(2004) 10 GUJ CK 0026

In the Gujarat High Court

Case No : Special Civil Application No. 10357 of 2004

Maraji Sidhaji Chauhan APPELLANT

Vs

Dhulabhai Jenabhai Bhoi RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

Citation : (2004) 10 GUJ CK 0026

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Shailesh C. Sharma, for Petitioner Nos. 1-4, for the Appellant; Gajendra P. Singh, for Respondent Nos. 1-2, Mahendra K. Patel, for Respondent Nos. 1-2 and Gori, Ld. AGP, for the Respondent

Judgement

Jayant Patel, J.—Leave to join the State Govt. through the Secretary, Revenue department (Appeals), Polytechnic compound, Ambawadi, Ahmedabad as party respondent. Mr. Gori, Ld. AGP is directed to appear on behalf of newly added respondent.

2. Rule. Mr. Gajendra Singh waives service of rule on behalf of respondent Nos. 1 and 2 and Mr. Gori, Ld. AGP waives service of rule on behalf of newly added respondent, i.e. respondent No. 3. With the consent of learned counsel for parties matter is taken up for final hearing today.

3. Upon hearing the learned counsel for the parties, and upon perusal of the orders passed by the authorities including the State Govt., it appears that the subject matter involved in this petition is, more or less, the same as it was considered by this court on 28.09.04 in SCA No. 12547/04. In the said matter at para 8 it was observed as under:

"8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgement, it appears that it would not be proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into adversely affecting the rights under the other enactment and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is prima facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to the final decision which may be taken by the competent authority under the other concerned enactment. This Court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with law. If the entry, on the basis of the sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it cannot be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising power under the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not."

5. Under the above circumstances, the orders passed by the Collector as well as by the State Govt. which are impugned in this petition are modified to the extent that the concerned Talati-cum-Mantri of the Gram Panchayat shall enter the mutation with the aforesaid clarification that the entry is, primafacie, in breach of the provisions of Prevention of Fragmentation Act and the reference may be made to the concerned competent authority. The entry on the basis of registered sale deed with the aforesaid clarification will be certified subject to final decision

in the proceedings under the other enactments. So far as the rights of the respondent o. 1 and 2 as mentioned in the order is concerned, it would be open to respondent Nos. 1 and 2 to resort to appropriate proceedings in the civil court for establishing their right over the property and if such suit is preferred, the same may also be recorded in the revenue record by Talati-cum-Mantri and finally effect shall be given to the decision of the civil court which may ultimately be decided in the appropriate proceedings.

6. The petition is partly allowed to the aforesaid extent. Rule is made accordingly. Considering the facts and circumstances there shall be no order as to costs.

