
(2017) 03 GUJ CK 0087
In the Gujarat High Court
Case No : 63 of 2001

MAULIKBHAI KIRITBHAI SHAH & ANR.

APPELLANT

Vs

COLLECTOR & ORS.

RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:

[Bombay Land Revenue Rules, 1921](#), Rule 108(6)

Citation : (2017) 03 GUJ CK 0087

Hon'ble Judges : Bela M. Trivedi

Bench : Single Bench

Advocate : MEGHA JANI, VENUGOPAL PATEL, VIRAL K SHAH

Final Decision : Dismissed

Judgement

1. The present petition was originally filed by the petitioner Maulikbhai Kiritbhai Shah challenging the order dated 7-8.09.2000 passed by the Deputy Secretary (Appeals), Revenue Department, Government of Gujarat

(hereinafter referred to as "the S.S.R.D."), in Revision Application No. 08 of 1998 filed by the said petitioner challenging the order dated 22.05.1997 passed by the respondent No. 1 - Collector.

2. As per the case of the said petitioner Maulikbhai, the land bearing Survey No. 157 (Old Revenue Survey No. 126/2) admeasuring 8094 sq. mtrs. situated at Adalaj, Taluka and District Gandhinagar, originally belonged to one Ratilal Nathabhai, Kanubhai Nathabhai and Jasubhai Nathabhai (respondent No. 5) herein. Subsequently, the said Ratilal and Kanubhai having released their right over the said land in favour of the respondent No. 5 Jasubhai Nathabhai, an entry being No. 7126 was mutated in the revenue record on 23.12.1985. According to the said petitioner, the said land was an old tenure land and by mistake the word "new tenure" was mentioned in the revenue record somewhere in 1948-49. Therefore, the said entry was sought to be corrected by the Talati-cum-Mantri vide the entry No. 8548 on 05.09.1995 stating inter alia

that the entry in the village Form No. 6 treating the said land as new tenure was required to be deleted. The said corrected entry was certified by the D.E.L.R., Gandhinagar on 11.10.1995 (Annexure "C"). It appears that thereafter, the said land was purchased by the petitioner Maulikbhai from the respondent No. 5 Jasubhai as per the sale deed executed on 21.10.1995 (Annexure F). However, the Prant Officer referred the matter of correcting the entry to the Collector. The Collector exercising the

powers of revision under Rule 108 (6) of the Bombay Land Revenue Rules (hereinafter referred to as "the said Rules") set aside the corrected entry being No. 8548 made in the village Form No. 6 holding that the said land was new tenure land only, vide the order dated 22.05.1997 (Annexure "D"). The petitioner Maulikbhai being aggrieved by the said order, had preferred the Revision Application being No. 08 of 1998 before the S.S.R.D., who vide the impugned order dated 07-08.09.2000 (Annexure "E") dismissed the same, against which the present petition was filed.

3. It appears that the said petitioner Maulikbhai filed an additional affidavit in the present petition on 29.02.2012 stating inter alia that he had already sold out the land in question to one Jayantibhai Mahadevbhai Jakasania by executing registered sale deed on 10.04.1997 and the said subsequent purchaser was the owner and in possession of the land in question. It appears that the said Jayantibhai Mahadevbhai had also moved a Civil Application being No. 2303 of 2012 seeking his impleadment as the petitioner No. 2. The said application was resisted by the learned advocate Mr. Viral Shah appearing for the respondent No. 5 contending inter alia that the original petitioner Maulikbhai had suppressed the material facts from the Court that on the date of filing of the petition that he was not the owner, as he had already sold out the land in question to said Jayantibhai. However, the Court keeping the said contention raised by Mr. Shah open, permitted the said

Jayantibhai to be impleaded as party petitioner No. 2 in the petition. It appears that the original respondent No. 5 Jasubhai Nathabhai also expired during the pendency of the petition, and therefore, his heirs were permitted to be brought on record.

4. The respondent No. 3 - Mamlatdar has resisted the present petition by filing affidavit-in-reply contending inter alia that the original petitioner Maulikbhai had suppressed the material facts from the Court, by not placing on record the subsequent events which had taken place pending the petition, in the additional affidavit filed by him in the year 2012. It was further contended that the heirs of the respondent No. 5 Jasubhai had challenged the entry No. 10881 made in the village form No. 6 certified by the Mamlatdar on 20.08.2007 in respect of the sale made in favour of Maulikbhai, and had also challenged the entry being No. 10884 made in the village Form No. 6 certified by the Mamlatdar on the same date i.e. 20.08.2007 in respect of the sale made by the said Maulikbhai in favour of said Jayantibhai, and that the Prant Officer vide the order dated

14.06.2010, had set aside both the entries after hearing the parties. According to this respondent, the said order passed by the Prant Officer has remained unchallenged by the petitioners and the said order was also suppressed by the petitioner No. 1 by not disclosing the same in the additional affidavit filed on 29.02.2012. It was also contended that the original respondent No. 5 Jasubhai had applied for conversion of the land from new tenure

to old tenure, and the said application was allowed by the Mamlatdar vide the order dated 22.05.2003 (Annexure R-1) subject to payment of charges as mentioned therein and thus, the said land was consistently treated as new tenure land till it was permitted to be converted into old tenure in the year 2003.

5. It has been sought to be submitted by the learned advocate Ms. Megha Jani for the petitioners that the land was treated as new tenure by mistake and therefore, the said mistake was sought to be corrected by the Talati-cum-Mantri vide the entry No. 8548, which was certified by D.E.L.R. on 11.10.1995, and thereafter the petitioner No.1 had purchased the said land on 21.10.1995. She further submitted that the said entry was set aside by the Collector vide the order dated 22.05.1997 without any evidence to show that the said land was of new tenure. Placing reliance upon the various decisions of this Court more particularly in the case of State of Gujarat versus Bhikaji Maganji Thakore decided on 24.08.2000 in Letters Patent Appeal No. 626 of 1997 and other connected matters, she submitted that in absence of any material to show that the land was a new tenure land, the revenue authorities could not make the entry treating the land as new tenure land. She also relied upon circulars of the Government instructing the revenue authorities to register the entries after verifying the status of land as to whether the land was of new tenure and inalienable or not. She further

submitted that the original petitioner Maulikbhai had stated necessary facts in the petition, and that non- disclosure of the fact with regard to the sale made by him prior to filing of the petition in favour of Jayantibhai, who was subsequent impleaded as the petitioner No. 2, could not be said to be material suppression of fact. In this regard, Ms. Jani has relied upon the decisions of Supreme Court in the case of S.J.S. Business Enterprises (P) Ltd. versus State of Bihar and Others reported in (2004) 7 SCC 166 and also Arunima Baruah versus Union of India and Others reported in (2007) 6 SCC 120. She lastly submitted that non-disclosure of said fact would not have made much impact inasmuch as the petitioner at the most was required to pay the charges equivalent to sixty times of the assessment of land. She has also relied upon the decision of this Court in the case of Rameshbhai Ambalal Shah versus State of Gujarat and Another reported in 2011 (3) GLH 98, in support of her submissions that the respondent No. 5 after pocketing the money from the petitioner No. 1, could not have contended that the land being new tenure land, the sale in favour of the petitioner No. 1, was illegal.

6. However, the learned AGP Mr. Patel for the respondent Nos. 1 to 4 and Mr. Viral Shah, learned advocate appearing for the legal heirs of respondent No. 5 vehemently submitted that the original petitioner Maulikbhai had not disclosed the correct facts in the petition. According to them, the said petitioner had no right, title or interest in the land

in question on the date of filing of the petition as he had already sold out the subject land in the year 1997 to the subsequently impleaded petitioner No. 2 Jayantibhai. The said fact was also suppressed by the said petitioner before the S.S.R.D. in the revision application filed by him. They also submitted that though the said petitioner Maulikbhai had filed an additional affidavit in the year 2012, he had suppressed all the subsequent developments which had taken place and the proceedings which were filed in respect of the land in question, pending the petition, in which he was party, and whereby the revenue entries made in favour of the petitioners, were already set aside. The learned advocate Mr. Shah has further submitted that the legal heirs of the respondent No. 5 have already filed a suit in the Civil Court seeking cancellation of the sale deed executed in favour of the petitioner No. 1 and that the said suit is pending before the concerned Civil Court.

7. Since much has been argued on suppression of material facts, let us see the legal position on the said issue. As held by the Supreme Court in case of *Trilokchand and Motichand and Others versus H.B. Munshi and Another* reported in (1969) 1 SCC 110, a litigant is bound to make "full and true disclosure of facts". The petitioner containing misleading and inaccurate statements amounts to abuse of process of law, which should not be dealt with lightly. It has also been held in catena of decision that no litigant should be permitted to play "hide and seek" or adopt

"pick or choose" method. True facts have to be disclosed in the petition invoking extraordinary jurisdiction of High Court. As regards the suppression of facts, Ms. Jani has placed heavy reliance on the decision of the Supreme Court in the case of *S.J.S. Business Enterprises(P) Ltd.* (supra), in which it has been observed in para 13 as under : -

"As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken."

8. The reliance has also been placed on the decision in the case of *Arunima Baruah* (supra), in which it has been held by the Supreme Court in para 12 as under : -

"It is a trite law that so as to enable the court to refuse to exercise its

discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the

parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question."

9. In the light of aforesaid position, if the facts of the present case are appreciated, then it appears that as stated earlier, the petition was originally filed by the petitioner Maulikbhai challenging the order of S.S.R.D. The said petitioner had already sold out the land in question to the subsequently impleaded petitioner No. 2 Jayantibhai by executing registered sale deed on 10.04.1997, which fact was neither disclosed in the present petition, nor in the proceedings before the S.S.R.D, which were filed by him after he sold out the said land. The present petition was filed in the year 2001 when the said petitioner had ceased to be the owner and occupier of the land in question. As transpiring from the copy of sale deed produced subsequently before this Court, the possession of the land was handed over to Jayantibhai on the date of execution of the sale deed, still however it has been stated in the petition that the said petitioner was in possession of the land in question, suppressing the fact that he had already sold out the land. The said fact was disclosed by the said petitioner only in the additional affidavit filed by him in the year 2012. Under the circumstances, it transpires that the said petitioner as such had no

right, title or interest in the land in question when he filed the petition in the year 2001.

10. Though it has been sought to be contended by Ms. Jani that non disclosure of the fact that the petitioner Maulikbhai had already sold out the land in question to the petitioner No. 2 in the year 1998, would not be suppression of material fact, it is difficult to accept the said submission. Though the said petitioner had ceased to have any right, title or interest in the land in question, the said petitioner by making misleading statements in the petition had sought to create an impression that he was the owner and in possession of the land in question. The Court relying upon such statements had granted an ex-parte ad-interim relief, which continued for so many years. Even in the additional affidavit filed by the said petitioner in the year 2012, the said petitioner had not disclosed about the subsequent events and proceedings which had taken place during the pendency of the petition in respect of the land in question. The Court therefore is of the opinion that by not disclosing true and correct facts in the

petition, the petitioner No.1 had disentitled himself to seek any relief from this Court. In any case, now since the petitioner No. 2 has been impleaded as such, let us examine merits of the petition also.

11. As stated hereinabove, the earlier entry recording that the land in question was of new tenure, was sought to be corrected by the Talati-cum-Mantri as

per the entry No. 8548 on the ground that there was no such entry made in the village Form No. 6 or 7/12 earlier. However, as transpiring from the revenue record produced in the petition, there were entries in the village form No.6 and 7/12 recorded for more than forty five years, showing the land as of new tenure. The said entry in the revenue record treating it as the new tenure land was never challenged by the original owner Nathabhai or his heirs. However, it was sought to be corrected by the Talati-cum-Mantri in the year 1995 without any authority of law. There was also no document or evidence produced by any party before the Talati-cum-Mantri or D.E.L.R. to show that the said land was of old tenure and not of new tenure. It is also not being culled out from the entry No. 8548 as to who was the applicant who had sought correction. If any such applicant had any grievance against such entry, registering the land as new tenure land, he was required to challenge the same before the appropriate authority under the Bombay Land Revenue Code and Rules framed thereunder. The Talati-cum- Mantri in any case had no authority to make the corrections in the revenue record with regard to the tenure of land. The Collector and the S.S.R.D. having rightly set aside the said corrected entry No. 8548, the impugned orders deserve to be confirmed.

12. It is pertinent to note that during the pendency of the present petition, the respondent No. 5 Jasubhai had got the land converted into the old tenure as per the order dated 22.05.2003 (Annexure R-1) produced by

the respondent No. 2. It has also been submitted by the learned advocate Mr. Viral Shah that the legal heirs of the respondent No. 5 have filed the suit seeking cancellation of the sale deed executed in favour of the petitioner No.1. In the judgment of Division Bench in the Letters Patent Appeal No. 626 of 1997 and others, relied upon by the learned advocate Ms. Jani, the Court after considering the facts of the case had found that there was no basis for registering the land in question as new tenure land, and therefore had not interfered with the order passed by the Single Bench, whereas, in the instant case, the entry existing for since more than forty five years, was sought to be corrected by the Talati and D.E.L.R. without any authority of law. It is further pertinent to note that the entries made in favour of the petitioner No. 1 and the petitioner No. 2, have also been set aside by the Prant Officer and the said order has also remained unchallenged at the instance of the petitioners.

13. In that view of the matter, the petition being devoid of merits, deserves to be dismissed and is accordingly dismissed. Rule is discharged.