

(2008) 01 GUJ CK 0090

In the Gujarat High Court

Case No : Special Civil Application No. 7124 of 1997

Patel Rameshbhai Ramabhai and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 2
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 17B, 32, 32F, 32I, 32O
State Bank of India (Subsidiary Banks) Act, 1959 — Section 2

Citation : (2008) 1 GLH 298 : (2008) 3 GLR 2049

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : R.A. Patel, for Petitioner 1-2, for the Appellant; Falguni Patel, Asst. Government Pleader for Respondents 1-2, for the Respondent

Final Decision : Allowed

Judgement

K.M. Thaker, J.—Mr. R.A. Patel, advocate for petitioner, made request for leave to amend. Granted. Accordingly, para: 1 of petition is amended.

2. The petitioners have preferred present petition against the order passed by the Mamlatdar: ALT being order dated 26.11.1990 and order dated 8.9.1992 passed by the Deputy Collector as well as order dated 13.2.1997 passed by the Gujarat Revenue Tribunal. The petitioners have also challenged order dated 22.4.1997 passed by the Gujarat Revenue Tribunal in review application preferred by the petitioners against the earlier order dated 13.2.1997.

3. The only ground, on which the petitioners have preferred present petition against the aforesaid orders is that the action initiated by the respondents against the action of petitioner No. 2 of family arrangement, was initiated after inordinate delay of almost 9 years and, therefore, the said action and subsequent actions are hit by the vice of delay and, therefore, are unsustainable.

4. The facts, which have been stated by the petitioners in support of the grounds

of the petition and reliefs prayed for therein, are as follows:

4.1 The dispute in present petition is related to Survey No. 224 and Survey No. 225 of village Ahima, Taluka Anand admeasuring about 10 Acres and 75 Gunthas and 2 Acres and 1 Guntha, respectively. The petitioners have stated that the father of petitioner No. 2 was, since 1940-41, tenant of the land in question and subsequently, the said land was purchased by the father of petitioner No. 2 u/s 32 of the Bombay Tenancy & Agricultural Lands Act. The father of petitioner No. 2 purchased the said land somewhere in the year 1966 and thereafter, he was cultivating the said land.

4.2 When the father of the petitioner No. 2 purchased the said land, it was subjected to the statutory restrictions u/s 43 of the Act.

4.3 The father of the petitioner No. 2 continued to cultivate the land in question and after sometime, the petitioner No. 2 continued to cultivate the land in question. In other words, the petitioners have contended that the land in question was being personally cultivated by the father of the petitioner No. 2 and thereafter by petitioner No. 2. The petitioner No. 2, after cultivating the land in question for sometime, i.e. for about 10 years, found himself unable to continue the cultivation activities personally in respect of the entire holding i.e. aforesaid two survey numbers being Survey No. 224 admeasuring 10.75 and survey No. 225 admeasuring 2.01 and that therefore, he handed over the land bearing Survey No. 224 to his son i.e. the petitioner No. 1 herein.

4.4 In view of the said action of the petitioner No. 2, a mutation entry being entry No. 951 came to be made in Form No. 6 on 22.6.1976. As per the said entry, the name of petitioner No. 1 i.e. son of the petitioner No. 2 was mutated against the Survey No. 224 admeasuring 10.75.

4.5 It is the case of the petitioners that the petitioner No. 1 continues to personally cultivate the said land. The further case of the petitioners is that despite the fact that the aforesaid was a family arrangement and the action was taken by way of internal arrangement between the father and son which did not amount to sale or distribution and/or partition and did not constitute violation of Section 43, suddenly, after lapse of almost 9 years since the entry came to be mutated a notice came to be issued by the respondents against the petitioners" alleging breach of Section 43.

4.6 The petitioners have further submitted that upon receipt of the said notice, the petitioners had remained present before the Mamlatdar: ALT and during the hearing the petitioners were told that the action of the petitioner No. 2 amounted to breach of Section 43 and the authority also directed the petitioners to hand over the possession to the State Government. The petitioners have submitted that they explained the facts to the said authority, however, the explanation was not accepted and an order dated 26.11.1990 came to be passed holding that the said action was in violation of Section 43 and u/s 84C the authority directed that the land would vest in government.

4.7 It appears that subsequently the said order dated 26.11.1990 was taken in revision by the Deputy Collector and an order in proceedings u/s 76A came to be passed by Deputy Collector on 8th September, 1992.

4.8 It also transpires from the submission of petitioner's advocate that against the order dated 26.11.1990, the petitioners had also, separately preferred an appeal along with an application for stay and a notice dated 27.3.1996 in respect of the said application was also issued. However, there is nothing on record to show the outcome of the said appeal. Thus, the reference of appeal said to have been filed by the petitioners has no relevance.

4.9 Against the said order dated 8.9.1992, the petitioners preferred proceedings before the Gujarat Revenue Tribunal and after hearing the parties, the Tribunal passed an order dated 13.2.1997 rejecting the application preferred by the petitioners and confirmed the order dated 8.9.1992. Aggrieved by the said order dated 13.2.1997, the petitioners preferred review application before the Tribunal and the said review application was also dismissed by order dated 12.3.1997.

4.10 Aggrieved by the said orders, the petitioners have preferred present petition, and as mentioned hereinabove earlier, the said orders are challenged solely on the ground that the inordinate delay has vitiated the proceedings as well as the orders.

5. Heard Mr. R.A. Patel, learned advocate, for petitioners and Ms. Falguni Patel, learned AGP, for the respondents.

6. When the petition was taken up for final hearing, an affidavit dated 9.1.2008 made by the Deputy Collector, came to be filed on behalf of the respondents after delay of 10 years since the date of admission of petition. In the said affidavit, the respondents have disputed the submissions made in the petition and have contended, inter alia, that the petitioner No. 2, by his actions which culminated into the mutation entry No. 951 committed breach of the provisions and restrictions u/s 43 of the Act and that therefore, the orders passed by the authorities are justified and in consonance with the provisions u/s 43 of the Act.

7. Against the said reply affidavit, Mr. Patel, learned advocate, has submitted that the said affidavit does not address his contention on the ground of inherent vice in the orders and in the proceedings viz. of delay. He, further, submitted that even if any explanation were to be offered for the delay in the action then such explanation would not wipe out the delay of almost 9 years in initiation of the proceedings.

7.1 In his submissions, while highlighting the delay of 9 years, Mr. Patel, learned advocate, relied on the judgment of the Hon'ble Apex Court in the case between State of Gujarat v. Raghav Natha reported in 1969 GLR 992 and also on the recent judgment of the Hon'ble Supreme Court in the matter between Pune Municipal Corporation Vs. State of Maharashtra and Others, Mr. Patel, learned advocate, further, submitted that almost 9 years delay in initiation of the

proceedings is an inherent vice and it vitiates the proceedings and the orders. It is necessary to note that the father of the petitioner No. 2 and grand-father of petitioner No. 1 got ownership of the land in question by virtue of the provisions u/s 32 as he, at the relevant time, was tenant of the land in question. Since he was the tenant, he got the benefit of purchasing the land in question under the provisions of Section 32 of the Act and accordingly, he purchased the land in the year 1966. At that time, the restrictions of Section 43 were attached to the land in question and they were required to be complied with. The said Section 43 of the Act reads, thus:

43. [(1) No land or any interest therein purchased by a tenant u/s 17B, 32, 32F, 32-I, 32-O, [32U, 43-1D or 88E] or sold to any person u/s 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, a gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector.]

[(1A) The sanction under Sub-section (1) shall be given by the Collector in such circumstances and subject to such conditions, as may be prescribed by the State Government.]

[(1AA) Notwithstanding anything contained in Sub-section (1), it shall be lawful for such tenant or a person to mortgage or create a charge on his interests in the land in favour of the State Government in consideration of a loan advanced to him by the State Government under the Land Improvement Loans Act, 1983, the Agriculturists' Loans Act, 1984, or the Bombay Non-Agriculturists' Loans Act, 1928, as in force in the State of Gujarat, or in favour of a bank or co-operative society, and without prejudice to any other remedy open to the State Government, bank or co-operative society, as the case may be, in the event of his making default in payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government, bank or co-operative society, as the case may be, to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan.

Explanation.- For the purposes of this sub-section, "bank" means-

- (a) the State Bank of India constituted under the State Bank of India Act, 1955;
- (b) any subsidiary bank as defined in Clause (k) of Section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;
- (c) any corresponding new bank as defined in Clause (d) of Section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
- (d) the Agricultural Refinance and Development Corporation, established under the Agricultural Refinance and Development Corporation Act, 1963.

(1B) Nothing in Sub-section (1) [or (1AA)] shall apply to land purchased u/s 32, 32F, 32O, or 64 by a permanent tenant thereof, if prior to the purchase, the permanent tenant, by usage, custom, agreement or decree or order of a court, held a transferable right in the tenancy of the land.]

(2) [Any transfer or partition, or any agreement of transfer, or any land or any interest therein] in contravention of Sub-section (1) shall be invalid.]

It can be seen from the said provision that it imposes certain obligations and restrictions against the transfer of the land purchased by tenant under Sections 17B, 32, 32F, 32I, 32(0), 32U, 43(1-D) or 88E and it provides that such lands cannot be transferred by sale, gift, exchange, mortgage, lease or assignment without previous sanction of the Collector and as per the Sub-section (2) of Section 43, any transfer or partition or any agreement of transfer of any land or any interest therein in contravention of Sub-section (1) is invalid.

8. Mr. Patel, learned advocate, has heavily relied on para: 2.4 of the petition wherein it has been stated by the petitioners that during the proceedings before the Deputy Collector u/s 76A the petitioners had deposed that they will restore the original position and that there was no transfer inasmuch as it was only a family arrangement made by father with his son.

9. This Court has, in the case between Bhanabhai Morarbhai Solanki Vs. State of Gujarat, held in para: 5 as follows:

5. Besides, sale of a parcel or agricultural land if made in contravention of any provision of the Act can be declared invalid in view of Section 83A of the Act and the necessary proceedings can be initiated u/s 84C thereof. In its ruling in the case of Bhaniben Mankanbhai Tandel v. State of Gujarat reported in AIR 1991 Gujarat 184, this Court has held that the initiation of the proceedings u/s 84C of the Act has to be made within reasonable time and if such proceedings are taken after five years or so they cannot be said to be taken within reasonable time. In that case, the proceedings u/s 84C of the Act were found to have been initiated after lapse of more than five years from the date the entry in the revenue records with respect thereto was certified. If initiation of the proceedings u/s 84C of the Act cannot be taken beyond any reasonable time, by analogy the proceedings for cancellation of any mutation entry cannot be taken beyond any reasonable time.

In the said case, the transaction was effected by virtue of a registered sale deed executed on 15th May, 1978 and a mutation entry was made on 15th September, 1978. Thereafter, an application was made to the first authority for cancellation of the said mutation entry. In pursuance of the same, the first authority made inquiry and came to the conclusion that the transaction was in contravention of Section 43 of the Act and that therefore, the first authority ordered cancellation of the said mutation entry. In other words, in the said case, the transaction was in contravention of Section 43. While dealing with the said matter, the Court observed that the proceedings u/s 84C of the Act has to be

made within reasonable time. In the said case, the delay was of about 5 years whereas in the present case, the delay is of about 9 years. In the judgment in the case between Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim reported in (1997) 5 SCC 70, where also the sale of agricultural land was effected in favour of non agriculturists and the suo motu proceedings u/s 84C were commenced, the Hon'ble Supreme Court, while referring to the judgment in the case between State of Gujarat v. Raghav Natha and in the case between Ram Chand v. Union of India, set aside the orders passed in the proceedings initiated after delay of about 3 years holding, inter alia, that the suo motu powers u/s 84C was not exercised by the Mamlatdar within reasonable time. The Hon'ble Supreme Court in the aforesaid judgment held at para: 2 as follows:

Although Mr. Bhasme, learned Counsel appearing for the appellant took a stand that u/s 63 of the Act aforesaid, there should not be any discrimination amongst the agriculturists with reference to the State to which such agriculturist belongs. But according to him even without going into that question the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Section 84C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgments of this Court that wherever a power is vested in a statutory authority without prescribing any time limit, such power should be exercised within a reasonable time. In the present case the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September 1973. If sale deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant reliance was placed on a judgment of Justice S.B. Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat v. Jethmal Bhagwandas Shah disposed of on 1-3-1990, where in connection with Section 84C itself it was said that the power under the aforesaid Section should be exercised within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat v. Patil Raghav Natha and in the case of Ram Chand v. Union of India has impressed that where no time-limit is prescribed for exercise at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo-motu power u/s 84C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed. The impugned orders are set aside. No costs.

10. The Division Bench of this Court, in the case between Gujarat Khet Kamdar Union and etc. Vs. State of Gujarat and Others, while dealing with the initiation of proceedings in exercise of suo-motu powers u/s 84C, has held that when the statute does not provide for any period of limitation for exercise of powers then such powers must be exercised within a reasonable period subject to the exceptions that such a plea is not available to a person, who is himself guilty of fraud or who has suppressed material facts. In the said judgment, this Court in para: 12 held as follows:

12. Having heard the learned Counsel for the parties we are of the view that there is considerable force in the submissions made on behalf of the petitioner: Union as well as the State Government. As per the settled legal position, when the statute does not provide for any period of limitation for exercising a particular power, such power must be exercised within a reasonable period, subject to the exception that such a plea is not available to a person who is himself guilty of fraud or who has suppressed material facts, but it is equally well settled that what is reasonable period during which a particular statutory power is to be exercised would depend on the facts and circumstances of each case and also on the nature of the order to be passed.... It is, therefore, not possible to accept the contention urged on behalf of the purchasers that the period of limitation stipulated in Section 76A of the Act should be taken into consideration for the purpose of explaining the scope and ambit of "reasonable period" within which the proceedings u/s 84C of the Act must be initiated to avoid the risk of being set aside on the ground of delay....

In this connection it is also necessary to refer to the following observations made by this Court speaking through Hon'ble Mr. Justice S.B. Majmudar (as His Lordship then was) in the judgment dated 1-3-1990 in Special Civil Application No. 2770 of 1979 and other cognate petitions which were all concerned with the same question about exercise of power u/s 84C of the Act within reasonable period:

...the Tribunal further observed in the same para, that it would be too late in the day for the Mamlatdar to take action u/s 84C after more than one year from the date of the sale transactions having come to the notice of the Revenue Officer and therefore, it was time barred. However, these observations cannot mean that there is fixed period of limitation of one year. It cannot be disputed that no such fixed period of limitation is prescribed by the Legislature for Mamlatdar to exercise suo motu power or otherwise u/s 84C. Therefore, the latter observation of the Tribunal in para 6 will have to be read in light of the facts of the case. When so read, it would only mean that initiation of proceedings on the facts of the present case after more than one year from the date of transaction is found to be an unreasonable exercise. Now, so far as this aspect is concerned, it is well settled that even when no period is fixed for any action, action cannot be taken at any time at the sweet will of the authority but it should be taken within reasonable time and what is reasonable time is always a question of fact....

It is unfortunate that in spite of enunciation of the aforesaid principle in no uncertain terms that there is no fixed period of limitation of one year and in spite of the fact that the aforesaid judgment of this Court in Special Civil Application No. 2770 of 1979 was referred to by the Tribunal, the Tribunal committed an error of law apparent on the face of the record by applying a wrong test that initiation of proceedings u/s 84C of the Act beyond one year per se would be illegal or unreasonable.

11. In the present case, it is not in dispute that it is actually the father who has

given his part of the land to his son by way of family arrangement. It is also not in dispute that the said arrangement between the father and son came to be recorded in Form No. 6 by way of mutation entry No. 951 in June 1976 and the name of petitioner No. 1 was mutated with reference to the land bearing Survey No. 224. It is also not in dispute that the proceedings u/s 84C were commenced in the year 1985. Thus, there has been a delay of almost 9 years in commencing the said proceedings. It is also relevant to note this is not the case where authorities allege any fraud. There are no allegations of fraud on part of petitioners. It is pertinent to note that when the petitioners understood the position then immediately during the proceedings before the Deputy Collector, they had offered to restore original position and the Deputy Collector has recorded the said aspect in his order.

12. On 16.7.1992 statement of petitioner No. 2 was recorded and in the statement also, he had shown his readiness to restore the original position. The Deputy Collector, after having recorded the said statements and readiness of the petitioner No. 2, disregarded the same by observing that the petitioners had not shown such readiness before the first authority.

13. The aforesaid aspects go to show that there has not been any fraud or misrepresentation or suppression by the petitioners. However, while passing the orders, the authority has disregarded the aforesaid aspects and the Deputy Collector while exercising suo-motu powers u/s 76A disregarded the statements and readiness of petitioner No. 2 without any justifiable reason.

14. During the hearing, it has been given out on behalf of the petitioners that though in the order dated 26.11.1990 the Mamlatdar: ALT had directed the Talati-cum-Mantri to take the possession of the land in question, the possession has not been taken over even as of now and the petitioners continue to be in possession of the land in question even now.

15. On behalf of the petitioners it is also submitted that not only they are in possession but the petitioner No. 1 continues to cultivate the land in question personally.

16. Thus, even after the order in November 1990, the possession has not been taken over and that therefore, no new equity in favour of any third party can be said to have come in existence.

17. In fact, for almost 2 years after the said order dated 26.11.1990, no action appears to have been taken and then the Deputy Collector initiated suo-motu proceedings again u/s 76A wherein even after recording the statements and readiness of the petitioner No. 2, he disregarded the same and passed the order dated 8.9.1992 confirming the earlier order dated 26.11.1990.

18. In view of the aforesaid discussions and in light of the facts and circumstances of present case noted hereinabove, the initiation of the proceedings u/s 84C after inordinate delay of almost 9 years is, beyond

reasonable time i.e. cannot be said to be within a reasonable time and that therefore, the same suffers the vice of inordinate delay and in light of legal position well settled by the judgments in case between State of Gujarat v. Raghav Natha (supra), Bhanabhai Morarbhai Solanki v. State of Gujarat (supra), Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim (supra) and Gujarat Khet Kamdar Union v. State of Gujarat and Ors. (supra), the impugned orders are untenable and the same deserve to be set aside. Accordingly, the impugned orders are set aside. The petition is allowed. Rule made absolute. No order as to costs.