
(1996) 12 GUJ CK 0034
In the Gujarat High Court

Mariamben and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 1, 10, 11, 12, 13
Constitution of India, 1950 — Article 226

Citation : (1997) 2 GLR 1056

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The order passed by the Deputy Collector of Choryasi Prant at Surat (Respondent No. 2 herein) on 16th August 1994

but communicated on 5th September 1994 is under challenge in this petition under Article 226 of the Constitution of India. Thereby respondent

No. 2 ordered resumption of administration for 10 years of one parcel of land bearing Survey No. 9001 renumbered as Block No. 95 situated at

Sachin, Taluka Choryasi (the disputed land for convenience) for breach of Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948

(the Act for brief).

2. The facts giving rise to this petition move in a narrow compass. The disputed land belongs to petitioner No. 1. She has entered into an

agreement for sale with petitioner No. 2 some time on 1st May 1987. Thereafter the State Government issued one notification u/s 88(1)(b) of the

Act exempting inter alia Survey No. 90 of Sachin, Taluka Choryasi, District Surat from operation of the Act. Its copy is at Annexure A to this

petition. It appears that petitioner No. 2 wanted to use the disputed land for non-agricultural purposes. It, therefore, remained uncultivated for

quite some time. It appears to have come to the notice of respondent No. 2. He appears to have found it in contravention of Section 65 of the Act.

A show-cause notice thereupon came to be issued inter alia to petitioner No. 2 on 16th October 1993 calling upon it to show cause why the

administration of land should not be resumed by the State Government for breach of Section 65 of the Act. Its copy is at Annexure B to this

petition. It appears that pursuant thereto the notice of the next date of hearing was given inter alia to petitioner No. 2 asking it to remain present on

11 th August 1994 at 12 noon in that connection. Its copy is at Annexure C to this petition. It appears that thereafter, by his order passed on 16th

August 1994, respondent No. 2 ordered resumption of the administration of the disputed land by the State Government for 10 years for breach of

Section 65 of the Act. A copy of the operative part of the order is at Annexure E to this petition. The petitioners have later on produced a copy of

the entire order and it is kept on record. The aggrieved petitioners have thereupon approached this Court by means of this petition under Article

226 of the Constitution of India for questioning the correctness of the order at Annexure E to this petition.

3. Learned Advocate Kum. Shah for the petitioner is right in her submission to the effect that the notification u/s 88(1)(b) of the Act will have

retrospective operation from the date of coming into force thereof. I am fortified in my view by the binding ruling of the Supreme Court in the case

of Smt. Parvati and Others Vs. Smt. Fatehsinhrao Pratapsinhrao Gaekwad, . It has clearly been held therein that the notification under the

aforesaid statutory provision is retrospective in its effect from the date of coming into force of the enactment.

4. A copy of the notification u/s 88(1)(b) of the Act issued on 14th November 1991 is at Annexure A to this petition. Survey No. 90 of Sachin,

Taluka Choryasi, District Surat very much figures therein. It is not in dispute that the aforesaid parcel of land bearing Survey No. 90 has been sub-

divided into Survey Nos. 90/1 and 90/2. In that view of the matter, the aforesaid notification at Annexure A to this petition will be applicable inter

alia to Survey No. 90/1, that is, the disputed land. The effect of the notification is that the land covered thereby is exempted from operation of

Sections 1 to 87 of the Act. In that view of the matter, the disputed land would enjoy exemption from the operation of inter alia Section 65 of the

Act retrospectively from the date of coming into force of the Act. If the aforesaid statutory provision contained in Section 65 of the Act is not

applicable, respondent No. 2 will have no jurisdiction to take any action thereunder in the disputed land.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure E to this petition cannot be sustained in law for

want of competence or jurisdiction on the part of its author. It has to be quashed and set aside.

In the result, this petition is accepted. The order passed by the Deputy Collector of Choryasi Prant at Surat on 16th August 1994 at Annexure E to

this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs. (SBS) Petition allowed