(2013) 03 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No. 10464 of 2000

Mariyambibi Ismailrasul and 1 Another APPELLANT

Vs

State of Gujarat and 1 Another RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2013) 03 GUJ CK 0029

Hon'ble Judges : J.B. Pardiwala, J

Bench : Single Bench

Advocate : Amar P. Dave, Mr. M.K. Vakharia, for the Petitioners No. 1-2 and Mr. Nandish Chudgar for Nanavati Associates, for the Petitioners No. 2, for the Appellant; Parth Bhatt, AGP for the Respondent(s) No. 1-2, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—By this application under Articles 226 /227 of the Constitution of India, the petitioners seek to challenge the order dated 10th July 1992 passed by the Deputy Collector, Godhra (Annexure-''A'' to the petition) and the order dated 8th October 1999 passed by the Secretary (Appeals), Revenue Department, Government of Gujarat (Annexure-''F'' to the petition).

Facts shortly stated may be summed up thus:

(1) The husband of the petitioner no. 1, late Ismail Rasul, purchased a parcel of land bearing Survey No. 349/1 admeasuring 2-Acres by way of a registered sale deed dated 10th August 1976 from one Shaikh Allarakha Rasul. After the registration of the sale deed on 10th August 1976, entry with regard to the said transaction was mutated in the Record of Rights on 26th April 1977 being Entry No. 4260.

(2) On 19th September 1985, the husband of the petitioner no. 1 passed away. On his demise, the petitioner no. 1, in her capacity as wife, requested the revenue authorities to substitute her name in place of her deceased husband''s

name in the Record of Rights, and accordingly, petitioner no. 1''s name was substituted by Entry No. 6116.

(3) It appears that thereafter the petitioner no. 1 executed an agreement to sell on 14th October 1985 in favour of the petitioner no. 2 Company with respect to the land in question.

(4) It is for the first time on 30th January 1992 that the Deputy Collector, Godhra, took Entry No. 4260 mutated in the Record of Rights on 26th April 1977 in suo motu review on the premise that the husband of the petitioner no. 1 could not have bought the land in question by way of a sale deed in the year 1976 as the character and nature of the land is a new tenure land governed by the provisions of Section 43 of the Bombay Tenancy Act.

(5) One additional ground which weighed with the Deputy Collector was that in the year 1985 the petitioner no. 1 could not have executed an agreement to sell with respect to the same land in favour of the petitioner no. 2 Company and, therefore, ordered forfeiture of the land in favour of the Government.

(6) I may clarify that the final order of forfeiture of the land is solely on the ground that Entry No. 4260 could not have been mutated in the Record of Rights as the transaction of 1976 could be said to be a void transaction being hit by the provisions of Section 43 of the Bombay Tenancy Act.

(7) Being dissatisfied with the order passed by the Deputy Collector dated 10th July 1992, the petitioners preferred an appeal before the Collector, Godhra. The Collector, Godhra, vide order dated 23rd March 1993, set-aside the order of the Deputy Collector, holding that a mere agreement to sell by the petitioner no. 1 in favour of the petitioner no. 2 Company would not confer any right, title or interest in the property and, therefore, there was no breach of the provisions of the Bombay Tenancy Act. The Collector also disagreed with the findings recorded by the Deputy Collector as regards the tenure of the land. Thus, vide order dated 23rd March 1993, the suo motu proceedings which were initiated by the Deputy Collector in the year 1992 came to an end.

(8) It appears that after a period of five years, the successor-in-office i.e. the Collector, Godhra, found that the order passed by his predecessor-in-office dated 23rd March 1993 was not in accordance with law and, therefore, he accordingly informed the Special Secretary (Appeals), Revenue Department, being his superior officer, about the same. Accordingly, the Special Secretary (Appeals), Revenue Department, took suo motu cognizance of the order passed by the Collector in the year 1993 on the strength of a letter dated 19th April 1997 addressed by the successor-in-office to the then Collector, Godhra.

(9) The Special Secretary (Appeals), Revenue Department, took the view that the land in question is a new tenure land and, therefore, the husband of the petitioner no. 1 could not have bought a new tenure land without seeking prior permission of the Collector and without paying the necessary premium for

change of tenure on 10th August 1976. Accordingly, the Special Secretary (Appeals), Revenue Department, held Entry No. 4260 mutated in the revenue record on 26th April 1977 as void ab initio.

(10) The Special Secretary (Appeals), Revenue Department, was also of the view that the agreement to sell executed by the petitioner no. 1 in favour of the petitioner no. 2 Company with respect to the land in question was also invalid.

Being dissatisfied with the order passed by the Special Secretary (Appeals), Revenue Department, the petitioners have come up with this petition.

2. Mr. Nandish Chudgar, the learned advocate appearing for the petitioners, very strenuously contended that the Deputy Collector as well as the Special Secretary (Appeals), Revenue Department, have committed an error which goes to the root of the matter. According to Mr. Chudgar, there is a gross delay in initiating suo motu proceedings against the petitioners. He has submitted that the Entry No. 4260 was mutated way back on 26th April 1977. He also submitted that when the husband of the petitioner no. 1 passed away in the year 1985 and when petitioner no. 1''s name was substituted in the Record of Rights, even at that point of time no objection was raised as regards the tenure of the land or as regards the transaction of the year 1976. Mr. Chudgar further submitted that it is only for the first time on 30th January 1992 that the Deputy Collector, Godhra took Entry No. 4260 in suo motu review on two grounds: first, the land being new tenure land and secondly, invalid agreement to sell by the petitioner no. 1 in favour of the petitioner no. 2 Company. Mr. Chudgar also laid stress on the fact that the order passed by the Deputy Collector cancelling the entry and ordering forfeiture of the land was quashed and set-aside by the Collector in the year 1993 and thereafter almost after a period of more than four years, the Special Secretary (Appeals), Revenue Department, took suo motu cognizance of the order passed by the Collector in the year 1993. Thus, according to Mr. Chudgar, there is a gross delay which could be termed as unreasonable going to the root of the matter. Mr. Chudgar, therefore, in the circumstances, prays to allow the petition and set-aside the orders impugned.

3. Mr. Parth Bhatt, the learned AGP appearing for the State respondents, very vehemently opposed this petition and submitted that no error not to speak of any error of law could be said to have been committed by the Deputy Collector as well as by the Special Secretary (Appeals), Revenue Department, in passing the orders impugned. Mr. Bhatt laid stress on the fact that the land is a new tenure land and, therefore, without prior permission of the Collector and without paying appropriate premium for the change of the tenure, the husband of the petitioner no. 1 could not have bought the land in the year 1976. According to Mr. Bhatt, the Entry No. 4260 mutated in the revenue record on 26th April 1977 is based on a void transaction of the year 1976. According to him, if a transaction is void, it remains void right from the inception and such transaction could be taken in suo motu review even if there is some delay. Mr. Bhatt also laid stress on the fact that the petitioner no. 1 could not have executed the agreement to

sell in favour of the petitioner no. 2 Company as the same is a new tenure land and even otherwise without seeking prior permission of the Collector an agricultural land cannot be transferred to a non-agriculturist as provided in the provisions of Section 63 of the Bombay Tenancy Act. Thus, Mr. Bhatt, in the circumstances, prays that there being no merit in this petition, the same be dismissed and the orders which are impugned be confirmed.

4. Having heard the learned counsel for the respective parties and having gone through the materials on record, the only question that falls for my consideration is, whether the Deputy Collector as well as the Special Secretary (Appeals), Revenue Department, are justified in passing the orders impugned.

5. I am of the view that this petition deserves to be allowed on a very short ground of gross and unreasonable delay.

6. By now it is well-settled that even a void transaction cannot be ignored. Although Mr. Bhatt tried to draw a distinction between an invalid order or transaction compared with a void order or transaction, as according to Mr. Bhatt, an invalid order or transaction would remain invalid till it is declared to be invalid, whereas a void transaction or order would remain void right from inception. However, I am not impressed with such submission of Mr. Bhatt.

7. I am afraid, I am unable to accept this submission because this issue is no longer res integra. Even a void transaction has to be declared so within a reasonable period of time in exercise of suo motu powers by the revenue authorities. I may only state that an entry which was mutated way back on 26th April 1977 remained on the revenue record till 10th July 1992. For all these years, no objection of any nature was raised, and despite the fact that in the year 1985 when the wife requested the authorities to substitute her name in place of her deceased husband''s name, even at that point of time no objection was raised. Apart from the above, another aspect which has weighed with me is the delay of five years in taking the order of the Collector in suo motu review by the Special Secretary (Appeals), Revenue Department. The Collector set-aside the order of the Deputy Collector on 23rd March 1993. This order of the Collector was taken in suo motu review by the Special Secretary (Appeals), Revenue Department, on 5th July 1997 and that too very surprisingly on a letter addressed by the Collector i.e. the successor-in-office of the then Collector who had passed the order dated 10th July 1992. It comes to this that an officer of an equal rank took the view that his predecessor-in-office had committed an error in passing the order and, therefore, he accordingly informed the Special Secretary (Appeals), Revenue Department, who in turn, took the order of the Collector dated 23rd March 1993 in suo motu review.

8. In the circumstances, I am left with no other option but to hold that the order passed by the Special Secretary (Appeals), Revenue Department, is not tenable in the eye of law.

9. For the reasons aforesaid, this petition is allowed. The order passed by the

Special Secretary (Appeals), Revenue Department, dated 8th October 1999 as well as the order passed by the Deputy Collector dated 10th July 1992 are quashed and set aside.

10. I may clarify that I have disposed of this petition on a very short ground of gross and unreasonable delay without going into any other aspects as regards the legality and validity of the agreement to sell executed by the petitioner no. 1 in favour of the petitioner no. 2 Company. With the above observations, the petition is allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

