

(1987) 09 GUJ CK 0026
In the Gujarat High Court

Case No : Spl. Civil Appls. No's. 1194 to 1159 of 1986

Markland Pvt. Ltd. and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-09-1987

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63, 76, 9
Constitution of India, 1950 — Article 227

Citation : AIR 1989 Guj 44 : (1988) 1 GLR 197

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : K.S. Nanavati, for the Appellant; J.M. Thakore, General and M.D. Pandya, Govt. Pleader, for the Respondent

Judgement

1. Obtain by "proper management" or otherwise, an unlawful and erroneous order permitting to transfer land in favour of non-agriculturist. See that the same is not challenged by vendor of the land. The phrase "proper management" conveys every thing dot commonsense should dictate, having regard to the realities of life. In this fashion can any one frustrate the objects of the Bombay Tenancy and Agricultural Lands Act, 1948? Or is it open to the State Government to challenge such orders in revision", notwithstanding the fact that the Government is not a party in the proceedings before lower authority? These are few of the questions involved in these petitions, besides other common questions of law and facts. Having regard to the facts and circumstances of the cases, at the request of and by consent of the parties all these petitions are being disposed of by a common judgment.

2. The petitions are under Art. 277 of the Constitution of India. Petitioner No. 1, a private limited company, and other petitioners who an original owners of the land challenge the. legality and validity of the order passed by the Gujarat Revenue Tribunal by which the Tribunal cancelled the permission to purchase agricultural land granted to the petitioner No. 1 private limited Company. The

Deputy Collector, under S. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, had granted the permission. The Tribunal, as per its order, dt. Sept. 20, 1985 cancelled the order of the Deputy Collector, and remanded the matter to the Deputy Collector for being considered the same in accordance with law. Same is the position in all the matters. This order is challenged by the petitioners.

3. The learned counsel for the petitioners submits that the order under S. 63 of the Act is required to be passed by the Collector. When the Deputy Collector exercised this power under S. 63, he acted as a delegate of the Collector. Therefore, the revision could not have been filed by the Collector. In his submission, revision at the instance of the Collector would amount to challenging the legality and validity of the order passed by the Collector himself.

4. The contention cannot be accepted. The term "Collector" has been defined in Section 2E of the Act, which reads as follows:

"2E. "Collector" includes an Assistant or Deputy Collector performing the duties and exercising the powers of the Collector under the Bombay Land Revenue Code, 1879, or any other Officer specially empowered by the State Government to perform the functions of the Collector under this Act."

In the instant case the Deputy Collector granted permission for sale of the land as per his order dt. Aug. 27, 1982. The revision had been filed by the Collector. As per definition of the term "Collector any of the officers mentioned in the definition clause can termed as Collector. He may be an Additional Collector, Assistant Collector or Deputy Collector or any other officer specially empowered under the Act in this behalf: Therefore, it is not correct to say that when the Deputy Collector exercised his power he exercised the power under S. 63 of the Act as a delegate of Collector. The Deputy Collector has exercised his power in his own right as "Collector" as per the definition u/s 2E of the Act.

5. It is also not correct to say that when the Collector prefers revision it would amount to challenging one's own order. The Collector does not prefer revision in his capacity as Collector. When he files the revision, he acts as the representative of the Government. The Government may take action either through the Collector or through any other officer. Simply because the Government takes action through the Collector of the same district it cannot be said that the revision is not maintainable. In a given case it may happen that the Government may direct the same officer to prefer revision. Even in such cases, technically such a revision application may be maintainable. But that is not the case here. Therefore, it is not necessary to discuss this question further.

6. The learned counsel for the petitioners submitted that in view of the provisions of Section 76 of the Act the revision by the State Government is not maintainable. In his submission the proceedings under S. 63 (i.e. for permission to transfer the land to non agriculturist), the Government is not a party. The Collector (as defined under S. 2E of the Act) exercised his statutory power. There is no "lies" between the applicants and the Government. The Government not

being. party in the proceedings under S. 63 of the Act, it has no right to challenge the legality and validity of the order passed under S. 63 of the Act. In substance the submission is that the appeal and/or revision being the creature of the statute, there being no specific provision conferring right upon the Government to challenge the legality of the order passed under S. 63 of the Act, the revision at the instance of the Government is not maintainable.

7. The aforesaid argument cannot be accepted. For this purpose one has to consider the provisions of the statute in its entirety and find out as to whether the Government has a right to prefer revision as it has been done in this case. If one reads the pre amble to the Act, it becomes evident that the objects of the said Act are :

(1) to see that the social and economic conditions of the peasants are improved; and

(2) to ensure full and efficient use of the land for agriculture.

With a view to achieve the aforesaid objects it is considered expedient:

(a) to assume management of estates held by landowners;

(b) to regulate and impose restrictions on the transfer of agricultural lands, dwelling houses, sites and lands appurtenant thereto belonging to or occupied by agriculturists, agricultural laborers and artisans; and

(c) to make provisions for certain other purposes appearing in the Act.

8. Therefore, having regard to the aforesaid objects of the Act, it is clear that the Government will be an interested party in respect of almost all orders that may be passed by the officers exercising powers under the provisions of the Act. It is the duty of the Government to see that proper orders are passed so that the objects of the Act are achieved and the provisions of the Act are properly applied. If the contention of the learned counsel for the petitioners is accepted, then it would be very easy, and/or at any rate it would not be very much difficult to frustrate the entire provisions of Section 63 of the Act. One has to see that an erroneous order is passed by an officer exercising power u/s 63 of the Act. Such an erroneous order can be managed also. Such a "managed order can frustrate the entire working of the Tenancy Act. Objects of the statute, and proper implementation thereof cannot be frustrated by "managed errors", or even by bona fide errors. This circumstance alone would be sufficient to read under S. 76 of the Act. That the Government has a right to file revision application against the orders which do not sub serve the object of the Act or which are not in conformity with the. provisions of the Act. There is nothing in Section 76 of the Act, which precludes the State Government from filing revision. Moreover, there is nothing to show that only a party to the proceedings before lower authority can prefer revision application" under S. 76 of the Act. The entire community and therefore the State Government have vital and material interest in the proper implementation of the Act. At any rate in proceeding under S. 63 of the Act,

wherein seller and purchaser of the land are likely to act in collusion and-since both may have common interest in flouting the law, the State Government will probably be the only agency through which. the order passed by lower authorities can be challenged in revision under S. 76 of the Act. Therefore, the contention, that the revision at the instance of the, Government is not maintainable has no force and the same is required to be rejected.

9. The learned counsel for the petitioners submitted that the revision application as provided under S. 9 of the Act is required to be filed within a period of sixty days from the date of tile order under challenge. In this case the revision application is filed after a period of about ten months from the prescribed date of limitation. As submitted by the learned counsel for the petitioners the Tribunal may condone the delay, but in the instant case there was no application for condonation of delay. Hence, in absence of application for condonation of delay, the delay could not have been condoned the contention is misconceived. There is no dispute with regard to the fact that provisions of section 5 of the Limitation Act do apply to these proceedings. Section 5 of the Limitation Act only requires the appellant or the applicant to satisfy the Court that he had sufficient cause for not preferring the appeal or making the revision application within such period. The section does not. require that There should be a written application for condonation of delay. In fact this is the view which has been taken by this Court in the case of Naran Anappa Sheti Vs. Jayantilal Chunilal Sahah, and in the case of Patel Purshottamdas Motilal v. Patel Chhotabhai Motibhai, (1979) 20 GLR 918. Therefore, the contention that the Tribunal ought not to have condoned the delay in absence of written application for condonation of delay has no merit and the same is required to be rejected.

10. The learned counsel for the petitioners submitted that the Government had failed to make out any cause, much less sufficient cause, for condonation of delay. Be it noted that this is a petition under Art. 227 of the Constitution of India. Once it is found that there is some material on the basis of which the Tribunal has come to the conclusion that there was sufficient cause, this Court cannot enter into further scrutiny. In the instant case the affidavit sworn by the Collector was filed before the Tribunal. It was only when the Government called for- the paper and the papers were routed through the Collector that the Collector knew about such an order having been passed. It was at that stage that the Government felt it necessary that the revision application should be filed. In the facts and circumstances of tile case, the Tribunal has found that there was sufficient cause for filing the revision beyond the prescribed period of limitation. This is the finding of fact. In a petition under Art. 227 of the Constitution of India, unless this finding is shown to be perverse, it would riot be open to this Court to disturb the same. The finding is certainly not perverse, but it is perfectly in accordance with law. As held by the Supreme Court in -the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , the phrase ":sufficient cause" occurring in Section 5 of the Limitation Act, is required to be construed liberally. Applying the principles laid down by the Supreme Court in the

aforesaid case it can never be said that the Tribunal has not considered the principles regarding condonation of delay properly.

11.The learned counsel for the petitioners submitted that the Tribunal ought not to have condoned the delay and ought not to have applied the principles laid down in the case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, . This was a case under S. 211 of the Bombay Land Revenue Code. For filing revision u/s 211 of the Bombay Land Revenue Code, no period of limitation is prescribed. The principles laid down in that case would not be applicable here. Therein, the Supreme Court has held that even in absence of the time limit prescribed under a statute, the revision application may be entertained or the revisional powers may be exercised within reasonable time. The" Supreme Court has further held that the length of reasonable time shall be determined having regard to the facts and circumstances of the case and nature of the order to be revised. In this case the question is whether there was "sufficient cause" for condonation of delay and whether it has been properly considered? Hence this decision has no application to the facts of this case. In light of the principles laid down by the Supreme Court in the case of *Collector, Land Acquisition, Anantnag (supra)* and in view of the principles laid down by this Court in the, case of *Naran Annappa Shethi (supra)* and *Patel Purshottamdas Motilal. (supra)* it can never be said that the Tribunal has committed any error, much less an error apparent on the face of the record, while, condoning the delay in the present case.

12.The learned counsel for the petitioner submitted that the grounds for interfering with the order passed by the Deputy Collector are not germane and all the grounds are irrelevant. The Tribunal has interfered with the order passed by- the Deputy- Collector *inter alia* on the following grounds :

- (i) that the sale consideration was not mentioned in the application; and on this point inquiry has not been made by the Deputy Collector;
- (ii) that the banakhat was entered into without permission of the appropriate authority under S. 63;
- (iii) that the Deputy Collector did- not inquire about the objects of the Company and did not look into the Articles of Association and Memorandum of the Company;
- (iv) that the Deputy Collector did not inquire about the extent of requirement. of the company nor did he inquire about the nature of industry and also did not consider as to how much area would be required for the proposed industry or industries.

If one keeps in mind the underlying objects behind enacting the Act which have been referred to hereinabove, it can never be said that any of the grounds mentioned hereinabove is extraneous or irrelevant. In fact one of the grounds i.e. banakhat having been entered into without permission of the appropriate authority as required under S. 63 of the Act, is very much relevant and weighty.

The parties may negotiate between themselves and then can arrive at agreed terms. But before entering into banakhat a proper application should be made to the appropriate authority. Only after the appropriate authority granted permission the banakhat could have been entered into. The fact that without obtaining such permission the banakhat was entered into, shows that something wrong was being done, or at any rate the parties were acting in contravention of the provisions of the Act Other grounds which have weighed with the Tribunal are also surely relevant and can never be said, to be irrelevant grounds.

13. As stated hereinabove, the, petitions are under Art. 227 of the Constitution of India. There is no illegality or impropriety in. the order passed by the Tribunal. All that the Tribunal has done is to remand the matter to the Deputy Collector to consider the same in accordance with law. The order passed by the Tribunal is eminently just and proper and the same is not required to be interfered with by exercising powers under Art 227 of the Constitution of India.

14. In the result, all the petitions are rejected. Notice discharged in each petition.

15. Petitions rejected...