
(2013) 12 GUJ CK 0065

In the Gujarat High Court

Case No : Special Civil Application No. 2146 of 2005

Pasiben Chhaganbhai Raval

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0065

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Kishor Prajapati for Mr. Mehul H. Rathod, for the Appellant; Manan Mehta, AGP for the Respondent(s) No. 1-3, for the Respondent

Final Decision : Allowed

Judgement

Rajesh H. Shukla, J.—The present petition has been filed by the petitioner under Articles 14, 226 & 227 of the Constitution of India as well as under the provisions of the Bombay Land Revenue Code read with Rules for the prayers, inter alia, that the impugned order passed by the Deputy Collector dated 23.03.1994 at Annexure-B may be quashed and set aside and also the order passed by the Collector in Appeal No. 44 of 1996 dated 30.06.1998 at Annexure-F and also the order passed by the Secretary Appeals dated 19/25.11.2004 at Annexure-G may be quashed and set aside on the grounds stated in the petition. The facts of the present case briefly summarized are that the petitioner has purchased the land in quest on by registered sale-deed in the year 1971. The land in fact was in the name of Panabhai Valabhai Bhangi since 1956 as Pashayat Jagiri Inami land. The Deputy Collector initiated inquiry resulting in the RTS/Sharatbhang/Case No. 9/93 at Annexure-B on the ground that the original allottee (owner) has not made the payment of the charges to the government, therefore it has vested in the government. Thereafter, the original owner has transferred the land by the registered sale-deed in 1971 and therefore the order was passed for vesting the land for breach of condition in the government, which is the subject matter of all the aforesaid proceedings. The affidavit-in-reply has been filed by the petitioner

and he has also narrated about factual background.

2. Heard learned advocate Shri Kishor Prajapati for learned Advocate Shri Mehul Rathod for the petitioner and learned AGP Shri Manan Mehta for the respondent Nos. 1 to 3.

3. Learned Advocate Shri Kishor Prajapati for learned Advocate Shri Mehul Rathod has referred to the papers and submitted that the transaction which has been taken place in the year 1971 is sought to be opened or scrutinized in the year 1993 for the first time by the Deputy Collector by the aforesaid proceeding i.e. RTS/Sharatbhang/Case No. 9/93, which has led to further appeal and in the revision. However, he submitted that the contention which has raised that the land in question would vest in the government for non payment of the charges by the original owner as the land was Pashayat Jagiri Inami Land. He, further submitted that in fact the petitioner has paid the charges according to the government resolution dated 11.06.1968. He pointedly referred to some of the clauses of payment stated in the Resolution, which provide for regularization and also the order passed by the High Court (Coram: Jayant Patel, J.) in Civil Application No. 12285 of 2007 in Special Civil Application No. 2146 of 2005 dated 28.09.2007. He submitted that in fact the High Court had granted installments for the payment of charges to the government and therefore there is no question of breach of any conditions.

4. Learned AGP Shri Manan Mehta, however, made a feeble attempt to point out that since the land was Pashayat Jagiri Inami land given to the original owner, who in turn did not pay the charges and transferred the land by the aforesaid registered sale deed is in violation of the provisions of law. He, however submitted that the land had already vested in the government and any transaction would be barred. He has also fairly stated that the petitioner has made some payment. He has further stated that as per the order passed by the High Court in Civil Application No. 12285 of 2007 in Special Civil Application No. 2146 of 2005 dated 28.09.2007, the possession was handed over to the petitioner but he is not required to transfer the land to any third party and he will have to continue to occupy the same land for his own purpose and can transfer only with a necessary permission.

5. In view of these submissions, it is evident that though it was claimed that it was Pashayat Jagiri Inami land and the transaction which has been taken place in the year 1971 by registered sale deed is void or bad, the fact remains that subsequently the charges have been paid by the petitioner, who has purchased the land in question and as per the government resolution dated 11.06.1968, the payments have been made. There is also a reference to the order of the High Court passed in Civil Application No. 12285 of 2007 in Special Civil Application No. 2146 of 2005 dated 28.09.2007. Therefore, when the High Court has passed the aforesaid order in the year 2007, the provisions or the breach of conditions etc., for which the order was passed in 2004 could have been brought to the notice of the Court. In fact despite this, the High Court has granted indulgence

wile passing the aforesaid order in Civil Application No. 12285 of 2007 in Special Civil Application No. 2146 of 2005 dated 28.09.2007.

6. Therefore, in view of the order of the High Court as stated above and also considering the settled legal position that the powers under the Statute has to be exercised with the reasonable period, and transaction which has taken place in the year 1971 including the order passed in 1993, present petition deserves to be allowed considering the observations made by the Hon''ble Division Bench in a judgment reported in Chandulal Gordhandas Ranodriya and Others Vs. State of Gujarat and Others, wherein it has been observed as under:

It must be fairly said that if the statute does not prescribe time-limit for exercise of revisional powers, it does not mean that such powers can be exercised at any point of time even if there is a breach of Section 43 of the Act, which is a provision which relates to a new tenure land, rather it should be exercised within a reasonable period of time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. It is clear from various judgments of the Supreme Court that where a statutory provision for exercise of any suo motu powers of revision does not prescribe any limitation, the powers must be exercised within a reasonable period of time even in the case of transaction which would be termed as void transaction.

7. Further, the Hon''ble Division Bench has considered the aspect of reasonable period with reference to the judgment reported in the case of Shri Santoshkumar Shivgonda Patil and Others Vs. Shri Balasaheb Tukaram Shevale and Others, : Shri Santoshkumar Shivgonda Patil and Others Vs. Shri Balasaheb Tukaram Shevale and Others, it has been observed that such power cannot be exercised beyond a reasonable period. Further, it has been observed that proceedings cannot be initiated beyond unreasonable period. It has been observed. ...Having regard to the fact that the proceedings came to be initiated after delay of more than about three years and that the petitioner is not guilty of fraud or suppression, the impugned proceedings and order cannot be said to have been initiated within reasonable time inasmuch as undisputedly the notice under the Act was issued in 2005. The proceedings and the order are hit by the vice of delay...

Therefore, in view of this settled legal position, the present petition deserves to be allowed and accordingly stands allowed. The impugned orders passed by the Authorities below at Annexure-B, F and G cannot be sustained and they are hereby quashed and set aside. It is also however clarified that for any future transaction regarding the land in question, necessary permission will have to be taken. Rule is made absolute. No order as to costs.