

(2011) 04 GUJ CK 0108

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1208 of 2009 in Special Civil Application No. 4157 of 2008

Pagi Aataji Kacharaji

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 135B, 135C, 135D, 135E, 135J

Bombay Land Revenue Rules, 1921 — Rule 108

Bombay Service Inams (Useful to Community) Abolition Act, 1953 — Section 62, 72

Constitution of India, 1950 — Article 136, 226, 227

Citation : (2011) 2 GLH 487

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Mihir Thakore, assisted by, Aspi M. Kapadia, for the Appellant; P.K. Jani, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—All these appeals arise out of a common judgment and order dated 22nd August 2008 passed by the learned Single Judge in a group of petitions being Special Civil Application No. 2952 of 2008 and cognate matters. By the said judgment, the learned Single Judge dismissed all the writ petitions.

2. The brief facts relevant for the purpose of deciding the appeals can be summarised as under:

The challenge before the learned Single Judge was to an order dated 7.12.2007 passed by the Principal Secretary (Appeals), Revenue Department, Government of Gujarat by which the revenue authority was pleased to exercise suo motu powers and interfered with the orders passed by the Collector and Deputy Collector. The Secretary was pleased to remand the proceedings to the Deputy Collector, Viramgam for fresh consideration of the issues arising after restoring certain entries which were mutated in the revenue records.

Deputy Collector, Viramgam passed an order dated 6th November 1952 under the Bombay Service Inam (Useful to Community) Abolition Act, 1953 with respect to 31 survey numbers of certain parcels of land of village Sola, Taluka Dascroi. Pursuant to such order, entry No. 1811 was mutated in the lands in question on 14.12.1952. Entry was certified on 25.1.1953.

Some of the landholders after a period of almost 40 years approached the Collector by filing an appeal on 17.5.1993 challenging said revenue entry No. 1811, which was mutated way back on 14th December 1952 and was certified on 25th January 1955. Shockingly, the said appeal was entertained by the Collector after a period of 40 years. Consequently by order dated 21st January 1994 the Collector partially allowed the appeal and set aside the said entry i.e. 1811 with respect to 16 survey numbers out of 31 survey numbers. The Collector remanded the proceedings before the Deputy Collector for fresh consideration after granting opportunity of being heard to the writ Petitioners of the group of Special Civil Application Nos. 113 of 2008.

The Deputy Collector, upon remand, by his order dated 24.3.1995 held and declared that the lands covered by these 16 survey numbers were not granted as Service Inam under the Bombay Service Inams(Useful to community) Abolition Act, 1953 and that the same are held by the owners on private ownership and such lands are their private properties. With this declaration, the Deputy Collector further directed that the owners shall continue to hold the land on the same basis as they were holding prior to year 1952 when entry No. 1811 was mutated.

Record reveals that owners of four more survey numbers namely 269/1 to 269/4 who are the Petitioners in Special Civil Application No. 113/2008 approached the Collector, Viramgam for similar declaration as was made in case of other lands of the same area claiming parity of their land holdings by filing Appeal No. 27/98 before the Collector, Ahmedabad challenging the order passed by the Deputy Collector on 24.3.1995.

Collector, Ahmedabad by his order dated 4.1.1999 dismissed the appeal.

3. The holders of the said lands preferred Revision Application No. 114/1999 before Secretary(Appeals). Revision Application came to be allowed partially. Order of the Deputy Collector as well as Collector were set aside and proceedings were remanded to the Deputy Collector, Viramgam.

4. The Deputy Collector, Viramgam thereupon by his order dated 30th June 2000 held with respect to these Survey Nos. 269/1 to 269/4 also that the lands were held by heirs of Dahyaji Galaji independently of the grant under the Bombay Service Inams(Useful to community) Abolition Act, 1953.

5. This order of the Deputy Collector dated 30.6.2000 came to be taken up by the Collector in suo motu revision and by order dated 28.9.2001, he set aside order passed by the Deputy Collector.

6. The record reveals that the heirs of deceased Dahyaji Galaji being aggrieved by the order passed by the Collector on 28th September 2001, approached the State Government by filing Revision Application No. 24 of 2001. In this revision application, the Secretary set aside the orders made with respect to all 31 survey numbers of which entry No. 1811 applied and directed the Deputy Collector, Viramgam to dispose of all the cases with respect to all 31 survey numbers afresh.

7. It deserves to be noted and as the record reveals as holders of 16 survey numbers in whose favour earlier orders by Collector dated 21.1.1994 and thereafter ordered by the Deputy Collector dated 24.3.1995 felt aggrieved by order passed by the order dated 10.12.2002 passed by the Secretary approached this Court by filing Special Civil Application No. 11603/2004 and connected matters. This group of petitions came to be disposed of on 20th January 2005. In the decision dated 20th January 2005 learned Single Judge found that the question of legality of the orders passed with respect to 16 survey numbers by the Collector and Deputy Collector respectively was not before the Secretary. Learned Single Judge took the view that Secretary ought not to have set aside such orders with respect to other survey numbers as such dispute was not before the Secretary. Consequently, the learned Single Judge set aside the impugned order dated 10th December 2002 passed by the Secretary in Revision Application No. 24 of 2001 with respect to survey numbers other than concerning land bearing Survey No. 269/1 to 269/4 as being without jurisdiction and beyond scope of revision application. It is very important to note at this stage that while doing so, the learned Single Judge clarified that it will be open for the appropriate authority either to take order passed by the Collector dated 21st January 1994 and order dated 24th March 1995 passed by the Deputy Collector in suo motu revision and/or appeal, if it was permissible under law. It was further clarified that authority is not precluded from taking such orders in revision or appeal, if otherwise permissible under the law.

8. The record further reveals that after High Court disposed of Special Civil Application No. 11603 of 2004 and connected matters by its decision dated 20th January 2005, Revenue Secretary issued a show cause notice dated 21.8.2006 calling upon the concerned persons to show cause why the above-referred orders of the Deputy Collector and Collector should not be taken in suo motu revision.

9. The Principal Secretary passed the impugned order on 7th December 2007, which was the subject matter of challenge before the learned Single Judge in a group of petitions, setting aside the orders of the Collector and Deputy Collector and remitted the matter to the Deputy Collector for thorough inquiry and for passing fresh orders after completion of such inquiry.

10. The findings of the learned Single Judge:

The learned Single Judge came to the conclusion that the petitions cannot be disposed of only on the ground that the order passed by the Secretary is only

one of remanding the issue before the Deputy Collector. The learned Single Judge also came to the conclusion that ordinarily, the Court would not encourage litigation against simplicitor remand orders, but peculiar facts of the case constrained the learned Single Judge to confirm the order of remand dated 7th December 2007.

The learned Single Judge came to the conclusion that the Deputy Collector while passing the order dated 24th March 1995 was completely oblivious of the settled position of law and went into question of nature of rights enjoyed by the occupant with respect to such lands and held and declared that lands were not granted to them by way of Service Inam. The learned Single Judge came to the conclusion that the Deputy Collector enlarged his scope of inquiry under Rule 108 of the Gujarat Land Revenue Rules, 1962 (popularly known as RTS proceedings) and examined the question whether the lands were granted actually by way of inam under the Bombay Service Inams (Useful to community) Abolition Act, 1953 or not. The learned Single Judge came to the conclusion that the Deputy Collector could not have conducted such an enquiry.

Learned Single Judge also recorded a finding as regards delay in initiating the suo motu proceedings that there was no fatal delay on the part of the Government in initiating the proceedings questioning the legality of the orders passed by the Collector and Deputy Collector particularly when the Appellants - original writ Petitioners had approached the Collector against the revenue entries which were made in the year 1953 by filing appeal in the year 1993.

11. As regards equities, the learned Single Judge recorded a finding that no details have produced as regards substantial investments made by the parties even at the time of hearing of the petitions. The learned Single Judge also recorded a finding that no material was also produced to rebut the assertion of Government Pleader that lands have not been converted to NA lands and no permission for construction has been granted and that therefore construction, if any, would be unauthorised.

12. We have heard learned Senior Advocate, Mr Mihir Thakor appearing with Mr Aspi Kapadia for the Appellants, Mr PK Jani, learned Government Pleader for the Respondents.

13. The contentions on behalf of the Appellants - original writ Petitioners are as under:

(a) Learned Single Judge failed to appreciate that the land in question was of the ownership of the Appellants or their predecessor-in-title. The land in question was never of the ownership of the Government.

(b) Learned Single Judge failed to appreciate that the land in question was not covered by the Abolition Act, 1953 and that the land in question was never given as a service inam to the Appellants or their predecessor-in-title.

(c) Learned Single Judge failed to appreciate that the Appellants or their

predecessor-in-title were occupier of the land in question since 196-70, they were paying the Government revenue and this would indicate that the lands were of the private ownership.

14. The principal argument is that Bombay Service Inams (Useful to Community) Abolition Act, 1953 came into force on 1st December 1954. The purported order dated 6.11.1952 of the Deputy Collector on the basis of which entry 181 was made in the revenue records of rights is illegal for the reason that on the date of the order the Bombay Service Inams (Useful to Community) Abolition Act, 1953 had not come into force.

15. The last contention is to the effect that SSRD could not have exercised the revisional power after lapse of about 12 years. Such exercise of power is illegal, unreasonable and arbitrary and that the learned Single Judge has materially erred in holding that there was no fair deal on the part of the State Government in initiating the proceedings.

16. The contentions on behalf of the Respondent-State The learned Single Judge has not committed an error much less an error of law in dismissing the batch of writ petitions. It is submitted that the matter is still wide open and the enquiry is yet to be finalised as directed by SSRD.

17. The most important contention on behalf of the Respondent is that the Appellants cannot take advantage of the fact that though the land is of the Government, since for some interregnum period the land was declared as private ownership land and the Appellants have purchased the land and thereby claiming to be bona fide purchasers of the land in question without notice. It is contended that if the Appellants are claiming any right, title or interest over the property, it is the competent civil court which can adjudicate such rights and give a declaration after a fulfilled trial. It is submitted that in RTS proceedings the revenue authorities cannot decide the issue of title.

18. Having regard to the rival contentions of the respective counsels for the parties, peculiar facts of the case and the position of law, we are of the view that the learned Single Judge has not committed any error much less an error of law which requires any interference at our hands in this appeal.

19. The most disturbing feature of this entire litigation is the order dated 24.3.1995 passed by the Deputy Collector (Annexure-B to the main petition) whereby the Deputy Collector declared that the lands covered by 16 survey numbers out of 31 were not granted as service inam under the Bombay Service Inam (Useful to Community) Abolition Act, 1953 and that the same were held by the owners as private ownership and such lands are their private properties. We are not able to understand as to on what basis, while exercising the powers under Rule 108 of the Gujarat Land Revenue Rules, 1972 the Deputy Collector could have given such a declaration and that too after a period of 40 years for which to a considerable extent even the Collector is responsible when he passed order dated 21.1.1994 partially allowing the appeal preferred by the Appellants

after a period of 40 years and remanding the proceedings before the Deputy Collector.

20. Time and again this Court has reminded the revenue authorities that in RTS proceedings disputed questions of title are not to be adjudicated. If any issue with regard to right, title and interest is raised, it is for the civil courts to decide such rights and give a declaration. In spite of this settled position of law, time and again revenue authorities are committing the same mistake knowingly or unknowingly. We deem it fit and proper to once again explain the entire process of law so that the authorities would bear in mind and would not commit the same mistake. It is necessary to make a brief reference to the statutory provisions having a bearing on the controversy involved in these appeals which pertains to what is popularly known as RTS proceedings.

21. Chapter X-A of the Bombay Land Revenue Code, 1879 provides for the record of rights. Sub-section (1) of Section 135-B reads as under:

135-B. The record of rights - (1) A record of rights shall be maintained in every village and such record shall include the following particulars:

- (a) the names of all persons other than tenants who are holders, occupants, owners or mortgagees of the land or assignees of the rent or revenue thereof;
- (b) the nature of extent of the respective interests of such persons and the conditions or liabilities (if any) attaching thereto;
- (c) the rent or revenue (if any) payable by or to any of such persons;
- (d) such other particulars as the State Government may prescribe by rules made in this behalf.

22. Sub-section (2) thereof pertaining to tenancy is not relevant for the present purposes.

Section 135-C with the title "Acquisition of rights to be reported" provides that any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land . shall report in writing his acquisition of such right to the village accountant within three months from the date of such acquisition. The second proviso to Section 135-C reads as under:

Provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the village accountant.

23. Section 135-D provides for register of mutations and register of disputed cases which reads as under:

135-D. Register of mutations and register of disputed cases -

The village Accountant shall enter in a register of mutation every report made to

him u/s 135C or any intimation of acquisition or transfer of any right of the kind mentioned in Section 135C received from the Mamlatdar or a Court of Law.

Whenever a village accountant makes an entry in the register of mutations he shall at the same time post up a complete copy of the entry in a conspicuous place in the chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein.

Should any objection to any entry made under Sub-section (1) in the register of mutations be made in writing to the village accountant, it shall be the duty of the village accountant to enter the particulars of the objection in a register of disputed cases and to give a written acknowledgment of the receipt of such objection to the person making it.

Orders disposing of objections entered in the register of disputed cases shall be recorded in the register of mutations by such officers and in such manner as may be prescribed by rules made by the State Government in this behalf.

The transfer of entries from the register of mutations to the record of rights shall be effected subject to such rules as may be made by the State Government in this behalf:

Provided that an entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified.

Entries in register of mutations how to be certified.- Entries in the register of mutations shall be tested and if found correct or after correction, as the case may be, shall be certified by a revenue officer of rank not lower than that of a Mamlatdar's first Karkun.

24. The Rules contemplated are the BLR Rules, particulars Rule 108, the relevant portion of which reads as under:

Rule 108. (1) Disputes entered in the register of disputed cases shall ordinarily be disposed of by the Mamlatdar's First Karkun or by the Mamlatdar.

(2) The enquiry shall ordinarily be made in the village in which the land is situated or where the interested parties reside.

(3) The Officer making the enquiry shall record his order disposing of the dispute in the said register and shall then make such entry in the Diary of mutations as may be necessary.

(4) Such officer shall certify the entry in the Diary of mutations to be correct.

(5) An appeal against an order under this rule shall, if the order has been made by the or a revenue officer of lower rank than that of a Deputy Collector, lie to the Sub-Divisional Officer or to an officer appointed by the Collector in this behalf and if the order has been made by a revenue officer of a rank not lower than that

of a Deputy Collector, to the Collector; such appeal shall be presented within sixty days from the date on which the copy of the order was served on the Appellant or was otherwise intimated to him.

Provided that the appellate authority may after recording its reasons in writing admit an appeal after the aforesaid period of sixty days if it is satisfied that the Appellant had sufficient cause for not presenting the appeal within such period.

Subject to the provisions of sub-rules (6) and (6-a) the decision of the appellate authority shall be final. There shall be no appeal against the order of the Collector. No second appeal shall lie in any case.

(6) The Collector may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 and sub-rules (1) to (5) of this rule for the purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings.

If in any case, it shall appear to the Collector that any proceeding so called for or any decision or order made in such proceedings should be modified, annulled or reversed, he may pass such order thereon as he deems fit.

(6-A) The State Government may call for and examine record of proceedings in respect of any order passed by the Collector under Sub-rule (5) or Sub-rule (6) for the purpose of satisfying itself as to its regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings. If in any case, it appears to the State Government that any proceedings so called for or any decision or order made in such proceedings should be modified annulled or reversed it may pass such order thereon as it deems fit.

25. Section 135-E provides that on the requisition of any revenue officer or village accountant, any person whose rights, interests or liabilities are required to be or have been entered in any record of register shall be bound to furnish information or documents needed for the correct compilation or revision of the record.

26. Section 135-J provides that an entry in the record of rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

27. Section 135-L reads as under:

135-L. Bar of Suit and exclusion of Chapter XIII.(1) No suit shall lie against the Government or any officer of Government in respect of a claim to have an entry made in any record or register that is maintained under this Chapter, or to have any such entry omitted or amended, and the provisions of Chapter XIII shall not apply to any decision or order under this Chapter.

(2) Appeal.- The correctness of the entries in the record of rights and register of mutations shall be inquired into and the particulars thereof received, by such

Revenue officers and in such manner and to such extent and subject to such appeal as the State Government may from time to time by rules prescribed in this behalf.

28. Rule 108 of the Bombay Land Revenue Rules is thus traceable to the provisions of Section 135-D and Sub-section (2) of Section 135-L.

29. In *Janardan D Patel v. State of Gujarat* (1) GLR 50, this Court considered the scheme of the aforesaid provisions and held that the revenue authorities exercising powers with respect to RTS proceedings are invested with limited powers. They cannot assume to themselves certain powers not conferred on them by law nor can assume jurisdiction not conferred on it by law and that in that view of the matter, it has no power to decide the validity of a transaction on the touchstone of a statutory provision occurring in some other enactment. If any such question arises, the matter should be referred to the authority empowered to deal with under the said other enactment. In such situation, the correct procedure to be followed would be to refer the matter to the authority empowered under the other Act for its decision. The necessary mutation entry may be made only after the decision of that authority under the other Act is received. It would, however not be open to the revenue authorities in RTS proceedings to decide that question.

30. In *The State of Gujarat Vs. Patil Raghav Natha and Others*, the Apex Court has made the following observations in para 14 of the judgment:

14. We are also of the opinion that the Commissioner (exercising the revisional power u/s 211 of the Bombay Land Revenue Code) should not have gone into the question of title. It seems to us that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent court and not to decide the question of title himself against the occupant.

31. In *Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State*, a learned Single Judge of this Court has held that in the proceedings under Rule 108 of the Bombay Land Revenue Rules, the revenue authorities cannot independently pass orders of cancelling the entries on an assumption that the transactions recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed.

32. In *Ratilal Chunilal Solanki and Others Vs. Shantilal Chunilal Solanki and Others*, this Court again examined this issue and laid down as under:

It cannot be gainsaid that, when a dispute as to the title to the properties

mentioned in the revenue records arises, the parties have to go to the competent Civil Court for resolution of their such dispute. They cannot convert the mutation proceedings under Chapter 8A of the Code into a battle-field for the purpose. The revenue authorities are incompetent to decide the disputed question of title to any property mentioned in any revenue record.

33. It is very clear that the scope of Rule 108 of the Rule of 1972 is to deal with the entries made in the record of rights and dispute regarding legality of such entries. Mutation entries do not create any title to the property since such entries are only enable the State for collection of tax. The right, title and interest as to the proper should be established independently of the entries. It is settled law that one cannot be divested of his legal title merely by virtue of mutation entries and one cannot be conferred a legal title merely by virtue of positing of mutation entries.

34. We are of the view that if any of the contentions raised by the Appellants is to be accepted and accepting the same if we quash and set aside the order dated 7.12.2007 passed by the Principal Secretary (Appeals), Revenue Department, Government of Gujarat, then, the resultant effect would be revival of two other illegal orders dated 21st April 1994 passed by the Collector (Annexure-A to the main petition) and/or 24th March 1995 (Annexure-B to the petition passed by the Deputy Collector). It is settled position of law that a writ court in exercise of its jurisdiction under Article 226 of the Constitution need not quash an order if it gives rise to another illegal order. The Supreme Court in the case of Commissioner of Income Tax, Shimla Vs. Greenworld Corporation, Parwanoo, in paragraph 66 held as under:

66. It is now well settled that this Court in exercise of its extra-ordinary jurisdiction under Article 136 of the Constitution of India may, in the event an appropriate case is made out, either refuse to exercise its discretionary jurisdiction or quash both the orders if it is found that setting aside of one illegal order would give rise to another illegality.

35. In Transmission Corporation of A.P. Ltd. and Others Vs. Lanco Kondapalli Power Pvt. Ltd., this Court held:

53. It is now well-settled that this Court would not interfere with an order of the High Court only because it will be lawful to do so. Article 136 of the Constitution vests this Court with a discretionary jurisdiction. In a given case, it may or may not exercise its power.

36. An identical view has been taken by the Supreme Court in the matter of State of Uttranchal through Collector, Dehradun and Another Vs. Ajit Singh Bholi and Another, in paragraph 9 it has been observed as under:

9. He has also not shown us any law or rule which authorizes the District Magistrate to take over possession in the manner done in the instant case. We do not wish to say anything more at this stage because we are conscious of the fact

that the writ petitions are still pending before the High Court. Having regard to the manner in which the District Magistrate took over possession of the premises, which appears to us as at present advised, to be high-handed, arbitrary and without any legal sanction we are not persuaded to exercise our discretion under Article 136 of the Constitution of India to set aside the interim order passed by the High Court. It is well-settled that this Court will not exercise its discretion and quash an order which appears to be illegal, if its effect is to revive another illegal order.

37. In the matter of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, in paragraph 17 has observed as under:

17. The result of the discussion may be stated thus: The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed: the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power u/s 72 of the Act to review an order made u/s 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order-it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.

38. For the reasons recorded above and applying the well settled principle of law that a writ court in exercise of its jurisdiction under Article 227 of the Constitution of India need not quash an order if it gives rise to another illegal order or may quash both the orders, we do not find any infirmity or error committed by the learned Single Judge in dismissing the writ petitions and confirming the order dated 7th December 2007 passed by the Principal Secretary (Appeals), Revenue Department, Government of Gujarat. The appeals fail and the same are dismissed with no order as to costs.