

(1994) 09 GUJ CK 0023

In the Gujarat High Court

Case No : Special Civil Application No. 1965 of 1979

Manubhai Ambalal Patel

APPELLANT

Vs

Chanchalaben Patel and Others

RESPONDENT

Date of Decision : 12-09-1994

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 9, 9(2), 9(3)
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1996 Guj 69

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : M.B. Parikh, for M.C. Shah, for the Appellant; A.J. Patel, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—In this petition under Article 227 of the Constitution of India, the petitioner has questioned the order passed by beauty Collector on 17-1-1978 and confirmed by Joint Secretary, Revenue Department, Ahmedabad on 27-11-1978.

2. For examining merits of this petition, the relevant factual fact may be noted. The petitioner purchased agricultural lands from respondent No. 1 and one Shashikant Jethalal in respect of Revenue Survey No. 625/4 admeasuring 24 Gunthas on 7th April, 1977 situated in village Thamna in Umreth Taluka of Kaira District. The petitioner is in possession of the disputed lands since the date of purchase.

3. Later on, the proceedings were initiated against the petitioner by the Deputy Collector under the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the Act) contending that there was breach of the provisions of Section 9(2) of the Act. The case was registered and inquiry was held by the Deputy Collector. After

hearing parties, Deputy Collector at Anand held that there was breach of provisions of Section 9(2) of the Act and the land sold to the petitioner was a fragmentation and, therefore, the sale transaction was void. The petitioner was found in an unauthorised occupation and, therefore, he was ordered to be removed from the fragmented land under the provisions of Sub-section (3) of Section 9 of the Act. The fine was also imposed. In short, the Deputy Collector at Anand resorted to provision of Section 9 of the Act empowering the revenue authority to levy penalty for transferring or partition contrary to the provisions of the Act. The order passed by the Deputy Collector came to be confirmed in a revision before the Government. Hence this petition under Article 227 of the Constitution of India.

4. Learned advocate for the petitioner has pointed out that land in question was exempted from the operation under the provision of Bombay Prevention of Fragmentation and Consolidation of Holdings Act by virtue of a Government Notification dt. 8th November 1956. The copy of the said notification is produced in the present petition. According to this notification, the entire area of Anand and Umreth Municipalities and the land falling within the radius of two miles from geographical territory of the said municipalities were declared to be exempted by the Government under the provisions of the Act.

5. On behalf of the petitioner, such a contention was also raised in revision before the Government. However, it was refused to be considered by the revisional authority on the ground that such a plea was not raised before the first court namely before the Deputy Collector at Anand. The reason which has weighed with the revisional authority is that the petitioner could not show that the disputed land Revenue Survey No. 625/4 was coming within the area of two miles radius as per said notification. This finding of the revisional authority is neither logical nor legal. Firstly, the notification itself in later portion shows that the numbers which are exempted from the operation of the Act and there is no dispute about this fact that the disputed Revenue Survey No. 625/4 is covered under the later part of the notification elaborately mentioning the numbers. So disputed land number is one of the numbers mentioned in the notification which are exempted from the operation of the Act.

6. In view of the aforesaid circumstances, the finding of the Government in revision that the disputed number was forming part of the lands and area mentioned in the notification exempting land from the Act is not mentioned or is not established, cannot be sustained. It makes not any manner of doubt in finding that the land in question bearing Revenue S.No. 625/4 is one of the numbers which are exempted from the operation of the Act by virtue of the notification issued under the Act. Therefore, the view taken by the revisional authority in revision is totally not only misconceived but perverse resulting in miscarriage of justice.

7. It may also be mentioned that ordinary new plea cannot be allowed to be agitated in revision. However when the point which goes to the root of the

matter, affecting jurisdiction of the authority or forum, can definitely be raised not only before the revisional authority but before the High Court. The Deputy Collector assumes authority and jurisdiction to levy penalty for transfer or partition contrary to the provision of Section 9 of the Act. It would be, therefore, necessary to refer to the said provision. Section 9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act reads as under :--

Section 9 : Penalty for transfer or partition contrary to provisions of Act.-- (1) The transfer or partition of any land contrary to the provisions of this Act shall be void.

(2) The owner of any land so transferred or partitioned shall be liable to pay such fine not exceeding Rs. 250/- as the Collector may, subject to the general orders of the (State) Government, direct. (Such fine shall be recoverable as an arrear of land revenue).

(3) Any person unauthorisedly occupying or wrongfully in possession of, any land, the transfer or partition of which, either by the act of parties or by the operation of law, is void under the provisions of this Act, may be summarily evicted by the Collector.

8. It becomes very clear that the named revenue authority is empowered to take action u/s 9 provided it is found that there was violation of provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, whether the disputed land is covered under the Act or is exempted is required to be examined by the authority concerned so as to exercise the powers under the provisions of Section 9 of the Act. Though it is true that the petitioner ought to have raised such a plea before the Deputy Collector. However, he raised such a plea before the Government in revision and admittedly it affects the exercise of the jurisdiction of the authority as it goes to the root of the matter; In such a situation, Court cannot sit silent even by raising its hands in helplessness condition or dispensing with the justice. Saying that new plea cannot be permitted at a latter stage, wherein the authority whether judicial or quasi-judicial, has in law no jurisdiction to pass the order. Mere omission on the part of the petitioner or party to raise such a plea before the authority, relevant facts for deciding that question would not empower the authority concerned to decide the matter and non-raising of such a plea would not clothe the authority with jurisdiction. In short, when a question or a plea is raised which affects the applicability of the Act or which pertains to the jurisdiction of the authority, such a plea can be allowed at any stage. The Government in impugned revision order ought to have allowed such a plea and decided in accordance with law. The view which has weighed with by me in the present petition at this stage is supported by the decision rendered in Pioneer Traders and Others Vs. Chief Controller of Imports and Exports Pondicherry, .

9. Having regard to the facts and circumstances of the case, and while I have viewed in light of the notification which is not in dispute, the land in question was

declared to be exempted from operation of the Bumbay Prevention of Fragmentation and Consolidation of Holdings Act. There was no fragmentation which was the subject-matter of the sale deed by virtue of which the petitioner got the possession of the land. Therefore, the Deputy Collector, Anand under the Act had no authority or jurisdiction to proceed with the matter and pass the order exercising the power u/s 9 of the Act, as the land in question was not covered and governed by the provisions of the Act.

10. In the result, the impugned orders passed by the Deputy Collector at Anand on 17-1-1978 and subsequently confirmed by the Government in revision on 27-10-1978 are required to be quashed and set aside. Accordingly both the impugned orders are quashed and set aside. The petition is allowed with no order as to costs. Rule is made absolute.