(2003) 03 GUJ CK 0020

In the Gujarat High Court

Case No : Letters Patent Appeal No. 278 of 2003 in Special Civil Application No. 7687 of 1995 and Civil Applilcation No. 1378 of 2003

Mohanbhai Vithhalbhai Patel APPELLANT

Vs

Ravidarshan Co-operative Housing Society Ltd. RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:
Bombay Land Revenue Code, 1879 — Section 203, 211
Constitution of India, 1950 — Article 226

Citation : (2003) 23 GLH 444

Hon'ble Judges : J.N. Bhatt, Acting C.J.;K.A. Puj, J

Bench : Division Bench

Advocate : R.S. Sanjanwala, for the Appellant; B.B. Naik and M.A. Bukhari, AGP for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J.—The challenge in this Letters Patent Appeal, at the instance of the appellant, who is a third party, by invocation of clause 15 of the Letters Patent, is against the judgment and order of the learned single Judge rendered on 10th September 1999 in Special Civil Application No. 7687 of 1995.

2. The appellant was not a party in the said writ petition. Respondent No. 1 herein, which is a co-operative Society registered under the Gujarat Co-operative Societies Act, 1961, was the original petitioner, whereas, respondent No. 2, appellate authority and respondent No. 3, Collector, were the original respondents in the writ petition. Since the dispute involved in this appeal has a long and chequered history, it would be material and relevant to highlight the important aspects and events which led to filing of this Letters Patent Appeal.

3. The original-petitioner Society was constituted on 17.3.79. The Special Recovery Officer held public auction of the land of one Bhagabhai Nathabhai, who was a debtor of the petitioner-Society for the sum of Rs. 2646.25 ps. for which one Mohanbhai Vithalbhai was guarantor. The society purchased the said land for

Rs. 1,80,000/- in April 1981. Thereafter mutation entry was made in the village revenue records and subsequently, the society obtained building permission from the Panchayat for the purpose of construction of residential units, in November 1981.

4. The Collector started suo motu inquiry u/s 211 of the Bombay Land Revenue Code in respect of the auction sale of the land to the original-petitioner society. Upon investigation of facts and circumstances, the Collector, in suo motu inquiry, quashed and set aside the auction sale made in favour of the petitioner Society which was challenged by the petitioner Society in an appeal u/s 203 of the Code and obtained interim order. The appellate authority then passed order dismissing the appeal of the petitioner, which led to filing of the writ petition under Article 226 of the Constitution of India. The writ petition was allowed and the impugned orders dated 23.3.1995 and 30.9.1989 came to be quashed by the learned single Judge. Hence this Letters Patent Appeal under clause 15 of the Letters Patent, at the instance of third party who claims to be the real owner of the land in question.

5. After having considered the entire factual profile and the text and texture of the impugned order of the learned single Judge and the submissions of the counsels appearing for the parties, we are satisfied that the impugned order of the learned single Judge is not justified when the appellant, who is claiming to be the real owner of the land in question, was not a party in the writ petition. We have noticed that the order of the Collector, setting aside the public auction of the land in favour of the society, came to be passed without hearing the society, at the instance of the owner of the land, whereas, the owner was not a party before the Appellate Authority as well as before the learned single Judge. Therefore, in our view, principles of natural justice are violated and the proceedings before two revenue authorities and the learned single Judge cannot be sustained. It is a settled proposition of law that any party who is to be visited with civil or evil consequences must be heard, as the doctrine of audi alteram partem is not a relic of the past but the living force of the day. Since we are satisfied that the proceedings before two revenue authorities and the learned single Judge are not in compliance with the principles of natural justice, the appeal is required to be allowed quashing the order of the learned single Judge as well as the orders of the Appellate Authority and the Collector with a view to do complete justice between the parties. The interest of the parties will be subserved if the entire matter is remitted to the first authority, like that, the Collector, who took up the matter in suo motu revision exercising powers u/s 211 of the Bombay Land Revenue Code.

6. In the result, the appeal is allowed quashing the impugned orders of the learned single Judge, Appellate Authority as well as the order of the Collector and the entire matter is directed to be remitted to the Collector for fresh inquiry and consideration in suo motu revision initiated u/s 211 of the Bombay Land Revenue Code. Obviously, the Collector shall have to give an opportunity of hearing to all

the parties concerned who will be entitled to raise all available and permissible pleas and submissions for effective and efficient adjudication of the controversy between the parties. Respondent No. 3, Collector is directed to examine and dispose of the suo motu revision expeditiously and preferably within a period of four months from the date of receipt of writ from this Court. In case the matter is not heard and decided as directed, it will be open for the parties to appropriate move the Collector for early hearing. Status quo with regard to the immovable property which is the subject of the dispute shall be maintained by all the parties till the Collector disposes of the de nova inquiry in suo motu revision, after hearing all the parties concerned. The appeal shall stand allowed accordingly leaving the parties to bear their own costs.

7. In view of the order in the main appeal, the Civil Application shall stand disposed of.

8. Direct service is permitted.