

(2023) 02 GUJ CK 0019
In the Gujarat High Court

Case No : R/Special Civil Application No. 6691 Of 2022

Naresh Ramanlal Doshi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 03-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Tenancy And Agricultural Land Act, 1948 — Section 54, 63, 63A, 63B, 75, 84(C)

Citation : (2023) 02 GUJ CK 0019

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : SP Majmudar, Ronak B. Raval

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. Rule. Learned Assistant Government Pleader Mr.Raval waives service of notice of rule on behalf of the concerned respondent authorities.
2. Though served, the respondent No.5 has refused to accept the notice of this Court. It is also pertinent to note that the entire proceedings are initiated by the respondent No.5, who has chosen not to appear before this Court.
3. On 01.07.2022, this Court, while recording the submissions advanced by the learned advocate Mr.Majmudar, appearing for the petitioner, had granted ad-interim relief in terms of paragraph No.21(B)(1).
4. In the present petition, the petitioner has prayed for quashing and setting aside the impugned notice dated 02.07.2021 issued by the Mamlatdar and ALT in Tenancy Case No.20 of 2021 and further prayed for quashing and setting aside the order dated 06.04.2022 passed by the Mamlatdar and ALT in Tenancy Case No.20 of 2021.

5. Brief facts leading to filing of the present writ petition are as under : -

5.1 It is the case of the petitioner that the dispute pertains to land bearing Revenue Survey No.1753/1 paiki situated at village Gothda, Taluka Savli, District Vadodara. The land bearing Survey No.1753/1 paiki was purchased by Ramanlal Shankarlal Doshi from Ibrahimbhai Himmatbhai Chauhan by way of a registered sale deed dated 06.07.2004. The mutation entry with regard to the said land was mutated on 12.07.2004 and was certified being Entry No.13070.

5.2 It is further case of the petitioner that there was a family arrangement for which mutation Entry No.12145 was mutated on 22.01.1999 with regard to some of the lands, which came to be share of Naresh S/o Ramanlal Doshi. The said Ramanlal Doshi passed away on 19.01.2015, however as per family arrangement, partition of the land in question came to the share of Naresh Ramanlal Doshi and all rights with regard to the land in question were released in favour of Naresh Ramanlal Doshi by all legal heirs of Ramanlal Doshi executing a relinquishment deed dated 25.05.2015.

5.3 The Mamlatdar & ALT, Savli issued a notice dated 02.07.2021 under Section 63-A and 63-B of the Gujarat Tenancy & Agricultural Lands Act, 1947 (for short, "the Tenancy Act") to the petitioner. In the said notice, the Mamlatdar & ALT, Savli has mentioned that for the lands in question, he was to conduct an inquiry under Section 63-A and 63-B of the Tenancy Act and wanted to verify the agriculturist status of the Ramanlal Shankarlal Doshi. Thereafter, the Mamlatdar & ALT has asked the petitioner to produce documents from 1952 onwards to show the agriculturist status. The said notice has been issued purportedly on the basis of a complaint made by Rana Harunbhai Anwarbhai alleging that the petitioner is not an agriculturist.

6. Learned advocate Mr Majmudar, has submitted that the land was purchased by Ramanlal Shankarlal Doshi somewhere in the year 2004 vide a registered sale deed. Entry No.13070 dated 12.07.2004 was posted in the revenue record, followed by the certification on 12.10.2004. It is submitted that thereafter, as a result of the family partition, the land came in favour of Nareshbhai Ramanlal Doshi, his son. Thereafter, no steps were taken.

6.1 It is submitted that apropos the complaint filed by a third party, who had no interest in the land, the proceedings were initiated by issuance of the notice dated 02.07.2021 by the Mamlatdar, Savli, requiring the petitioner to produce on record the village form no.7/12 and other relevant documents from the year 1951-1952, so as to substantiate the status of the agriculturist of Shri Ramanlal Shankarlal Doshi.

6.2 It is submitted that the said notice was challenged before this Court and during the pendency, the Mamlatdar, showing undue haste has passed the order dated 06.04.2022, possibly because of the pressure exerted by the complainant. It is also submitted that had there been no pressure, the Mamlatdar would have chosen not to initiate any proceedings at this distance of time. It is submitted

that the land was purchased in the year 2004 and the proceedings have been initiated after the delay of almost 17 years.

6.3 It is submitted that such delayed action, is a jurisdictional error and therefore, the writ petition is very much maintainable against the order of the Mamlatdar. Reliance is placed on the judgment in the case of Seemaben Ajaykumar Ranka vs. State of Gujarat passed in Special Civil Application no.12783 of 2016 wherein, this Court, while relying upon the judgment in the case of Bharatbhai Naranbhai Vegda vs. State of Gujarat reported in 2016 (2) GLR 1021 held and observed that initiation of the proceedings after unreasonable period, would not be sustained inasmuch as, the action and the initiation of the proceedings, are without jurisdiction. Reliance is also placed on the judgment of the Division Bench of this Court in the case of Bharatbhai Naranbhai Vegda vs. State of Gujarat rendered in Letters Patent Appeal no.798 of 2011 wherein, it is observed that for the proposition that if the action is initiated beyond the unreasonable period, that would be without jurisdiction. It is submitted that this Court has held and observed that the bar of delay operates against the exercise of the jurisdiction or that the initiation of the action is beyond reasonable period, the action, can be said as without jurisdiction.

7. Learned Assistant Government Pleader has submitted that once the petitioner participated in the proceedings before the Mamlatdar and has also sought adjournment, it is not open for him to challenge the same. He has submitted that the impugned order as well as the impugned notice, at the most, may be set and aside and the matter may be remanded to the Mamlatdar.

8. I have heard the learned advocates appearing for the respective parties.

9. The afore-noted facts suggest that the proceedings by invoking the powers under Section 84(C) read with Section 63 of the Tenancy Act, has been initiated after a period of almost 17 years. It is well settled proposition of law as enunciated in various judgments and orders of this Court, one of them being the judgment dated 29.07.2015 passed in Letters Patent Appeal No.798 of 2011 that the initiation of the proceedings by the authorities beyond a reasonable time are nullity and the authorities do not have the powers to call in question any revenue entries after a reasonable period. In the present case, there is a delay of 17 years.

10. At this stage, it would be apposite to refer to the observations made by the Division bench in the judgment dated 29.07.2015, which read as under : -

"10. In our view, the above referred well considered two decisions of this Court makes the position abundantly clear that if the action is to be initiated for setting aside of a transaction under the Ordinance by invoking section 54 read with section 75 of the Ordinance, it has to be within reasonable period. The above referred two decisions are in respect of the cases wherein the powers were exercised and proceedings were initiated after 5 years and 17 years respectively, whereas in the present case, it is after more than 35 years. Hence, we find that

the initiation of the action itself can be said as beyond reasonable period and the bar of delay and laches could operate against the authority in initiation of the action. The aforesaid aspect is coupled with two additional circumstances, one is that the land has changed hands further during the period of delay and the ownership is transferred by the purchaser to the another person and the second is that the revenue entries were mutated. Thereafter, they were also certified by the competent authority and in spite of that, no action was taken for cancellation of such entry or otherwise or even for declaration of the transaction as invalid within reasonable period. If during the period of delay, the rights of the parties in the properties are altered, the delay would operate as a bar with more gravity and when the ownership is changed during the period of delay, the bar for not taking action within reasonable period would also operate with more gravity against the authority in initiation of the action.

12. We may first consider the question for interference to the order passed by the learned Single Judge. There cannot be second opinion on the aspect that if two views are possible and the learned Single Judge has taken one view, the Division Bench of this Court in exercise of the jurisdiction under Letters Patent would be loathe to interfere and may not entertain the appeal, but in a case where only one view was possible or that well settled legal position is not considered, which goes to the root of the matter for the jurisdiction of the authority, such would be an appropriate case for interference for exercise of the jurisdiction under the Letters Patent. Examining the case on the said aspects, we find that as per the above referred decisions of the Apex Court, the limitation provided for initiation of the action or the consideration of the reasonable period for initiation of the action or the bar operating of delay for initiation of the action are jurisdictional aspects on the power of the authority which has initiated the action.

If as per the well settled principles of law, the bar of delay operates against the exercise of the jurisdiction or that the initiation of the action is beyond reasonable period as per the well settled principles of law, the action can be said as without jurisdiction. If an action is without jurisdiction, as observed by the Apex Court in the above referred decision in the case of State of Punjab (supra), the petition under Article 226 of the Constitution can be maintained and the jurisdiction of this Court under Article 226 of the Constitution can be invoked. If the action is decided on the ground of jurisdiction and found to be without jurisdiction by the Court while undertaking judicial scrutiny under Article 226 of the Constitution, the only view possible is that of the action without jurisdiction. If the action was without jurisdiction, we do not see that it would fall in the arena of discretion to be considered while exercising the power under Article 226 of the Constitution. We may record that the contention is not based on the conduct on the part of the petitioners which may lead the Court to decline the interference but the contention is on the ground that two views were not possible as against the settled legal position on the point of reasonable period and the delay for initiation of the action. Hence, we find that it is a fit case for interference with

the order passed by the learned Single Judge and it cannot be said to be outside the jurisdiction of the appellate power of the Division Bench of this Court in Letters Patent as sought to be canvassed."

11. Further, in the order dated 09.03.2018 passed in Special Civil Application No.12783 of 2016, the Co-ordinate Bench after considering the judgment of the Division Bench has held thus: -

"5. The Division Bench of this Court in Bharatbhai Naranbhai Vegda and others Vs. State of Gujarat and others [2016 (2) GLR 1021] was dealing with the question of Show Cause Notice issued for cancellation of mutation entry on the ground of breach of Saurashtra Gharkhed, Tenancy Settlement and Agricultural Land Ordinance, 1949.

5.1 The Division Bench observed and held thus :

"Taking in view, the abovereferred considered two decisions of this Court makes the position abundantly clear that if the action is to be initiated for setting aside of a transaction under the Ordinance by invoking Sec.54 read with Sec.75 of the Ordinance, it has to be within reasonable period. The abovereferred two decisions are in respect of the cases wherein the powers were exercised and proceedings were initiated after 5 years and 17 years respectively, whereas in the present case, it is after more than 35 years. Hence, the initiation of the action itself can be said as beyond reasonable period and the bar of delay and laches could operate against the authority in initiation of the action and when the ownership is changed during the period of delay, the bar for not taking action within reasonable period would also operate with more gravity against the authority in initiation of the action. (Para 10)"

5.2 It was held that when the bar of delay operated, the exercise of power was without jurisdiction, "The bar of delay operate against the exercise of the jurisdiction of that the initiation of the action is beyond reasonable period as per the well settled principles of law, the action can be said as without jurisdiction. If an action is without jurisdiction, as observed by the Apex Court in the abovereferred decision in the case of State of Punjab v. Bhatinda District Co- op. Milk Producers Union Ltd., 2007 (11) SCC 363, the petition under Art.226 of the Constitution can be maintained and the jurisdiction of this Court under Art.226 of the Constitution can be invoked. (Para 12)"

6. The aforesaid law applies to the facts of the case. The proceedings initiated by issuance of Show Cause Notice after long 20 years in the present case would not be sustained. The action and the initiation of proceedings are rendered without jurisdiction. For this very reason, the contention of availability of alternative remedy attempted to be raised by the other side is hereby overruled. When an action is patently illegal lacking in jurisdiction, and when it stands contrary to the decision of this Court in Bharatbhai Naranbhai Vegda (supra), this petition under Article 226 of the Constitution could be entertained.

12. So far as the contention raised by the learned AGP that having participated in the proceedings, it was not open for the petitioner to challenge the same, does not merit acceptance, since if the proceedings in fact are without jurisdiction and nullity, the parties even after participating in the proceedings, can challenge such proceedings, at any stage.

13. Resultantly, the present petition succeeds. The impugned show cause notice dated 02.07.2021 and the consequential order dated 06.04.2022 passed by the Mamlatdar and ALT in Tenancy Case No.20 of 2021 are quashed and set aside. Rule is made absolute.