

(2022) 05 GUJ CK 0051

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 1165, 1300 Of 2013 In R/Special Civil Application No. 1938 Of 1984, 5113 Of 1985, Civil Application (For Stay) No. 1 Of 2013

Narendrabhai Amarabhai Khachar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 6(3B), 6(3C)
Hindu Succession Act, 1956 — Section 5, 6

Citation : (2022) 05 GUJ CK 0051

Hon'ble Judges : R.M.Chhaya, J; Nirzar S. Desai, J

Bench : Division Bench

Advocate : P P Majmudar, Sp Majmudar, Nishit P Gandhi, Tirthraj Pandya

Final Decision : ?Dismissed/Disposed Of

Judgement

Nirzar S. Desai, J

1 Since the issue involved in both these appeals is common, both these appeals are heard and decided together.

2 In Letters Patent Appeal No.1165 of 2013, the appellant has challenged the judgment dated 19.8.2013 rendered by the learned Single Judge in Special Civil Application No.1938 of 1984 whereby the learned Single Judge partly allowed the petition and remanded back the matter to the Mamlatdar and ALT (Ceiling) – Competent Authority under the Act to decide the issue qua Section 6(3-B) of The Gujarat Agricultural Lands Ceiling Act, 1960 (for short, 'the Act') only in view of the judgment of this Court in the case of Khachar Godadbhai Pithubhai & Ors. vs. The State of Gujarat reported in 2004(2) GLH 589, and the decisions rendered by the Hon'ble Apex Court in the cases of Nagbhai Najbhai Khachar vs. State of Gujarat reported in 2010(10) SCC 594 and State of Gujarat and Anr. Vs. Manoharsinhji Pradyumansinhji Jadeja reported in 2013(2) SCC 300, and directed the concerned authority to decide the matter on merits in accordance

with law and pass appropriate orders. Except for the aforesaid contention, rest of the contentions came to be rejected by the learned Single Judge.

3 In the above writ petition, the appellant has challenged orders dated 26.2.1981, 2.11.1991 and 3.1.1984 passed by the Mamlatdar & ALT (Ceiling) - Competent Authority under the Gujarat Agricultural Ceiling Act, 1960, Deputy Collector and Gujarat Revenue Tribunal, respectively. All the three authorities below have concurrently held that the appellant is entitled to hold only one unit i.e. 54 acres of agricultural land and declared the rest of the land i.e. 98.15 acres as surplus agricultural land and directed to vest the same into the Government.

4 Letters Patent Appeal No.1300 of 2013 is filed against the common judgment dated 30.8.2013 passed in Special Civil Application No.5113 of 1985 and connected petitions, whereby the learned Single Judge while granting similar liberty to canvass before the authority the submission qua applicability of Section 6(3-B) and 6(3-C), the petition was dismissed. However, in both the matters, the issue considered by the learned Single Judge was whether the bid land could have been considered as part of the overall agricultural holding so as to bring the holding within the purview of the Act read with amendment or not.

5 Heard Mr. S.P.Majmudar and Mr. Nishit Gandhi, learned advocates for the appellants and Mr. Tirthraj Pandya, learned AGP for the State respondents.

5.1 As far as Letters Patent Appeal No.1165 of 2013 is concerned, learned advocate for the appellant submitted that though liberty has been granted in favour of the appellant to canvass the issue in respect of applicability of Section 6(3-B) of the Act, the learned Single Judge has rejected the case of the appellant in respect of invocation of Section 6(3-C) of the Act. Learned advocate for the appellant further submitted that the appellant had two daughters born after 1956 and as per the provisions of Section 5 of the Hindu Succession Act, 1956, the daughters will have independent rights as coparceners and their share would not be liable for clubbing under Section 6 of the Act. Learned advocate for the appellants further submitted that in 2004, the Act has been repealed, and therefore, the land in question which is a bid land ought to have been excluded from the provisions of the Ceiling Act.

5.2 As far as the Letters Patent Appeal No.1300 of 2013 is concerned, the learned advocate for the appellant submitted that in view of the fact that the Act is repealed in 2004, the learned Single Judge has committed an error by not extending the benefit of the repeal Act.

6 Mr. Tirthraj Pandya, learned AGP for the State respondents vehemently opposed both the appeals and submitted that in view of the decision of this Court in the case of Khachar Godadbhai Pithubhai (supra) and the decisions rendered by the Hon'ble Apex Court in the cases of Nagbhai Najbhai Khachar (supra) and Manoharsinhji Pradyumansinhji Jadeja (supra) the bid lands are agricultural lands within the meaning and for the purpose of the Act and once the question about the bid land is decided by the Hon'ble Apex Court and this Court, the only aspect

which was required to be considered by the authority was to consider the applicability of Section 6(3-B) and 6(3-C) of the Act in respect of various ceiling cases as per the judgments under challenge.

7 We have heard learned advocates for the respective parties and perused the record of the case. As far as the contention of learned advocate for the appellant in Letters Patent Appeal No.1165 of 2013 in respect of grant of liberty with regard to Section 6(3-B) and 6(3-C) of the Act is concerned, the learned Single Judge has categorically observed in para 19 as under:

"19. The ratio of the Supreme Court and pronouncement of this Court is unequivocally clear qua reckoning of the bid land, which indicate that member of the family if are exceeding 5 in numbers, irrespective of their gender, then, each additional member is entitled for 1/5th of the allocable area and therefore, the Court has to allow the petition partly as it cannot be said that the submission, is not found in the proceedings, but the Court at the same time, is not impressive of the submission of the petitioner qua invocation of Section 6(3C), as it could be seen from the proceedings, the arguments qua mother's existence has not been canvassed in any manner nor has the same being argued or attempted to be established that mother was part of family and as it is observed in para-41 of the judgment reported in case of The State of Gujarat and Another Vs. K.S. Patel and others (supra), and in absence of any plea, it cannot be invoked Section 6(3C). This argument qua this submission in respect of Section 6(3C) is required to be rejected and is rejected."

7.1 The only contention raised in Letters Patent Appeal No.1300 of 2013 is in respect of repeal Act and once the Act is repealed in 2004, the benefit of repeal Act should not be given to the appellant.

The aforesaid submission is made even in Letters Patent Appeal No.1165 of 2013 also.

7.2 As far as the submission in respect of the repeal Act is concerned, when the entire issue is covered by following the decision of this Court in the case of Khachar Godadbhai Pithubhai (supra) and the decisions rendered by the Hon'ble Apex Court in the cases of Nagbhai Najbhai Khachar (supra) and Manoharsinhji Pradyumansinhji Jadeja (supra), wherein it is categorically held that the bid land would squarely fall within the definition of agricultural land and once the entire issue is covered by the aforesaid three judgments, more particularly, when there is nothing on record to point out as to how the repeal Act would make the aforesaid orders redundant, we do not agree with the contentions raised by learned advocates for the appellants.

8 In view of the above, we are in complete agreement with the view taken by the learned Single Judge in both the judgments. We do not find any reason to interfere with both the judgments dated LPA/1165/2013 CAV JUDGMENT DATED: 13/05/2022 19.8.2013 and 30.8.2013 rendered by the learned Single Judge in Special Civil Application Nos.1938 of 1984 and 5113 of 1985, respectively.

Accordingly, both the appeals fail and the same are hereby dismissed. Consequently, all the connected civil applications stand disposed of.