

(1996) 04 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 12842 of 1994

Patel Jividas Trikamdas and Others

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 02-04-1996

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 14, 3, 4, 5, 5(3)
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1997 Guj 121 : (1996) 2 GLR 688

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : P.M. Thakkar, for the Appellant;

Judgement

J.N. Bhatt, J.—Whether an illegal transaction or sale in contravention of the provisions of law could be questioned or revoked or can-celled after a lapse of several years is the heart of the present petition under Article 226/227 of the Constitution of India.

2. The petitioners had purchased the admeasuring 2 acres in block No. 1029/93 of village Dingucha, Tal. Kalol, Mehsana District from Respondents Nos. 3, 4 and 5 by registered sale deed dated 6-6-68. Since then, according to the case of the petitioners, they are in possession of the said agricultural land and they have spent huge amount for the development and for taking crops every year.

3. The respondent No. 1, District Collector, had initiated proceedings under the provisions of Bombay Prevention of Fragmentation Act, 1947 (Act) in the year 1987, i.e. after 19 years for declaring the aforesaid sale transaction as invalid being in violation of the provisions of the Act and show cause notice was issued. Thereafter the petitioners were heard. After hearing the parties and considering the facts and circumstances and the provisions of the Act, the respondent No. 1 Collector passed the impugned order on 30-7-92 under the provision of Section 9(1) declaring the sale transaction dated 6-6-68 as illegal and invalid, which was

challenged before the respondent No. 2, State of Gujarat in Appeal No. 1/93, but unsuccessfully. The appeal came to be rejected on 4-10-94 confirming the order of the respondent No. 1 dated 30-7-92. Being dissatisfied and aggrieved by the order of the respondent No. 1 and confirmed by the respondent No. 2 in appeal, the petitioners have come up before this Court challenging the legality and validity of the same by filing this writ petition.

3-A. The learned Counsel Mr. Pahuwa appearing for the petitioners has raised the following contentions:

- (1) That the delay in quashing the sale transaction is more than 19 years and therefore it is unreasonable;
- (2) That the land in question is not declared as fragment u/s 7 of the Act and no such notice is ever given to the petitioners; and
- (3) That equity is created in favour of the petitioners as they have purchased the land in question in 1968 and they have spent huge amount and that is the main source of their livelihood of the petitioners;

The aforesaid three contentions are interconnected and therefore, they are being dealt with simultaneously. In support of the first contention, the learned Counsel has also placed reliance on the two decisions of this Court. Firstly, he has placed reliance on a decision rendered by this Court in Special Civil Application No. 4583/85 decided by a single Judge (Coram : R.C. Mankad, J.) on 29-2-88. In the said decision, it was held by this Court that eviction after 24 years of the sale transaction even in violation of breach of Section 9 of the Act would not be justified. Therein reliance was placed on a decision of this Court in *Ranchhodbhai v. State* 1984 (2) 25 GLR 1225 : (AIR 1984 NOC 250). In that case, it was noticed that the transaction which had taken place in 1960 and the mutation entry in respect whereof was made in 1966 was sought to be set aside in 1984. Thus the transaction was sought to be held to be illegal and the petitioner in that case was sought to be evicted after 24 years of transaction. It was found in that case that the action of the authority was not justified. In the aforesaid decision, it was also observed by this Court that even assuming for the sake of argument that the transaction was in violation or in breach of Section 9 of the Act, no action can be justified after a lapse of long period of 24 years. Therefore, following the decision of this Court in *Ranchhodbhai's* case (supra), it was held that the authorities below were not justified in holding that the transaction in question was bad in law and evict the petitioner in that case.

4. In *Ranchhodbhai's* case (supra), this Court had held that upon appreciation of the peculiar facts of that case, it had got to be held that the power exercised by the concerned authority u/s 9 of the Act was at grossly belated stage and there was unreasonable delay in exercise of power and that exercise of power would be ex facie unreasonable, unjust and illegal. It was further held that transfer without permission of the Collector was sought to be questioned after 7 years under the Act and in the meantime the petitioner in that case had constructed house on the

land and had incurred expenses. It was held that exercise of power u/s 9 at a grossly belated stage against the transfer without permission of the Collector was illegal. Reliance was placed by this Court (Coram : S.B. Majmudar, J.) on a decision of the Hon'ble Apex Court rendered in the case of The State of Gujarat Vs. Patil Raghav Natha and Others,

5. The provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 are designed to provide for prevention of fragmentation of agricultural holdings and for their consolidation. One of the important and underlying objects is to prevent fragmentation of agricultural holdings and provide for consolidation of agricultural holdings for the purpose of better cultivation thereof. Chapter I of the said Act deals with the preliminary provisions. Chapter II of the Act is very important for our purpose. In Chapter 11, right from Section 3 to Section 14 various important provisions are incorporated. Section 3 provides about the determination of local area for the purpose of the Act. Section 4 deals with settlement of standard areas. Section 5 deals with determination and revision of standard areas for the purpose of the Act. Section 6 prescribes that on notification of the standard area u/s 5(3) of the Act 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. It also provides that notice of every entry made under Sub-section (1) of Section 6 shall be given in the manner prescribed in the notice under the relevant Code of an entry in the register of mutations. Section 7 provides prohibition of transfer of fragments. No person shall transfer any fragment in respect of which a notice has been given u/s 6(2) of the Act except to the owner of a contiguous survey number or recognised sub-division of a survey number. It is true that transfer of fragment Bav under the section does not apply where notice under Sub-section (2) of Section 7 is not issued. Section 8 provides that no land in any local area shall be transferred or partitioned so as to create a fragment. Section 8AA which came to be inserted by Amendment Act of Bombay, 61 of 1953 provides restriction on partition of land. Section 9 of the Act prescribes penalty for transfer or partition contrary to the provisions of the Act. Section 9 reads as under;

"9, Penalty for transfer or partition contrary to provisions of Act. (1) The transfer or partition of any land contrary to the provisions of this Act shall be void.

(2) The owner of any land so transferred or partitioned shall be liable to pay such fine not exceeding Rs. 250 as the Collector may, subject to the general orders of the State Government, direct. Such fine shall be recoverable as an arrear of land revenue.

(3) Any person unauthorizedly occupying or wrongfully in possession of any land the transfer or partition of which, either by the act of parties or by the operation of law, is void under the provisions of this Act, may be summarily evicted by the Collector."

This is the scheme and object of the Act.

6. It is a settled proposition of law that any action, transaction, decision or order which is illegal and void ab initio is to be treated as non est. The validity of such an illegal non est order could be questioned in any proceedings at any stage by anybody. The very nature of the non est order in its effect does not create any right, title or interest. It being a void, it confers no any status or any right. With the result, such non est or illegal order, decision, transaction or action would be for all purposes ineffective and of no consequence in the eyes of law. This proposition of law is very well explained, examined and expounded by catena of judicial pronouncements. The view being taken by this Court at this juncture is reinforced by a decision of the Hon''ble Apex Court in the case of State of Orissa v. Brindaban Sharma . In that case, the question had arisen under the Orissa Estate Abolition Act, 1951. Section 38-B was added in 1973 in the said Act. The Board of Revenue under the said Act had exercised power u/s 38B after a period of 27 years. Thus, the confirmation of tenancy rights by the Tehsildaar without obtaining prior confirmation of the Board of Revenue was ques-tioned after 27 years. It was found in the said decision that the order of the Tahsildar was void. The Board of Revenue was therefore justified in quashing the said order even after 27 years had lapsed since the grant of patta by the Tehsildar in favour of the party. It was laid down by the Hon''ble Apex Court that once the order is found in violation of the provisions of the law, it is illegal and void and therefore it is non est for all purposes. It was, therefore, held that it cannot be said that the Board of Revenue exercised the power u/s 38-B of the said Act after an unreasonable lapse of time. In the circumstances, the exercise of revisional power u/s 38-B by the Board of revenue after 27 years was found legal and valid and it was further held that it brooked no delay. It was also held by the Hon''ble Apex Court that the order passed by the Tehsildar without the confirmation by the Board which was a requirement of the law was non est and a non est order is void and it confers no title and its validity can be questioned or invalidity be set up in any proceedings or at any stage.

7. In view of the decision of the Apex in the case of State of Orissa v. Brindaban Sharma , the two decisions relied on by the learned counsel appearing for the petitioners would not assume any more significance. The ratio of the decision of the Hon''ble Apex Court would undoubtedly water down the ratio of the aforesaid two decisions of this Court. In the circumstances, the aforesaid two decisions relied on by the learned counsel for the petitioners is of no avail.

8. In the present case, there is no dispute about the fact that fragmentation is prohibited u/s 8 of the Act. It is clearly provided that no land in any local area shall be transferred or partitioned so as to create a fragment. The petitioners purchased the disputed land admeasuring 2 acres in block No: 1029/93 out of the total land of 6 acres and 17 gunthas and thereby created fragment of the agricultural land which is prohibited u/s 8 of the Act. In case of any violation of the provisions of the Act, penalty for transfer or partition contrary to the

provisions Act is prescribed u/s 9. The proceedings were started by the Collector, respondent No. 1, against the petitioners in 1988 pursuant to the provisions of Section 9 in Fragment case No. 30/88. It is true that the proceedings questioning the validity of the sale transaction in violation of the provisions of Section 8 have been initiated 20 years after the transaction took place. However, that by itself would not be sufficient to justify the illegal transaction. The impugned order of respondent No. 1 came to be passed on 30-7-92 which came to be confirmed in appeal by the respondent No. 2 on 4-10-94. The said orders could not be said to be illegal or unjust requiring interference of this Court exercising extraordinary, equitable, plenary and discretionary writ jurisdiction under Article 226/227 of the Constitution of India. It may also be mentioned that there is no proof of the date as to when the mutation came to be made in the record of rights. There is nothing on record which would even remotely indicate that the petitioners were shown owners of the land by virtue of the disputed transaction of sale in 1968. Apart from that, in view of the aforesaid settled proposition of law, the petitioners are not entitled to claim any equity. Of course, there is no any material whatsoever to indicate that the petitioners have spent huge amount, except the bare version of the petitioners. Even assuming that huge amount has been spend on the land, then also, it would not be a ground not to exercise the statutory rights or powers u/s 9 of the Act by the Competent Authority. Not only that the amount must have been spent for taking better crops which are admittedly enjoyed by the petitioners since last more than 20 years, In the circumstances, the aforesaid three grounds raised by the learned counsel for the petitioners would not constitute any legal hurdle or hindrance in rejecting the petition under Article 226/227 of the Constitution of India.

9. In view of the aforesaid facts and circumstances enumerated hereinabove and the provisions of law explained hereinbefore, this Court has no hesitation in holding that the present petition is meritless. Therefore, it must be rejected. Accordingly, it is rejected with no order as to costs in the circumstances.

Rule discharged.

10. The learned counsel for the petitioners at this stage requests that the interim relief may be continued for a further period of four months so as to enable the petitioners to approach the higher forum. Having regard to the facts and circumstances and the long period of occupation and possession, this request is reasonable. The interim relief granted earlier shall remain operative till 31st July, 1996.