition under Article 227 of the Constitution in view of the decision of the Hon"ble Apex Court in the case of Himalayan Coop. Group Housing Society v. Balwan Singh, reported in , (2015) 7 SCC 373. All these new pleas and their cardinality have been looked into by this Court, and therefore, supervisory jurisdiction of this Court though does not permit this Court to go beyond the scope, I have gone and dealt with each and every aspects raised before this Court and the scope of interference dehors statutory provision cannot be exercised and the petition will have to fail.

23. In view of amendment to section 70-A, which is amended in the year 2014,

under the Bombay Tenancy & Agricultural Act, the Government of Gujarat after the Deputy Collector's order, has felt to take any proceeding under section 84-C of the Bombay Tenancy Act and when the finding is that the respondents No. 5 to 10, may be, through the power of attorney holder, are bona fide purchasers of the property, which was declared to be a property of old tenure, in view of interregnum period, cannot be found fault with. The Tribunal's declaration holding them to be bona fide purchasers has to be accepted. The findings of facts under Article 227 of the Constitution, unless they are perverse, cannot be interfered with and I do not find that the same are perverse, on the contrary, I can hasten to say that the petitioner had also accepted the amount of Rs. 3.5 crores which is still lying with him and had never deposited the same with the Trial Court. Be that as it may. While going through the record, it is found that the mutation entries are made in the name of the respondents, and therefore also, the order cannot be found fault with.

24. In the result, this petition fails and is dismissed. It goes without saying that the petitioner will be at liberty to raise all the objections before the Collector, as permitted under the law. Rule is discharged. Interim relief, if any, stands vacated.

FURTHER ORDER

25. After the judgment is pronounced, Ms. Jani learned advocate for the petitioner makes a request to stay the operation of this judgment for a period of 4 weeks, as the interim order has continued for a long time. Mr. Sanjanwala learned senior counsel, on instructions, states that, as such, they will pursue the remedy before the Collector or concerned authority, and therefore, as such, the interim relief may not be extended as it would take considerable long time for the Collector to decide their application, and as this Court has permitted the petitioner to raise all possible objections before the Collector. Once it is held that the petitioner has no right as there was no basic foundation even in the memo. before the Tribunal, I do not think that the status-quo order which was granted by this Court should be continued any further, as status-quo would mean that this court is recognizing the prima-facie right of the petitioner who has miserably failed in establishing the pleadings even before the authorities concerned, and therefore, the request made by Ms. Jani learned advocate for the petitioner to stay the operation of this judgment could not have been granted by this Court as I have left liberty to the petitioner, which, as such, he has never claimed, despite that, that prayer has also been granted, and therefore, the request of Ms. Jani learned advocate for the petitioner to stay the operation of this judgment, is rejected. However, the Civil Suit instituted by the children along with other civil Suits, which are still pending before the trial Court, will be decided on its own merits.