courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 13/09/2026

(2022) 04 GUJ CK 0072

In the Gujarat High Court

Case No : R/Special Civil Application No. 5827 Of 2015

Minaben Girishchandra & 1 Other(S) APPELLANT

Vs

State Of Gujarat & 5 Other(S) RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Gujarat Land Revenue Code, 1879 — Section 3(11), 3(16), 3(17)
Bombay Land Revenue Code, 1980 (Gujarat Second Amendment) Act, 1980 — Section 73A, 73AA, 73AB, 73AC, 73AD, 73AD(1), 73AD(2)

Citation : (2022) 04 GUJ CK 0072

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Dhiraj M Patel, Maulik R Shah, Dhwani Tripath, Pratik P Thakkar

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. By filing this petition, the petitioners have prayed to quash and set aside order dated 12.3.2015 passed by Additional Secretary, Revenue Department (Appeals), Ahmedabad in Revision No.MVV/JMN/BHCH/14/2014 and order dated 9.12.2014 passed by Collector, Bharuch in Bhumi/Vashi/ 8304. It is also prayed to direct respondent no.3 to issue No Objection Certificate stating that restriction of Section 73-AA of Gujarat Land Revenue Code does not apply to the Sale Deed dated 10.12.2014.

2. The short facts giving rise to the present petition are that agricultural land (Old Tenure) bearing Block no. 21 paiki 3 admeasuring 17,199 sq. mtrs. situated in the sim of Amadada Tal.Dist. Bharuch was originally owned by deceased Shankarbhai Ichhalabhai. That Late Shankarbhai had executed an agreement to sale dated 29/2/80 in favour of Rustambhai Sulemanbhai Patel for the consideration to tune of Rs. 2,15,000/and handed over the physical and actual possession of the said land to Rustam Suleman Patel and since then Rustam Suleman Patel had been in lawful possession of the said land. Rustam Suleman

Patel had assigned his rights of the said Agreement to Sell dated 29/2/80 in favour of the present petitioner by executing Agreement to Sell dated 9/6/89.

2.1 Late Shankarbhai Ichhalabhai passed on 1/6/92. The names of Respondents no. 4 to 6 were recorded in the Hakkpatrak by succession entry no. 1484. The aforesaid land was converted in to old tenure from new tenure by order dated 26/6/2009 passed in Tenancy Case no. 21/2003/Vasi and to that effect entry No. 1743 dated 27/7/09 came to be mutated in the revenue record. There was no endorsement of restriction of section 73AA in the revenue record since 1980.

2.2 The petitioners state that after conversion of the land in old tenure on 26/6/09, Rustam Suleman Patel approached Respondent nos. 4 to 6 time and again and requested for performance of an agreement dated 29/2/80 as the said land has become old tenure, however, Respondent nos. 4 to 6 did not pay heed to the request and therefore Rustambhai sent a legal notice dated 7/8/12 through Advocate calling upon Respondent nos. 4 to 6 to perform said agreement. Failure on the part of the Respondent nos. 4 to 6 to comply with the said notice, Rustambhai Suleman Patel filed Civil Suit No. 204/12 against the Respondent nos. 4 to 6 on 9/11/12 in the Court of Civil Judge at Bharuch for specific performance of the said agreement. In the said suit settlement came to be arrived at and the parties have compromised the suit and filed compromise pursis dated 2/10/13 and obtained decree dated 15/10/13 from the Hon’ble trial Court. In view of aforesaid compromise decree, respondents no. 4 to 6 were required to execute Sale Deed in favour of Rustam Suleman Patel or such person as may be named by Rustam Suleman. In pursuance thereof respondent nos. 4 to 6 executed Sale Deed dated 10/2/14 which is registered at Index no. 1301 in favour of the present petitioners for consideration of Rs.7,15,000/-and Rustam Suleman Patel confirmed the said Sale Deed by becoming confirming party and Rustam Suleman Patel handed over the physical possession of the said land as per Sale Deed to the present Petitioners. The petitioners state that the said Sale Deed was registered before the Sub-registrar office at Bharuch vide Index no. 1301 on 10/2/14. After the registration of the said sale deed, Sub-Registrar, Bharuch impounded the said Sale Deed and asked the petitioners to bring No Objection Certificate from the Collector as the transfer of the said land is not restricted under section 73AA of Gujarat Land Revenue Code.

2.3 The petitioners state that thereafter the petitioners moved an application dated 24/2/2014 to the Collector Shri, Bharuch inter-alia requesting to issue No Objection Certificate on the basis that the restriction of 73AA does not apply to the aforesaid Sale Deed dated 10/2/14 as the transfer of occupancy of the said land took place on 29/2/80 by the virtue of Agreement to Sale in favour of Rustam Suleman Patel as the provision of 73AA was inducted in the statute on 1/2/81. The petitioners state that by order dated 9/12/14 passed in Bhumi/ Vasi/8304, the Collector, Bharuch has rejected the said application.

2.4 The petitioners state that the Revision No.Jaman/BhCh/14/14 was preferred by the present petitioners before the Special Secretary (Revenue) Appeals on

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/minaben-girishchandra-1-others-…

18/12/14. Ld. SSRD was pleased to dismiss the said revision by order dated 12/3/15.

3. Being aggrieved and dissatisfied by the impugned order dated 12/3/15 passed by the Special Secretary Revenue (Appeal), in Revision Application no. JAMAN/ BHCH/14/14, and impugned order dated 9/12/14 passed by The Collector, Bharuch in Application dated 24/2/14, the petitioners have preferred this petition.

4. The respondent has filed reply to the petition, wherein it is contended that the possession was never handed over to Rustam Suleman Patel and it was with the heirs of the deceased and, therefore, amended provisions of Section 73 AA of the Gujarat Land Revenue Code would be applicable in the facts of the case. Reliance is placed on the decision in the case of Kanbi Narsi Ratna Bambhrolia v. District Collector reported in 2003 (2) GLH (UJ) 3. It has been submitted that in that case possession was handed over to the party concerned and, in the present case, possession has never been handed over to Rustam Suleman Patel and, therefore, said decision is not applicable to the facts of the case and, therefore, the order passed by the revenue authority is proper and the petition deserves to be dismissed.

5. Heard learned advocate Mr.Maulik Shah for the petitioner and Ms.D.R.Tripathi, learned AGP for the respondent State.

6. Mr.Maulik Shah, learned advocate for the petitioners submitted that learned SSRD has confirmed order passed by the Collector without considering the question of law and the decision of this Hon'ble Court in case of Kanbi Narsi reported in 2000 (3) G.L.H. (U.J.) 3 on the identical issue, contentions, relevant facts and submission. He also submitted that learned Collector and SSRD have committed an error in holding that the said land was continued with the possession and in the occupancy of the Respondent nos. 4 to 6 after the date of Agreement to Sell dated 29/2/80 and the Respondents no. 4 t0 6 are tribals and therefore the restriction of the provision of section 73AA is applicable to the transfer of the said land by executing Sale Deed dated 10/2/14 in favour of the petitioners.

6.1 He also submitted that both the authorities have committed an error in holding that Agreement to Sell was executed on 29/2/80 in favour of Rustam Suleman Patel and Sale Deed came to be executed on 10/2/14 by respondent nos.4 to 6 in favour of the present petitioners and the said Sale Deed was executed after 1/2/1981 and therefore the restriction of 73AA is applicable to sale deed dated 10/2/14. He also submitted that both the authorities have misconceived and Misconstrued the provision of 73AA and 73AD(2). He further submitted that both the authorities ought to have considered that the Agreement to Sell with possession was executed on 29/2/1980 and on that day the occupancy came to be transferred as per the preview of provision of Section 3 (11), 3(16) and 3 (17). He further submitted that the provision of Section 73-AA, 73-AB, 73-AC, 73-AD of the Bombay Land Revenue Code, 1980 (Gujarat Second

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/minaben-girishchandra-1-others-…

Amendment) Act, 1980 (Gujarat 37 of 1980) came into force on 1/2/81. In view of that legal possession, the transaction of transfer of occupancy which took Place before 1/2/81 is not covered by the restriction of 73-AA. The provision of section 73-AD(2) contemplates that the restriction under Section 73-AD(1) shall not apply to the documents of transfers of occupancies of persons belonging to any of Scheduled Tribes made before the said date (1/2/81), but presented for registration after the said date (1/2/81) (Gujarat Second Amendment) Act, 1980 (Gujarat 37 of 1980).

6.2 Mr.Shah also submitted that Rustam Suleman Patel was put in to possession of the said land on 29/2/80 for consideration of Rs.2,15,000/- paid to the Respondent no. 4 to 6. This was under the agreement and on part payment of the consideration, therefore, Rustam Suleman was in lawful possession of the said land and in that event, Late Shankarbhai Ichhalabhai and the Respondent no. 4 to 6 were not the person in lawful possession from 29/2/80. He submitted that, on other words, on the date of amendment dated 1/2/81, Late Shankarbhai and his heirs were not the occupants of the said land. It is further submitted that Late Shankarbhai and his heirs, Respondent nos. 4 to 6 were not holder of the land after 29/2/80 when the Agreement to Sell was executed and on 10/2/14 when the Sale Deed is executed in favour of the petitioners. It is further submitted that Rustam Suleman Patel and the petitioners are in lawful possession of the said land and holder of the land within meaning of section 3(11) of the Gujarat Land Revenue Code and the land held by Rustam Suleman Patel should be treated to be the land in his occupancy within the meaning of section 3 (17) of the Code and eventually, Late Shankarbhai and his heirs Respondent no. 4 to 6 can’t be treated to be land holder after 29/2/80. In view of these circumstances, it can’t be said that the occupancy has been transferred by Late Shankarbhai and his heirs i.e. Respondents no. 4 to 6 after the amendment of section 73AA on 1/2/81 and, therefore, the petitioners submit that the transaction of Agreement to Sell dated 29/2/80 and thereafter sale transaction dated 10/2/14 cannot be said to be illegal under section 73-AA of the Code.

6.3 The petitioners submit that from 29/2/80, the occupancy has been transferred in favour of the Rustam Suleman Patel by the virtue of the Agreement to Sell dated 29/2/80 and original owners i.e. Respondents No. 4 to 6 ceased to be holder of the land from 29/2/80 in view of that matter, any transaction which took place of the said land on or after 1/2/81, restriction under section 73AA does not apply to the said transaction, because the said land ceased to be in the occupancy of schedule Tribes on or after the date of commencement of the Bombay Land Revenue (Gujarat second Amendment) Act, 1980 (Guj. 37 of 1980) i.e. 1/2/81.

7. Per contra, learned AGP Ms.Dhwani Tripathi has submitted that the order of the revenue authority is proper. She submitted that till 2009 names of heirs of deceased Shankarbhai were in the revenue records and they were in possession

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/minaben-girishchandra-1-others-…

of the land in question. It is also contended that the Sale Deed has been executed in the year 2014 and, therefore, possession can be said to be handed over in the year 2014. It is also submitted that since the possession has been handed over in the year 2014 only and the amendment was carried out in the Gujarat Land Revenue Code adding Sections 73AA onwards in the year 1981, the transaction is hit by the amended provisions of the Code. She has also submitted that even Agreement to Sell would also fall within the meaning of Section 73AA of the Gujarat Land Revenue Code. While referring to the revenue entries, she has submitted that when the Agreement to Sell was entered into, the land was New Tenure land in the year 1989. It is also contended that only in the year 2009, the land came to be converted into Old Tenure Land. She has also submitted that though there is consent decree between the parties, the Government was not party to the suit and the Civil Court has not gone into this aspect of the case and, therefore, the order of the revenue authority is in consonance with the provisions of the Gujarat Land Revenue Code. She has also submitted that the Agreement to Sell of 1989 was never brought to the notice of the authority. She has also submitted that in view of provisions of Section 73AA, the Civil Court has no jurisdiction to entertain the suit and, therefore, the consent decree is not binding to the Government. She has also submitted that the Agreement to Sell was not registered. She has supported the impugned order and prayed to dismiss the petition.

8. Learned advocate Mr.Pratik Thakkar appearing on behalf of the respondent Nos.4, 5 and 6 has stated that these respondents are consenting party before the Civil Court.

9. In the case of Punjabhai Jethabhai Patel v. State of Gujarat and Others reported in 2006 (1) GLH 51, the question regarding applicability of amended provisions of Section 73A and 73AA was raised, wherein this Court has observed as under:-

"15. Upon a plain reading of the provisions of section 73A of the Code, it is apparent that the same are applicable to occupancies in any tract or village in respect of which the Government has before the introduction of an original survey settlement by a notification declared the provisions of the said section to be applicable. In other words for the provisions of the said section to be applicable to occupancies in a tract or village, the notification under section 73A should precede the original survey settlement. In the facts of the present case it is an admitted position that a survey settlement had been made by the erstwhile State of Idar in the year 1936 which covered Bhiloda Taluka, including village Bundheli wherein the subject lands are situated. The question as to whether the settlement of survey for land revenue made by the erstwhile State of Idar, prior to the introduction of the Bombay Land Revenue Code could be said to be a survey settlement under the Code came up for consideration before this Court in the case of Devshankar Ambalal Jani v. State of Gujarat (supra) and it was held that the survey settlement carried out by some authority before the introduction

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/minaben-girishchandra-1-others-…

and remaining in force at the date of commencement of the Bombay Land Revenue Code (Amendment) Act, 1939 becomes a survey settlement under the Bombay Land Revenue Code. It was further held that the survey settlement of land carried out by the authority of the erstwhile State of Idar and accepted by the State of Gujarat had become a survey settlement under the Bombay Land Revenue Code. Thus on facts it cannot be disputed that the survey settlement was made in respect of Bhiloda Taluka including village Bundheli in the year 1936, whereas the provisions of section 73A of the Code had been made applicable to the same by a notification dated 4th April 1961. The basic requirement for applicability of the provisions of section 73A of the Code is that the notification under section 73A should precede the original survey settlement, which is not fulfilled in the present case inasmuch as the original survey settlement was introduced much before the notification under section 73A of the Code. Hence, the learned Advocate for the petitioner is right in contending that the provisions of section 73A of the Code are not applicable to the subject lands, and therefore, prior sanction of the Collector was not required for transferring the same. This view is fortified by the aforesaid decision of this Court wherein this Court had noted the fact that the notification under section 73A of the Code issued by the respondent No.1 State of Gujarat dated 4.4.1961 clearly ipso facto says that it shall apply to all those villages in the Scheduled areas in the State of Gujarat in which survey settlement under the Bombay Land Revenue Code has not been introduced and to which the provisions of section 73A have not been made applicable before issue of notification. It was held that since survey settlement in respect of the disputed land situated in Bhiloda in Sabarkantha district had been made in, as early as 1934, the said notification will not apply to the disputed land.”

10. In the case of Kanbi Narsi Ratna Bambhrolia (supra) also similar observations have been made.

11. Having considered the submissions made on behalf of both sides coupled with the material placed on record as well as decisions referred to herein above, it emerges from record that there is no dispute that the land in question was originally running in the name of Shankar Ichhalbhai, who was a tribal. It also appears that said Shankarbhai has entered into an Agreement to Sell with one Rustam Suleman Patel. It also appears from record that after death of Shankarbhai, names of his heirs came to be mutated in the revenue record. It also reveals that for execution of Sale Deed, Mr.Rustam Suleman Patel has preferred Special Civil Suit No.204 of 2012 before the Court of learned Civil Judge, Bharuch, and in the said Civil Suit compromise has been arrived at on 15.10.2013 and on payment of additional amount of Rs.3 Lacs to the heirs of Shankarbhai registered Sale Deed came to be executed. It also appears from record that initially land was New Tenure land and, thereafter, in the year 2009, it was converted into Old Tenure land.

12. It appears from decree of the Civil Court that heirs of deceased Shankarbhai

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/minaben-girishchandra-1-others-…

have specifically admitted that since execution of Agreement to Sell, possession of the land in question was with Rustam Suleman Patel and heirs were never in possession of the land. Thus, there is clear admission on the part of the private respondents regarding possession of the property with Rustam Suleman Patel from the very beginning i.e. from the date of Agreement to Sell in the year 1980. Admittedly, provisions of Sections 73AA, 73AB and 73AC came to be added in the Bombay Land Revenue Code with effect from 1.2.1981. Thus, on the date of execution of Agreement to Sell with possession, there was no such restriction of transferring the land in favour of a non-tribal from tribal.

13. Considering the factual aspects of this case, when amended provisions came into existence, possession of the land was with Rustam Suleman Patel on the basis of the Agreement to Sell. Under these circumstances, though Agreement to Sell was not registered, the fact remains that possession was with Rustam Suleman Patel and, thereafter, due to passing of consent decree Sale Deed has been executed in favour of present petitioners, wherein Rustam Suleman Patel is consenting party. Considering this peculiar facts of the case, it is crystal clear that the transaction is not hit by the amended Section 73AA of the Code. Therefore, the impugned order is not sustainable in the eyes of law.

14. In view of above, present petition is allowed. Impugned order dated 12.3.2015 passed by Additional Secretary, Revenue Department (Appeals), Ahmedabad, in Revision No.MVV/JMN/ BHCH/14/2014 and order dated 9.12.2014 passed by Collector, Bharuch in Bhumi/Vashi/8304 are quashed and set aside. Respondent no.3 is directed to issue No Objection Certificate stating that restriction of Section 73AA of Gujarat Land Revenue Code does not apply to the Sale Deed dated 10.12.2014 executed for the land in question. No order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/minaben-girishchandra-1-others-…