
(1996) 10 GUJ CK 0003
In the Gujarat High Court

Padmaben Chandulal By her Heirs Bharatkumar and Others	APPELLANT
Vs	
Assistant Collector and Others	RESPONDENT

Date of Decision : 24-10-1996

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(8), 63, 84(c), 84B, 84C
Constitution of India, 1950 — Article 226
Gujarat Town Planning and Urban Development Act, 1976 — Section 121, 124

Citation : (1997) 3 GLR 2386

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—The petitioners, in all five, purchased the land of Survey No. 1/ Paiki admeasuring 12 gunthas of Umarwada village in Choryasi Taluka, Dist. Surat from the respondent Nos. 2 to 4 under five separate sale deeds each for 300 sq. yds. of the land for a consideration of Rs. 6,000/-. These sale deeds were registered on 14th April, 1969. The respondent Nos. 2, 3 and 4 purchased the land in question from Surat Parsi Panchayat Trust by registered sale deed of 14th April, 1969 for a consideration of Rs. 27,000/-. In para No. 1 of the Special Civil Application, the date of sale deeds of the land has been given to be 14th April, 1979, but both the Counsels for the parties are in agreement that this date is 14th April, 1969. These are the errors which are being made normally in the pleadings in this Court. Under the sale deed dated 14th April, 1969 executed by the trust in favour of the respondent Nos. 2 to 4, the area of the land sold was stated to be 15,000 sq. yds. and out of which 1,500 sq. yds. has been sold to the petitioners. This Court during the course of arguments in this case desired from the Counsel for the respondent Nos. 2 to 4 to bring on the record, the original sale deed executed by the trust in favour of the respondent Nos. 2 to 4, but this document has not been filed on the record. The petitioners filed an affidavit dated 10th August, 1996 wherein it has been stated that the land admeasuring 15,000 sq. yds. was purchased by the respondent Nos. 2 to 4 from Surat Parsi Panchayat Trust. The petitioners have further stated in the affidavit aforesaid

that the land purchased by the respondent Nos. 2 to 4 was covered by the Town Planning Scheme and they sold other plots from the said land to other persons also. The other purchasers of the land used the same for non-agricultural, residential purposes. It is not in dispute that the land in question which is a part of the land purchased by the respondent Nos. 2 to 4 was agricultural land. The trust got a certificate u/s 88B of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Act, 1948) from the competent authority. Under that certificate, the trust was exempted of the provisions of the Act, 1948 as provided under the aforesaid section. By virtue of the said certificate granted to the trust, the provisions of Section 63 of the Act, 1948 were not applicable to the sale of the land in question by the trust to the respondent Nos. 2 to 4. Otherwise the transfer of the agricultural land to non-agriculturist is barred without prior permission of the Collector or the officer authorised by the State Government in this behalf. The petitioners have come up with a case that the land in question was included in Town Planning Scheme existing in the year 1969 made by the Surat Municipality and now the land is also covered by the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the Act, 1976). The Town Planning Scheme of 1965 made under the Bombay Town Planning Act is deemed to have been made under the Act, 1976 by virtue of Sub-section (2) of Section 124 of the said Act. It has further been stated that by virtue of the provisions as contained in Section 121 of the Act, 1976, the land in question is exempted from the provisions of the Act, 1948.

2. The Mamlatdar, Choryasi, initiated a suo motu proceeding u/s 84C of the Act, 1948 against the petitioners on the ground that the sales of the land in dispute were made in contravention of Section 63 of the Act, 1948 by the respondent Nos. 2 to 4 in their favour and therefore, the same are invalid. The inquiry was made in the case by the Mamlatdar and thereafter it has been held under its order dated 24th November, 1977 that the land in question is covered under the provisions of the Act, 1948, and as such, the sales made in favour of the petitioners by the respondent Nos. 2 to 4 without the permission of the Collector u/s 63 of the Act, 1948 are invalid and void in law. Further order has been made for forfeiture of the land to the Government.

3. The petitioners, aggrieved of the aforesaid order of the Mamlatdar, preferred an appeal before the Assistant Collector, Choryasi Prant, Surat. The appellate authority under its order dated 10th September, 1978 held that the land is an agricultural land and is subject to the provisions of Section 63 of the Act, 1948. It has further been held that so far as the sale of the land in question by the trust to the respondent Nos. 2 to 4 is concerned, the same was valid, as the Trust was granted certificate u/s 88B of the Act, 1948, but the sales made to the petitioners by those respondents are hit by the provisions of Section 63 of the Act, 1948. However, the matter was remanded back to the Mamlatdar for considering whether the second sales were valid or not and if invalid, the opportunity should be given to the parties to restore the position under the provisions of Section 84C(2) of the Act, 1948.

4. On remand of the matter, the Mamlatdar heard the parties and under its order dated 25th December, 1978 held that the second sales made in favour of the petitioners were invalid and that the parties should restore the original position within three months failing which the sales will be declared invalid and the land shall revert to the Government and vest in the Government. The petitioners thereupon preferred an appeal being or Tenancy Appeal No. 6 of 1979 before the Assistant Collector, Choryasi Prant, Surat. The Assistant Collector under its order dated 16th April, 1979 dismissed the appeal of the petitioners and held that as soon as the Parsi Panchayat Trust sold the land to respondent Nos. 2 to 4, the exemption given u/s 88B of the Act, 1948 came to an end and therefore, the second sale to the petitioners violate the provisions of Section 63 of the Act, 1948. The petitioners have taken the matter to the Gujarat Revenue Tribunal by filing a revision application, but the revision application has also been dismissed. Hence, this Special Civil Application by the petitioners.

5. None of the respondents have filed the reply to the Special Civil Application and as such, the facts stated in this Special Civil Application stands uncontroverted. Not only this, the facts stated in the affidavit dated 13th August, 1996 by the petitioners also stand uncontroverted as none of the respondents have filed counter to it.

6. On 13th August, 1996, the matter has been adjourned to give an opportunity to the respondent Nos. 2 to 4 to file the reply to the writ petition as well as to the affidavit aforesaid and to bring on record the original sale deed which has been executed by the Trust in their favour, but nothing has been done.

7. Ms. Mehta made four-fold submissions in support of the case of the petitioners which are as follows :

(i) The power of the cancellation of the sales made in contravention of Section 63 of the Act, 1948 though vests in the Mamlatdar, but the exercise of this power should have been permissible within a reasonable time. u/s 84B of the Act, 1948 the time-limit has not been prescribed, but the suo motu powers could have been exercised within a reasonable time. The sale was made on 14th April, 1969 whereas the suo motu proceeding has been initiated u/s 84B of the Act, 1948 on 14th August, 1977, i.e., the date of the show-cause notice which has been given to the petitioners. In support of this contention, the learned Counsel for the petitioners placed reliance on the decisions in the cases of Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others, ; The State of Gujarat Vs. Patil Raghav Natha and Others, and Bhaniben Makanbhai Tandel Vs. State of Gujarat and Another, .

(ii) The land in question is a part of the Town Planning Scheme which is deemed to continue under the Act, 1976 by virtue of Section 121 of the said Act and as such, the provisions of the Tenancy Act, 1948 are not applicable to the sale made in the present case. Consequent thereupon, the action initiated by the Mamlatdar u/s 84B of the Act, 1948 is without any authority of law.

(iii) Section 2(8) of the Act, 1948 defines the land which means the land used for agricultural purposes, but on the land in question at the relevant time the grass was growing naturally. As there was no agriculture in the said land within the meaning of the said provision, the provisions of Act, 1948 are not attracted in the present case.

(iv) The lands, in question fall in the Municipal limit of Surat Nagar Nigam and as such, the provisions of the Act, 1948 are not applicable.

8. Though the Counsel for the petitioners advanced the contention No. 4 aforesaid, but later on she has not pressed this contention.

9. Shri V.J. Desai, Counsel for the respondent Nos. 2 to 4 contended that the petitioners have not raised the objection before the Mamlatdar regarding the delay made by the said officer in initiating the suo motu proceeding u/s 84B of the Act, 1948. The petitioners by not raising this objection, Shri Desai contended, have waived this plea. The further contention of Shri Desai on this question is that the delay in initiation of proceeding itself may not vitiate the action because it depends on the facts of each case. It is a mix question of law and fact and in case this point would have been raised then only the Mamlatdar could have been in a position to decide the same and could have given justification for initiation of the proceeding at a later stage. Shri Desai further contended that this delay is not fatal and on this ground the proceeding cannot be said to be invalid. Reliance is placed by Shri Desai in support of his contention on the decision of Supreme Court in the case of State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others, . The second contention made by the learned Counsel for the petitioners is concerned; Shri Desai urged that it stands concluded against the petitioners by the decision of this Court in the case of Navrangpura Gam Dharmada Milkat Trust Vs. Ramtuji Ramaji and Others, . So far as the last contention of the learned Counsel for the petitioners is concerned, Shri Desai contended that this point was not raised by the petitioners before the Mamlatdar. Otherwise also Shri Desai contended that the Courts below have recorded a finding of fact against the petitioners in respect of the nature of land in question and the land was held to be an agricultural land.

10. I have given my thoughtful consideration to the submissions made by the learned Counsels for the parties.

There is no dispute in the position of law as settled that where no period is prescribed under the statute for exercise of suo motu powers therein by the authority, the said authority has to exercise the said power within a reasonable time. I do find sufficient merits in the contention of Shri Desai, the Counsel for the respondent Nos. 2 to 4 that merely on the ground of delay in initiation of the proceeding the same will not stand vitiated. The further contention made by Shri Desai that it is a mix question of law and fact also sounds merit. The delay in initiation of suo motu proceeding has to be considered with reference to the fact

of each case, and the decision given by the Court on facts of a particular case may not be applicable to another case where the facts are different. The sale deed has been executed in favour of the petitioners by the respondent Nos. 2 to 4 on 14th April, 1969 and the petitioners proceeded with this date and the date on which the show-cause notice was given by the Mamlatdar u/s 84B of the Act, 1948 and if we go by these dates then there appears to be some delay in initiation of suo motu proceeding by the said officer for cancellation of the sales of the land in question. But it is not in dispute that the necessary entry in the revenue record of the aforesaid sales being Entry No. 1612 of 1975 has been made by the Mamlatdar on 16th December, 1975. The Mamlatdar has come to know about the sales of the land in question in favour of the petitioners by the respondent Nos. 2 to 4 only when the Entry No. 1612 of 1975 has been made. It is not the case of the petitioners nor there is any material on the record that the Mamlatdar has come to know about these sales earlier to 16-12-1975. This entry, as stated earlier, was made on 16th December, 1975 and the show cause notice was issued for the cancellation of the sales of land in favour of the petitioners on 14th August, 1977, i.e., about one year and eight months after this entry. This period of one year and eight months in taking of the suo motu proceeding for cancellation of the sale of the land made in favour of the petitioners u/s 84B of the Act, 1948 cannot be said to be culpable or unreasonable delay in initiation of the proceeding by the Mamlatdar. The size of the delay which is sought to be made out a ground by the petitioners' Counsel is not correct. The delay has to be considered in initiation of proceeding with reference to the date of the entry made of the sale in the revenue record and not with reference to the date of sale. Though on merits, I am satisfied that it is not a case where the Mamlatdar has made such a delay in initiation of suo motu proceeding which vitiates the same but otherwise also, the conduct of the petitioners not to raise this objection before the said authority is fatal to this plea. I have gone through the judgment which has been given by the Gujarat Revenue Tribunal in the Revision Application filed by the petitioners, but could not get anything therein that this point has been raised by the petitioners before the Tribunal also. The petitioners cannot be allowed to raise a new plea before this Court in a writ petition filed by them under Article 226 of the Constitution of India. This plea is not a plea purely of the question of law, but it is a plea of mix question of law and fact.

11. The second contention made by the learned Counsel for the petitioners is also devoid of any substance. The Gujarat Town Planning and Urban Development Act, 1976 has come into force on 1-2-1978. I have gone through the provisions of Section 121 of the said Act and I do not find anything therein or in other provision of the said Act to show that the said section was given retrospective effect. There is no dispute between the parties that Section 121 has been deleted from the Act, 1976 under the Act No. 4 of 1986 with effect from 2nd June, 1985. The sale in the present case had taken place on 14th April, 1969 when the Act, 1976 had not come into force. The provisions of the Tenancy

Act, 1948 were applicable which is clearly apparent from the fact that the Trust was granted the certificate of exemption under the provisions of the said Act. The notices for cancellation of the sales was given to the petitioners in the year 1975 and the Mamlatdar made the first order in this case on 24th November, 1977, i.e., earlier to 1-2-1978. The decision of this Court in the case of N.G.D.M. Trust v. Ramtaji Ramaji (supra) squarely covers this issue, and as such, I do not propose to go on any further on this contention of the learned Counsel for the petitioners.

12. The last contention of the Counsel for the petitioners is of no substance. The Tribunal has dealt with this contention elaborately. The Tribunal has rightly observed that this contention was not raised by the petitioners before the Mamlatdar when he decided the matter on 24th November, 1977 and before Assistant Collector who decided the appeal on 10th September, 1978. Not only this, but on remand when the matter has come before Mamlatdar this plea was not raised by the petitioners. The Mamlatdar decided the remanded matter on 25th December, 1978. This matter was first time raised by the petitioners when the Assistant Collector was hearing the appeal against the second order of the Mamlatdar. The Assistant Collector has recorded a finding of fact that the petitioners have failed to establish by producing cogent and satisfactory evidence that the grass grows naturally on the land. The Tribunal has also considered this matter. The reliance has been placed by the petitioners on a document, i.e., Village Form No. 7-12. The Tribunal has noticed, after going through this document that in the crop column though the land is recorded as under grass but this extract is only of one year, i.e., 1975-76. The petitioners have not produced the extract from the Village Form No. 7-12 of the preceding years of the year 1976. The entry in the revenue record of the year 1975-76 is of no help to the petitioners. The petitioners have to establish the fact that in the year 1969 when the land was sold to them the land in question was under grass growing naturally. The Tribunal has noticed an important fact that in the sale deed which has been executed by the Trust in favour of the respondent Nos. 2 to 4 there is a mention of fact that on the day it is made, a protected tenant was there on the land and that protected tenant was given 25% of sale price of the land in question. Nothing has also been shown and established that the land has been converted into a non-agricultural land. This is a finding of fact recorded by the Tribunal and I am satisfied that no illegality has been committed by the Tribunal in recording of the same.

13. Lastly, the Counsel for the petitioners made the contention that the petitioners should be dealt with by the respondent as per the provisions as contained in the document Annexure "D" dated 7-9-1970. Annexure "D" is an order of the Government under the caption Permission u/s 63 of the Tenancy Act, Government of Gujarat, Revenue Department, Circular No. T.N.C.I 167-67-J, Sachivalays, Gandhinagar. The date is 7-9-1970 under which some clarification was given to the earlier circular dated 21st July, 1967. The earlier circular dated 21st July, 1967 has not been produced on the record by either of the parties.

Secondly this order is of 7th September, 1970, but this point was not raised by the petitioners before any of the authorities below and the Tribunal. Whether this order holds field today or not has also not been shown by the petitioners. The power has been given under the circular, as per the petitioners' own case, to the Mamlatdar and/or Assistant Collector, then why the petitioners have not resorted to any insistence upon this order before those authorities. The petitioners cannot be allowed to make out a case which has not been raised by them before any of the authority below including the Tribunal. The last contention raised by the learned Counsel for the petitioners cannot be accepted.

14. The two further facts have to be noticed. So far as the validity of the sales in favour of the petitioners is concerned, the Mamlatdar and the Assistant Collector have decided it in the first proceedings. The Mamlatdar held that the sales are made in contravention of provisions of Section 63 of the Act, 1948, which decision has been confirmed by the Assistant Collector. The matter was remanded only on the question to be dealt with u/s 84(c) of the Act, 1948. Section 84C of the Act, 1948 makes a provision of disposal of the land, transfer or acquisition of which is invalid. The transfer of the land in favour of the petitioners was held to be invalid by the Assistant Collector also, but that decision has not been challenged by the petitioners. Invalidity has to be determined u/s 84B. Section 84C is a procedural provision. So far as the petitioners are concerned, they cannot be allowed to retain this land. The question does arise whether the respondent Nos. 2 to 4 can get this property on payment of the price charged by them from the petitioners. The matter would have been different if the sales would have been made by the agriculturist to an agriculturist, but the Trust has also sold this land to respondent Nos. 2 to 4 for making the profit may be to use for some charitable or other purposes, but that much is sure that the respondent Nos. 2 to 4 purchased this land for earning of their own profit and sold this land to the petitioners for the gains. In case, this land is reverted back to them they will earn much more profit now as the prices have been hiked like anything after 1970s. The question does arise whether further profit should be allowed to be taken by the respondent Nos. 2 to 4 who have in fact, committed fraud, and the answer is certainly in the negative. The decision given by the authorities below and affirmed by the Court, and the land is reverted back to the respondent Nos. 2 to 4 then it will come in their hands like a lottery to them. This land has to be forfeited by the Government and it should be utilised for any permissible purposes by the Government or it may be disposed of for any non-agricultural purposes by an open auction. The State of Gujarat will get this profits. The petitioners have paid the price for it to the respondent Nos. 2 to 4. The respondent Nos. 2 to 4 have paid the price for this to the Trust. In view of this fact, it is hereby directed to the State of Gujarat, Revenue Department to pay to the petitioners the consideration of sale deeds before taking the possession of this property and this amount paid by them to the petitioners shall be the expenses of the auction of the land in case, ultimately it decides to sale it by auction or as a necessary expenses of the development of

this land if it is to be used for some public purposes. This order has been given keeping in view of the fact that the petitioners paid the price and the respondent Nos. 2 to 4 have also paid the price to the Trust. However, it shall be open to the State of Gujarat, Revenue Department to recover from the respondents the profit component of the sale transactions made by them in favour of the petitioners.

15. Before parting with the case, I consider it appropriate to make out certain observations. The present is a case of simple sale by non-agriculturist to non-agriculturist for profit motive. The land was purchased by the respondent Nos. 2 to 4 from the Trust on 14th April, 1969 and on the same day, the land has been transferred to the petitioners by another sale deed. The object of the purchase of the land by the respondent Nos. 2 to 4 was to make profit. It is an object to convert the agricultural land for non-agricultural purposes. A certificate has been granted to the Trust for sale of the land under the provisions of Section 88B of the Act, 1948, but the further sale of the land cannot be said to be justified in the facts of the present case. Section 88B of the Act, 1948 nowhere provides that the land has to be transferred to a non-agriculturist. On certificate being granted, the provisions of the Act, 1948 may not apply except certain provisions enumerated in the said section will apply. It is not an object or the import of the Act, 1948 to grant the certificate for sale of the land to the non-agriculturist. The respondent Nos. 2 to 4 though desired by the Court have not produced the sale deed which was executed in their favour by the Trust, but having gone through the scheme it was a sale certainly to an agriculturist. If they have purchased this land by showing themselves to be an agriculturist, but on the same day these persons have sold this land to a non-agriculturist and it clearly gives out how frauds are being played by the persons with the benevolent provisions of a statute. The persons who earn the profit by sale of agricultural land for non-agricultural purposes defeat the very object and purpose of the Act, 1948 which clearly exhibit from the facts of this case. The further facts which have come on record by way of the additional affidavit filed by the petitioners that all of the land purchased by these persons has been transferred for non-agricultural purpose and the construction has been made on the land. Though in this case, the challenge to those sales are not before this Court, but it is a matter of concern that the authorities of the revenue department would not be oblivious of this fact, but for the reasons best known to them they have not taken any action for the cancellation of those sales made by the respondent Nos. 2 to 4 other than the petitioners. Acting in this manner and fashion by the authorities certainly gives a pain to other persons against whom the action has been taken. The Assistant Collector is a party to this petition, but he has not chosen to file the reply. Not only this, but the affidavit filed by the petitioners on 10th August, 1996 has also not been replied. There is no material available on the record of this case that the sale which has been made of the land by the respondent Nos. 2 to 4, which they purchased from the Trust to the person other than the petitioners was legal and valid. The Mamlatdar and the Assistant Collector, the State functionaries, and the officer of the Revenue Department in the District

though initiated action against the petitioners but left out substantial portion of this land which was put under sale in similar manner by the respondent Nos. 2 to 4 which is a serious matter. The officer and the functionaries of the State in the Revenue Department of the District, concerned has permitted the respondent Nos. 2 to 4 to earn the profit which is not the object and purpose of the Act, 1948. It is expected of the Revenue Officers of the District concerned, to take appropriate action against the purchasers of the land which the respondents No. 2 to 4 purchased from the Trust and sold to different persons like the petitioners, and the compliance of this order should be reported to this Court. It is expected of the Secretary, Revenue Department at Gandhinagar to look into the matter and see that all the persons similarly situated are dealt with in like manner. The necessary inquiry may be made and whosoever found to have purchased the land in violation of the provisions of the Act, 1948 should be dealt with severely. It is further expected of the Secretary, Revenue Department at Gandhinagar, to hold an inquiry against the concerned officers why and for what reasons only the petitioners have been picked up and rest of the purchasers are kept free. It is difficult to accept that the Revenue Officer of the District concerned would not have known of the sale of the land purchased by the respondent Nos. 2 to 4 from the Trust to other persons.

16. The Court expects that the Secretary will make the necessary inquiries in the matter within a reasonable time, say within six months from the date of receipt of certified copy of this order and the result thereof be brought on the file of this case. This file be placed before this Court on receipt of the report from the Secretary of the Revenue Department at Gandhinagar or on 10th May, 1997 whichever is earlier. A copy of this judgment be sent to the Secretary, Revenue Department, Government of Gujarat and the District Collector, Surat. Rule is discharged with no order as to costs. Interim relief, if any, granted by this Court in this case stands vacated.