

(2000) 08 GUJ CK 0028

In the Gujarat High Court

Case No : Special Civil Application No. 4082 of 1989

Mavjibhai S. Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-08-2000

Acts Referred:

Citation : (2002) 1 GLR 410

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : K.B. Pujara, for the Appellant; Hansa Punani, Asstt. Govt. Pleader for Respondent Nos. 1, 2, 3, for the Respondent

Final Decision : Allowed

Judgement

H.K. Rathod, J.—Heard Mr. K.B. Pujara, learned advocate on behalf of the petitioner and Ms. Hansa Punanani, learned AGP appearing on behalf of the respondents.

2. In the present petition, RULE has been issued by this Court on 2nd May, 1991 and granted interim relief which continued till further order. It is required to be noted that respondent authorities have not filed any reply to the present petition and not challenged any averments made in the petition. In the present petition, order passed by the Gujarat Revenue Tribunal in Tenancy/B.A./567/87 decided on 29th August, 1988 is under challenge.

3. The brief facts of the present petition are as under.

The petitioners are Kachchi Patels and agriculturist by occupation since generations and they were holding agricultural lands jointly with their brothers at Khedbrahma in Sabarkantha District but as it was difficult to maintain their families in the small income from such lands of inferior quality, the petitioners migrated to village Nandol in Dehgam Taluka in the year 1975-1976 and started doing agricultural labour. In 1978 the petitioners purchased land of block No. 824 of Nandol by registered sale deed dated 2nd February, 1978 and started

agricultural operations thereon. The said transfer was registered in the record of rights - Form No. 6 by entry No. 2644 dated 26-9-1978 which entry was approved on 6th / 16th February, 1979. Thereafter, by entry No. 2834 dated 29th December, 1980 the land was entered in the name of petitioner No.2 pursuant to family partition. This entry was also approved by the Mamlatdar on 30th January, 1981.

4. According to the petitioner after the period of more than 5 years of the said purchase of the said land, the Mamlatdar initiated proceedings u/s 84(C) of the Bombay Tenancy and Agricultural Lands Act, 1948 for breach of Section 63 of the Act by RTS No. 35/1983 dated 1st November, 1983 and by his order dated 30th November, 1983 passed Tenancy Case No. 6034/83 the respondent No. 3 set aside the transfer and directed the land to vest in the State Government. The petitioner approached the appellate authority against the said order by way of appeal but the said appeal was also dismissed by the respondent No.2 by his order dated 24th July, 1987 in Tenancy Appeal No. 123/1984. Thereafter, revision application u/s 76 of the Act against the said order was also dismissed by the Revenue Tribunal by his order dated 29/ 30th August, 1988 in revision application No. TEN/BA/567/87. The said order of the tribunal is challenged in the present petition.

5. Mr. Pujara, learned advocate for the petitioner has submitted that the petitioner having good case on merits. However, he submitted that in respect of the contention raised by the petitioner about unreasonable delay as set out in para-3 of the petition, Mr. Pujara submitted that the authorities have exercised their powers too belatedly after long span of 5 years during which the petitioners have developed the land in question and their position is irreparable and therefore, the authority cannot put the land back to the Government as it would cause irreparable loss and injury to the petitioner. Mr. Pujara, learned advocate further submitted that where no period of limitation is prescribed for initiating such proceedings, in that case, such proceedings have to be initiated within some reasonable period. It is further submitted that aforesaid contention has been raised before the Deputy Collector in Tenancy Appeal No. 123/ 84 by the petitioner but that question was not examined by the Deputy Collector. Thereafter, before the tribunal also, very contention was raised by the petitioner. The tribunal has considered the said contention about unreasonable delay for exercising the powers by the respondent authorities in para-7 on page 25 of the petition. The tribunal has observed that in the present case before the Tribunal there has been a passage of a little over five years between the posting of the entry No.2644 on 26-9-1978 and notice u/s 84(C) issued by the Mamlatdar, Dehgam on 11th November, 1983 , the entry was certified on 16th February, 1979 and counted from that date the time between the certification of the entry and the issue of notice u/s 84(C) is about 4 years and 9 months or thereabout, say a little less than five years. After considering this aspect, the tribunal has come to the conclusion that period of time taken in initiating the proceedings u/s 84(C) by the respondent authorities is not unreasonable considering the facts of

this case. The main ground for coming to this conclusion is that in this case, according to the Tribunal illegality or mischief done by the Deputy Mamlatdar while certifying the entry, it cannot be said that the higher authorities were aware of the certification of the entry and yet slept over the matter. In a case like this, which has its own features distinguishable from the facts and features of the case decided by the Division Bench of the Tribunal, the illegality of a transaction should not get protection and privilege of the technicalities, and therefore the tribunal has come to the conclusion that lapse of time of 5 years or so is not unreasonable delay in initiating proceedings by Mamlatdar and A.L.T. u/s 84(C) of the Tenancy Act. Mr. Pujara, learned advocate for the petitioner has also pointed certain averments of para-5 of the petition that the petitioner have purchased the said land in Rs.14,999/- thereby investing all their means at the relevant time. After purchase of the land, the petitioners have also spent a huge amount of more than Rs.40,000/- on the development of the land by resurfacing and levelling the same by providing for irrigation facilities, so also by putting up residential farm house and shed for the cattle on the land. Therefore, the belated proceedings by the authorities would therefore obviously result in irreparable injury and further pointed out that considering the principles of equity, justice and fair play, so also the facts and circumstances of the case, the transaction could not be invalidated in the interest of justice.

6. Ms. Punani, learned AGP has also submitted that the tribunal has rightly considered the facts of the case and the Deputy Collector has wrongly certified the entry with some observation which is not necessary. The observation made by the Mamlatdar that on the basis of physical possession with instruction to make entry in the other rights column about violation of Consolidation Act certified. Therefore, looking to the facts and circumstances, the view taken by the tribunal is right which does not required any interference by this Court while exercising powers under Article 226 and 227 of the Constitution.

7. Mr. Pujara, learned advocate for the petitioner has also pointed out one another aspect of the matter on page 30 of the order dated 15th December, 1988 in respect of the very same petitioner, who purchased the land from Prahaladbhai Chhaganbhai of the same village Block No. 638 paiki. The said transaction has been certified because it was between the farmer and farmer and therefore, Section 63 has not been violated and said transaction has been certified and accepted by the authority and proceedings u/s 84(C) has been dropped by the authority. The said order has been passed by the Mamlatdar, Dehgam on 15th December, 1988 in favour of the petitioner in respect of different transaction of the sale deed for different land, wherein, the land was purchased from Prahladbhai Chhaganbhai. Mr. Pujari has also pointed out that the very petitioner has purchased some different land from different vendor of the same village for which sale deed or transaction has been certified by the authority and come to the conclusion that provision of Section 63 of the Tenancy Act has not been violated and proceedings u/s 84(C) of the Tenancy Act has been dropped. Therefore, in the present case, view taken by the tribunal is totally

different which has caused irreparable injuries. It is further submitted that because of passage of time, the petitioner has developed the land and has spent huge amount upon the land in question.

8. In the present case, the petitioner has been able to succeed in respect of the contention of unreasonable delay on the part of the respondent authority for initiating proceedings u/s 84(C) of the Tenancy Act and therefore, I am not going into merits of another aspects of the matter and this Court is examining the question of unreasonable delay which has been raised by the learned advocate Mr. Pujara. Mr. Pujara has also relied upon the decision of this Court as well as the Apex Court in support of his contention. The following authorities have been cited by Mr. Pujara, learned advocate for the petitioner in support of his contention. In case of Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State, . In case of PARSHOTTAM RAMAJI RATHOD VS. D.D. MISTRY reported in 1999 (2) GLH 310 and so also in case of Shree Ravidarshan Co-op. Housing Society Ltd. and Others Vs. Prafullakumar Thakar, Secretary, Revenue Department and Another, and in case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, . In case of KESHAVLAL A. MANTAR VS. DY. COLLECTOR in Special Civil Application No. 2323/89 decided on 16th June, 2000 so also in case of GANAPAT M. SHIKARI VS. STATE OF GUJARAT delivered in Special Civil Application No. 1778 of 1987 [coram : D.M. Dharmadhikari, CJ.] on 3rd March, 2000.

9. I have considered the various authorities cited by the learned advocate Mr. Pujara. Observations of the Apex Court in case of MANCHHARAM VS. SP PATHAK AND OTHERS in Civil Appeal No. 1262 (N) of 1978 decided on 28th September, 1983, it has been observed that;

"Where the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within as reasonable time. This is too well established to need buttressing by precedent. However, one is readily available in The State of Gujarat Vs. Patil Raghav Natha and Others, ."

10. Recently, the Apex Court has also considered the power which has been exercised by respondent authorities u/s 84(C) under suo motu inquiry by Mamlatdar should be initiated within reasonable time. Sale of land taking place in December, 1972, the suo motu inquiry started in September, 1973, it was held that suo moto power u/s 84(C), not exercised within reasonable time.

11. In all the decisions which have been cited by the learned advocate Mr. Pujara of this Court as well as of Apex Court, the question of exercise of powers by the authorities within reasonable period or not has been examined in light of the facts that when no period of limitation has been specified under the statutory provisions. In case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, , even 1 year delay has been considered by the Apex Court unreasonable while exercising the suo motu powers u/s 84(C) of the Bombay Tenancy and

Agricultural Lands Act, 1976 and therefore, considering this decision of the Apex Court and the facts of the present case, wherein at least more than 4 years period have been passed after sale deed has been executed between the parties. The petitioner has purchased the land of Block No. 824 of Nandol by registered sale deed dated 2-2-1978 and started agricultural operations thereon. The said transfer was registered in the record of rights Form No. 6 by entry No. 2644 dated 26-9-1978 and the said entry was approved on 6/16th February, 1979. Thereafter, proceeding has been initiated by the respondent authorities u/s 84(C) of the Bombay Tenancy Act on 1st February, 1983 which comes to about 5 years period. Therefore, looking to the facts of the present case and averments made in para-5 of the petition that the petitioner has spent huge amount for developing the land in question and also the land has been resurfacing and levelling by the petitioner for providing irrigation facilities and also put up residential farm house and cattle shed and further considering the fact that the petitioner remained with the land and is earning his livelihood, it appears that the impugned action of the respondent authorities after such long period will take away the source of livelihood of the petitioner. It may also be mentioned that the petition has been filed in the year 1989, has remained unchallenged so far as the averments made in the petition are concerned. The petitioner has undisputedly in possession of the land and has cultivated the land and therefore in view of decision of the Apex Court as well as of this Court as referred to above, I hold that the action under the Act was taken by the respondent authorities after undue and unreasonable delay of more than 4 years.

12. Therefore, the petitioner succeeds in the present petition on the aspect of unreasonable and undue delay on the part of the respondent authorities for undertaking the proceedings under the Act. Since the petitioner has succeeded in the present petition only on the unreasonable delay, this Court does not examine the other contentions raised in this petition and same are not dealt with separately. Consequently, the petition succeeds and is allowed accordingly. The impugned order dated 30th November, 1983, 24th July, 1987 and 29th / 30th August, 1988 at Annexures-A, B and C respectively are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, the parties are left to bear their own costs.