
(1990) 06 GUJ CK 0008
In the Gujarat High Court

Patel Lalji Devji

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-06-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Gujarat Agricultural Lands Ceiling Act, 1960 — Section 38, 8, 8(1), 8(2)

Transfer of Property Act, 1882 — Section 53A

Citation : (1990) 2 GLR 1240

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 (wrongly mentioned as Article 226 of the Constitution of India in

the cause title of the petition), the petitioner has challenged the revisional order of the Gujarat Revenue Tribunal in Revision Application No. TEN

B. N. 246 of 1977, whereby the Gujarat Revenue Tribunal dismissed the Revision Application on the ground that the petitioner had no right to

make any application under Sub-section (1) of Section 8 of the Gujarat Agricultural Lands Ceiling Act, 1960. The facts in brief are as under.

2. The petitioner obtained possession of agricultural lands bearing Survey No. 375 admeasuring 5 acres and 10 gunthas and Survey No. 376

admeasuring 20 acres and 2 gunthas under an agreement dated 6-2-1971 from the trustees of Shri Akshar Purushottam Public Charitable Trust

which was holding large area of agricultural lands. The Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as "the Act") was

enacted in order to place restriction of holding agricultural lands in excess of certain limit for securing distribution of agricultural lands to subserve

the common good. u/s 8(1) of the Act where after 24th of January, 1971, but before the specified date, any person has transferred whether by sale, gift, mortgage, with possession, exchange, lease, surrender or otherwise or partitioned any land held by him, then notwithstanding anything contained in any law for the time being in force, such transfer or partition shall, unless it is proved to the contrary, be deemed to have been made in anticipation in order to defeat the object of this Act. Sub-section (2) provides that any person affected by the provisions of Sub-section (1) may, within the prescribed period and in the prescribed form, make an application to the Collector for a declaration that the transfer or partition was not made in anticipation in order to defeat the object of the Act. As per Sub-section (3), on receiving of such an application, the Collector shall hold an inquiry and after giving an opportunity to the transferor and the transferee to be heard and after considering the evidence which may be produced, decide whether the transfer was made or was not made in anticipation in order to defeat the object of the Act. u/s 38 of the Act, an application for revision against any order of the Collector can be made to the Gujarat Revenue Tribunal.

3. The petitioner made an application u/s 8(2) of the Act to the Deputy Collector (Agricultural Lands Ceiling Act), Bhavnagar for a declaration that the transfer of land in his favour by the Trustees of Akshar Purushottam Mandir, Gadhada, was not made in anticipation in order to defeat the object of the Act. He stated in his application that he was already placed in possession of the land on 15-3-1971 pursuant to an agreement dated 6-2-1971 and so, his possession was protected u/s 53-A of the Transfer of Property Act. He also expressed his apprehension that if his application is not granted his land might possibly be declared as surplus land thereby causing irreparable loss and hardship to him. He also stated that when the agreement was executed in his favour on 6-2-1971 he never predicted that the words ""after 24th day of January 1971"" would be inserted by the Gujarat Act II of 1974.

4. The Deputy Collector passed a cryptic order rejecting the application on the ground that no registered sale deed had been executed in respect of the said land and no mutation had also taken place.

5. The petitioner challenged this order by filing Revision Application No. TEN B.

R. 246 of 1977 before the Gujarat Revenue Tribunal. The

Gujarat Revenue Tribunal observed that as the sale of immovable property of the value of Rs. 100/- or upward can be effected only by a

registered instrument; and as Section 53-A of the Transfer of Property Act can be availed of only to protect one's possession, the petitioner

cannot put up his claim on the basis of such imperfect title, as the agreement to sell does not create title at all. So according to the Tribunal, as

agreement to sell was not covered by the category of transactions mentioned in Sub-section (1) of Section 8 of the Act.

6. However, the real ground on which the revision application was held to be incompetent is that according to the Tribunal the right to make

application is confined to the transferor whose intention is to be judged while deciding the application and it is the transferor who has to satisfy the

authority concerned about his bona fides. So, according to the Tribunal the petitioner had no right to make an application u/s 8 of the Act.

7. It appears that the revisional order of the Gujarat Revenue Tribunal clearly suffers from jurisdictional error in so far as it debars the petitioner

from agitating his case u/s 8 of the Act. Sub-section (2) of Section 8 clearly provides that:

(2) Any person affected by the provisions of Sub-section (1), may, within the prescribed period and in the prescribed form, make an application to

the Collector for a declaration that the transfer or partition was not made in anticipation in order to defeat the object of this Act, or as the case may

be, of the Amending Act of 1972.

It is obvious that the petitioner who had paid Rs. 30,000/- to Akshar Purushottam Public Charitable Trust and who had been cultivating and

improving the aforesaid lands since the year 1971 would be affected by the presumption laid down in Sub-section (1), unless he satisfies the

authorities that the transfer had not been made in anticipation in order to defeat the object of the Act. If the transferor had already received the

amount of consideration, it would be the transferee who would be really affected if the land is declared surplus land.

8. Sub-section (3) of Section 8 also provides that the Collector is expected to give an opportunity to the transferor as well as the transferee while

holding an inquiry u/s 8. It is, therefore, clear that the petitioner was an affected

person contemplated under Sub-section (2) of Section 8.

Moreover, the categories of transfer made in Sub-section (1) include sale, gift, mortgage with possession, exchange, lease, surrender, or otherwise or partition".

9. In the present case the possession of the land was transferred to the petitioner in the year 1971, after taking full consideration. However, at this stage, I do not want to express any opinion as to whether transfer of possession by virtue of an agreement of sale along with the delivery of

possession would not be relevant under Sub-section (1) of Section 8 Suffice it to say that the Gujarat Revenue Tribunal had committed an obvious

error of law and jurisdiction in rejecting the revision application on the ground that the petitioner was not a person "affected by the provisions of

Sub-section (1)" of Section 8.

9.1. Nothing was pointed out to me to show that the petitioner cannot be called a "person affected by the provisions of Sub-section (1)". As this

was the main ground on which the revision application was rejected no other submissions were made.

10. In the result, the revisional order of the Gujarat Revenue Tribunal in Case No. TEN B. R. 246 of 1977 is set aside. It is held that the petitioner

can be called "a person affected by the provisions of Sub-section (1)" of Section 8 of the Act, and so, the application under Sub-section (2) of

Section 8 has to be decided on merits, after giving an opportunity to the transferor and the transferee and after taking into consideration the

evidence on record. The proceedings are, therefore, remanded to the Gujarat Revenue Tribunal, and as they are pretty old, the Gujarat Revenue

Tribunal is directed to decide the said revision application as early as possible, preferably within four months after the receipt of the writ from this

Court. Rule is made absolute accordingly with no order as to costs.