

(1990) 07 GUJ CK 0018
In the Gujarat High Court

Parmar Govind Jesang

APPELLANT

Vs

Parmar Ajmal Arjan and Others

RESPONDENT

Date of Decision : 19-07-1990

Acts Referred:

Constitution of India, 1950 — Article 227

Gujarat Rural Debtors (Temporary Relief) Act, 1976 — Section 2, 3, 6, 6(1)

Citation : (1991) 1 GLR 34

Hon'ble Judges : C.V. Rane, J

Bench : Single Bench

Judgement

C.V. Jani, J.—In this petition under Article 227 of the Constitution of India, the petitioner has challenged the order of the Debt Settlement Officer, Surendranagar, scaling down the respondent's debt to Rs. 1,400/- payable in 10 equal instalments and confirming the order of the appellate authority dated 18-7-1979.

The following facts emerge from the impugned order as well as the petition:

The respondent No. 1-Parmar Ajmal Arjan of village Rampara, Taluka Wadhwan, District Surendranagar, submitted an application as a small farmer u/s 6(1) of the Gujarat Rural Debtors' Relief Act, 1976, hereinafter referred to as the Act, for setting his debt of Rs. 16,000/-. Necessary notices were served and statements were recorded by the Debt Settlements Officer. According to the respondent, his father left three heirs, namely the respondent, his brother and sister in joint possession of 34 acres and 5 gunthas of land in village Rampara. It appears from Annexure "H" that the respondent and his brother applied to the Talati on 25-4-1978 for mutation of these lands in the names of the three heirs jointly. It is, therefore, obvious that till 25-4-1978 the lands were joint properties of the respondent and his brother and his sister. It also appears from Annexure "I" that the respondent's sister Dhaniben wanted to relinquish her share in the said property and the respondent and his brother wanted the Talati to record a private settlement regarding partition of land to the effect that the respondent

would be holding 6 acres and 2 gunthas of land, while his brother would be holding 21 acres and 38 gunthas of land. The Debt Settlement Officer, therefore, held that the respondent was a small farmer inasmuch as he was holding less than 3.44 hectares as prescribed for Surendranagar District in the schedule annexed with. He, further held that though there was a well in the land held by the respondent, the land could not be said to be perennially irrigated land. As a result, he reduced the respondent's debt to Rs. 1,400/-, as per Sub-section (2) of Section 3 of the Act. This order was confirmed by the appellate officer, respondent No. 3 herein.

2. In this petition it is urged that the alleged partition between the two brothers and the alleged transfer of 6 acres and 29 gunthas by the respondent was only with a view to defeat the petitioner's claim under the Act. It is further urged that even taking the respondent's case at its face value, there is a well in the land admeasuring 6 acres and 2 gunthas coming to the share of the respondent and so it being irrigated land, the real area of the land deemed to be held by him for the purpose of Section 2 for determining whether the debtor is a small farmer, should be considered to be twice the extent of such irrigated land as per Explanation-I in the definition "small farmer" contained in Clause (p) of Section 2 of the Act. It is also urged that the total debt could not be reduced to Rs. 1,400/- (Rupees Fourteen hundred) in any event.

3. I am conscious about the limitation of this Court while excising jurisdiction under Article 227 of the Constitution of India, However, it appears that the orders of the Debt Settlement Officer and the Appellate Authority suffer from errors apparent on the face of the record, even though, I do not disturb the findings of facts. It is apparent, as per the case pleaded by the party, that the total land which belonged to the respondent's father was 34 acres and 5 gunthas. The respondent transferred 4 acres and 1 guntha on 28-3-1974 and 2 acres and 4 gunthas on 14-4-1976. So, on the appointed day i.e. 15th August, 1976, the total area which was held by the petitioner, his brother and his sister admeasured 28 acres. u/s 6 of the Act every debtor has to furnish to the local authority a true statement in respect of every debt due by him on the appointed day to his creditors. This statement must contain particulars showing whether he is the marginal farmer, small farmer, rural artisan or rural labourer. Therefore, the relevant date on which the total extent of land held by the debtor is to be considered is 15th August, 1976. So far as the facts of the present case are concerned, it was about 1 year and 8 months thereafter that the petitioner and his brother submitted an application to the Talati (Annexure "H") for mutating the lands in the joint names of three heirs. Thereafter, on 22nd June, 1978, the petitioner and his brother submitted an application to the Talati for mutation on the ground that they had partitioned 28 acres of land in such a way that the petitioner was to get 6 acres and 2 gunthas of land; while his brother was to hold 21 acres and 38 gunthas. Now this unusual partition was sought to be explained on the ground that the land coming to the share of the petitioner contained a well. Without going into the contention that this partition was effected

subsequently in order to defeat the object of the Act, I find two things emerging from the alleged partition:

(i) The land coming to the share of the respondent was more valuable than the land going to the share of his brother, it being virtually an irrigated land; and (ii) The application regarding partition by family arrangement was made as late as 22-6-1978.

So, on the appointed day, the respondent was actually holding 1/3rd share in the land left by his deceased father. This would exceed the extent of land prescribed for a small farmer in the schedule.

4. As a result, it is found that the respondent was not a small farmer on the appointed day, and so, his debt could not be reduced or scaled down. As the Debt Settlement Officer and the Appellate Officer have proceeded on an altogether erroneous basis without taking into consideration the relevant "appointment day", the orders Annexures "A" and "B" will have to be set aside.

5. I, therefore, do not think it necessary to go into the other points raised in the petition. Rule is therefore made absolute. The orders passed by the Debt Settlement Officer in Case No. Rural Debtor Relief/Wadhwan/2/21 and the appellate order of the District Magistrate in Case No. Rural Debtor Relief/235. Annexures A and B are quashed and set aside. As further proceeding in the Special Civil Suit. No. 16 of 1976 pending in the Court of Civil Judge (S.D.), Surendranagar, has been stayed by an interim order passed in Civil Application No. 4055 of 1983 since September 20, 1983, the learned Civil Judge shall proceed with the suit and decide it as early as possible. The stay of further proceeding is vacated hereby. There will be no order as to costs in the circumstances of the case.