(2003) 05 GUJ CK 0050

In the Gujarat High Court

Case No : Special Civil Application No. 10151 of 2002

Mumtaz Mehmoodkhan Pathan APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Citation : (2003) 05 GUJ CK 0050

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : M.T.M. Hakim, for the Appellant; Pandit, AGP for Respondent Nos. 1-2 and Jigar P. Raval, for Respondent Nos. 3, 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—RULE. The learned AGP Ms Pandit appears for respondent no. 1 and 2 and Mr Jigar Raval appears for respondent nos. 3, 4 and 5 and waive notice of Rule for the respective respondents. With the consent of the parties, the matter is taken up for final hearing.

2 The short facts of the case are that revenue entry no.1094 dated 9.5.1981 came to be mutated in the revenue record for transfer of the property by registered will dated 5.11.1980 and it appears that the entry came to be mutated on account of death of the executor of the will on 1.12.1980. In the entry it has been recorded that the notices were served and thereafter it is certified by the Deputy Mamlatdar on 9th July 1989. Respondents nos. 3, 4 and 5 preferred appeal in RTS No.18 of 1993, after a period of about 12 years, before the Deputy Collector, who partly allowed the appeal and directed the issuance of the notice u/s 135D to all the interested persons and the matter was remanded. It appears that the matter was carried before the Collector by way of revision being Revision No.6 of 1994 and the said revision came to be dismissed as per the order dated 19th August 1994 by the Collector, Vadodara. The matter was carried further by the petitioner herein before the Secretary of the State Government in revision and ultimately as per the order dated 24.9.2001 the

Secretary has dismissed the revision. However, the pertinent aspect is that the Secretary has also recorded that the civil suit is pending before the Civil Court regarding the alleged rights of the respondents nos.3, 4 and 5 and the Secretary observed that until the finalisation of the civil suit the revenue officer can examine the right by way of succession and therefore maintained the order of the Deputy Collector and the Collector and it is under these circumstances the present petition.

3 The contention raised on behalf of the petitioner by Mr Hakim is that the civil suit being Civil Suit No. 972 of 1993 which is preferred by respondent no. 3, 4 and 5 for declaration regarding the effect of the will and for right of respondents nos. 3, 4 and 5 over the property is pending. He submitted that the entry came to be mutated as back as in the year 1981 and the appeal was preferred after a period of about 12 years. Therefore, he submitted that until the outcome of the civil suit proceedings, the entry ought not to have been set aside by issuing a fresh notice u/s 135D on the basis of the successory right over the property in question and therefore in his submission the order of the Secretary deserves to be quashed.

4 Mr Raval appearing for respondents nos. 3, 4 and 5 submitted inter-alia that he has no objection if the operation of entry no. 1094 is made subject to the outcome of proceedings of Civil Suit No. 972 of 1993. However, he submitted that till the outcome of the civil suit, the petitioner may also maintain status quo qua the title and possession of the property. Mr Hakim has no objection if such an interim order is passed to maintain the status quo as sought to be canvassed by Mr Raval. The learned AGP has left the matter to the Court since the respondents nos.1 and 2 have acted as a quasi judicial authorities.

5 In view of the aforesaid, I find that it had come on record that the entry was mutated in the year 1981 on the basis of the registered will and when it had come on record before the Secretary of the State Government that Civil Suit which is preferred by the respondents nos.3, 4 and 5 is pending in the Civil Court and earlier entry came to be mutated on the basis of the registered will, the Secretary ought to have relegated respondents nos.3, 4 and 5 to await until the outcome of Civil Suit No.972 of 1993. He ought not to have observed for examining the right on the basis of succession over the property in question. When the basis of the right of the petitioner is on a registered will, unless the Court makes a declaration that the will is unlawful or is otherwise, the successory right over the property cannot be asserted. I am not expressing any final opinion on the said aspects since the civil suit is pending before the appropriate Court but, suffice it to say that the Secretary of the State Government ought not to have dismissed the revision by observing that until the suit is decided the revenue officer can examine the matter on the basis of the successory right over the property in question and therefore in my view the Secretary has committed an error which is apparent on the face of the record and it can also be said that he has exceeded in exercise of the jurisdiction while deciding the revision

application.

6 In view of the aforesaid discussion, the order passed by the Deputy Collector, its confirmation thereof by the Collector and by the Secretary are quashed and set aside with the clarification that the operation of entry no. 1094 shall be subject to the outcome of the proceedings of Civil Suit No. 972 of 1993 and with the further direction that until the finalisation of the rights of the parties in Civil Suit No. 972 of 1993, the petitioner shall also maintain status quo qua the title and possession of the property in question and shall not transfer or alienate the property in question in any manner whatsoever and the petitioner shall also not take any undue benefit of entry no.1094.

7 The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No costs.