
(1997) 05 GUJ CK 0018
In the Gujarat High Court

Pandya Bherulal Vardhaji

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-05-1997

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 4, 6, 6(1), 6(2), 7

Citation : (1998) 1 GLR 468

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

Bench : Single Bench

Judgement

S.K. Keshote, J.—The dispute in this Special Civil Application arises in respect to Survey No. 85 admeasuring 0.28 Gunthas of Ambaji, Taluka Danta, District Banaskantha. The respondent No. 2 herein was the owner and occupant of 1/3rd of the land of Survey No. 85. The other 1/3rd of the disputed land was of the ownership and occupancy of predecessor of respondent No. 3 and another 1/3rd of the land was of the ownership of respondent No. 4 herein. The petitioner has purchased the 1/3rd share of respondent No. 2 of the land of Survey No. 85. The said land is not an agricultural land and is situated within the Municipal limits of Ambaji. The other parts of the lands were purchased by Shri Shivram Lachchiram Joshi and Shri Mangulal Dalsukhlal Joshi. The petitioner purchased the land in dispute under a registered Sale Deed of the year 1972.

2. The Assistant Collector, Palanpur, gave a notice to the petitioner and two other purchasers u/s 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the "Act 1947") to show cause why the sale should not be declared to be void and penalty for transfer of land contrary to the provisions of the Act 1947 should not be imposed. The notice has been given on the basis of the fact that the land is noted as Fragment vide village entry No. 139 dated 10-1-1966 and u/s 6(2) of the Act 1947, the notice was served. The Assistant Collector, Palanpur, registered a case No. RTS/ Fragment/12 of 1983 and held a single inquiry in respect of all the three transactions of the land in dispute made in favour of the petitioner and two other

persons. After holding inquiry, under its order dated 7-3-1984, the said authority held the transactions of sale in question as void and further held that the land is to be reverted to its original owner and Rs. 250/- was levied as fine. The petitioner and two other persons, against the order of the Assistant Collector, Palanpur, approached to the Secretary (Appeals), Government of Gujarat, Revenue Department, Ahmedabad, by way of revision applications. The revision applications were dismissed by the said appellate authority under the order dated 11th December 1984. Hence this Special Civil Application.

3. Shri G.R. Shaikh, learned Counsel for the petitioner contended that initiation of action u/s 9 of the Act 1947 for declarartion of the sale transactions to be void and for imposing penalty and other consequential orders has been issued after about 12 years from the date of sale and as such, whole proceedings deserve to be set aside only on this ground. It has next been contended that the owners of the land were not given the notice u/s 6(2) of the Act 1947 and as such, the provisions of Section 9 of the said Act could not have been resorted in the present case against the petitioners. It has further been contended that the petitioner was in possession of the land for the last 25 years and the land was not an agricultural land nor it was a fallow road land, but it is a rocky hill land which can otherwise be put to any agricultural use and in fact, it has not been used for carrying out any agricultural operation. The petitioner has raised construction of house on the land after spending huge amount. Lastly, the learned Counsel for the petitioner contended that in the facts of this case, the order of eviction of the petitioner may not be warranted.

4. On the other hand, the learned Counsel for the respondent No. 1 supported the orders made by the authorities below.

5. The reply to the Special Civil Application has not been filed by any of the respondents.

6. I have given my thoughtful considerations to the submissions made by the learned Counsels for the parties.

The scheme of the Act 1947 which is relevant for the purpose of deciding the fontroversy arisen in the present case is to be briefly taken. The Government may after such inquiry as it deemed fit, by Notification in the Official Gazette specify a village, Mahal, or Taluka (Tehsil) or any part thereof, as a local area for the purpose of this Act. The State Government then may, after such inquiry as it deems fit and after consultation with the District Advisory Committee or any other body appointed by it, provisionally settle for any class of the land in any local area, the minimum area that can be cultivated profitable as a separate plot. It shall by notification in Official Gezette and in such other manner as may be prescribed, publish the minimum areas provisionally settled by it and invite objections thereto. Thereafter, the Government shall after considering the objections, if any, received within three months of the date of publication of the notification under Sub-section (2) of Section 4 in the village concerned and

making such further inquiry as it may deem fit, determine the standard area for each class of land in such local area. The power to revise the standard area determined has also been conferred upon the Government under the Act 1947. The standard area determined or revised shall be notified in the Official Gazette and in such other manner as being prescribed. Section 6 of the Act 1947 makes a provision for entry in the Record of Rights. On notification of standard area under the Act 1947, for a local area all fragments in the local area shall be entered as such in the Record of Rights or where there is no Record of Rights in such village record as the State Government may prescribe. The notice of every entry made under Sub-section (1) shall be given in the manner prescribed for the giving of notice under the Land Revenue Code of an entry in the register of mutations. Section 7 of the Act 1947 provides that no person shall transfer any fragment in respect of which a notice has been given under Sub-section (2) of Section 6 (except to the owner of) a contiguous survey number or recognised sub-division of a survey number. Similar restrictions have been put to leasing rights of the land. Section 8 of the Act 1947 provides that no land in any local area shall be transferred or partitioned so as to create a fragment. Section 8AA of the Act 1947 puts restrictions on the partition of land where such partition shall have effect of creating a fragment. Section 9 of the Act 1947 makes a provision for penalty for transfer or partition of the land contrary to the provisions of this Act. The transfer or partition of any land contrary to the provisions of the Act 1947 shall be void. Any owner of the land so transferred or partitioned shall be liable to pay the fine not exceeding Rs. 250/- as the Collector may, subject to the general orders of the State Government, direct. The fine imposed under the aforesaid provision is made recoverable as the arrears of land revenue. Further provision has been made for summary eviction by the Collector of any person unauthorisedly occupying or wrongfully in possession of any land, the transfer or partition of which, by the act of parties or by the operation of law, is void under the provisions of this Act.

7. The revisional authority, in its impugned order has recorded finding of fact that the notice was served to the original owners at the relevant time under Sub-section (2) of Section 6 of the Act 1947, stating therein that the disputed land is a fragment. The learned Counsel for the petitioner contended that this finding is *ex facie* erroneous. The contention of the learned Counsel for the petitioner is that from the side of the respondent either before both the authorities and before this Court, no material has been produced to show and establish that the notice under Sub-section (2) of Section 6 of the Act 1947 has been given to the owners of the land in dispute. From the order of the revisional authority, I find that it was an admitted case of the parties that in the document of sale there was a mention regarding issuance of the notice. The learned Counsel for the petitioner made a reference to the decision of this Court in the case of *Harijan Parbhubhai Makanbhai v. Joint Special Secretary, Revenue Department and Ors.*, reported in 1994(1) GCD 794. This Court, in the case of *Harijan Parbhubhai Makanbhai v. Joint Special Secretary* (*supra*) held that where a notice u/s 6(2) of

the Act 1947 was not given with regard to entry of fragment made u/s 6(1) there will be no presumption of the correctness of the entry made u/s 135J of the Land Revenue Code, and in such case, provisions of Section 7 of the Act 1947 would not be attracted to give rise to prohibition on owner of fragment to transfer. The order made in that case u/s 9(1) of cancellation of sale deed was set aside. Section 135J of the Land Revenue Code 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 therefore. Section 135C of the Land Revenue Code provides that any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgage landlord or tenant of the land, or assignee of the rent of revenue thereof, shall report orally or in writing his acquisition of such right to the village accountant within three months from the date of such acquisition, and the village accountant shall at once give a written acknowledgment of the receipt of such report to the person making it. So the entry referred to Sub-section (1) of Section 6 of the Act 1947 is an entry to be made in the Record of Rights or where there is no Record of Rights in such village then in the record as the State Government may prescribe. So this entry falls u/s 135C of the Code. Section 135D of the Code refers to register of mutations and register of disputed cases. It is a legal obligation on the village accountant to enter in register of mutations every report made to him u/s 135C of the Code. Sub-section (6) of Section 135D provides how the entries in the register of mutations are to be certified. The 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. I do not find anything on the record of the case as well as in the orders of both the authorities below to show that any notice contemplated under Sub-section (2) of Section 6 of the Act 1947 is given, much less any entry pertaining to such notice is made in the register of mutations u/s 135D of the Code. The learned Counsel for respondent No. 1 fairly conceded that on the record of the case before the authorities below as well as before this Court nothing has been produced on their behalf to show that notice u/s 6(2) of the Act 1947 was given to the owner of the fragment. Thus, in the absence of any proof of notice of an entry made under Sub-section (2) of Section 6 of the Act 1947, there is no question of any presumption to be drawn for the correctness thereof. When the notice u/s 6(2) of the Act 1947 was not given or established to be given in the present case to the owners of the land, the provisions of Sub-section (1) of Section 7 of the Act 1947 are not attracted and as such, there was no prohibition on the owners of the fragment, to transfer the same to the petitioner. In view of the facts discussed above, the transfer of the land in dispute to the petitioner by respondent No. 2 cannot be said to be in contravention of Sub-section (1) of Section 7 of the Act 1947. The finding which has been recorded by the revisional authority is perverse as it is not supported by any evidence. Both the authorities below have, therefore, erred in holding that the transfer of the land in dispute by respondent No. 2 in favour of the petitioner was in breach of

Sub-section (1) of Section 7 of the Act 1947 and these orders cannot be allowed to stand. As this writ petition deserves acceptance only on this ground raised by the learned Counsel for the petitioner, the other points need not be gone into.

8. In the result, this Special Civil Application succeeds and the orders of Assistant Collector, Palanpur, in Case No. RTS/(Fragment) 12 of 1983 dated 7th March 1984 and that of the Secretary (Appeals), Revenue Department, Ahmedabad, passed in Case No. SRD/KON/160 of 1984 dated 15th December 1984, are quashed and set aside. Rule made absolute. No order as to costs.