(2000) 06 GUJ CK 0077

In the Gujarat High Court

Case No : Special Civil Application No. 6974 of 1987

Patel Virabhai Devabhai — APPELLANT

Vs

State of Gujarat — RESPONDENT

Date of Decision : 16-06-2000

Acts Referred:

Citation : (2000) 06 GUJ CK 0077

Hon'ble Judges : D.P. Buch, J

Bench : Single Bench

Advocate : P.J. Vyas, for the Appellant; P.K. Shukla, AGP, for the Respondent

Judgement

D.P. Buch, J.—The petitioner above named has filed this Special Civil Application under Article 226 and 227 of the Constitution of India read with the provisions contained in the Bombay Land Revenue Code, 1879.

2. The facts of the case of the petitioner may be briefly stated as follows:-

3. The petitioner purchased land bearing S.No.63/2 admeasuring A.0 34 gs situated in the sim of Village Modana-Gadh from the respondent no.2 to 4 under a registered sale deed dated 11.7.1974. The petitioner also purchased land S.No. 63/1 admeasuring A-1-10 Gs. situated in Madana-Gadh on 12.4.1982 from Thakor Cheji Tejaji, Thakor Genaji Tejaji and Thakor Kachraji Tejaji who happen to be the sons of Respondents No.2 to 4''s father''s brother. The land held by the said three persons is also pasayata land. The subsequent transaction of sale is regularised by the authority by imposing fine of Rs.50/- on the petitioner pursuant to Government Resolution dated 11.6.1968 which has been placed at Annexure A to the petition.

4. The petitioner further states that on the reports made by the Mamlatdar, Deputy Collector, Palanpur issued show cause notice dated 30.7.1983 to respondent no.2 to 4 and the petitioner to show cause why this land S.No. 63/2 be not entered on government head on the ground that though the lands are of new tenure, the same have been sold to the petitioner and therefore show cause

notice has been issued as to why the said grant be not cancelled. The petitioner appeared before the Learned Deputy Collect and opposed the said show cause notice. The petitioner also submitted before the learned Deputy Collector that he was willing to pay fine or 50% of the purchase price pursuant to the government resolution.

5. The Learned Deputy Collector passed an order dated 30.8.1983 holding that the respondents have sold the land without obtaining prior permission and there is no provision for regularisation pursuant to the government resolution dated 13.7.1983. Therefore he was pleased to pass an order for the forfeiture of the said land to the Government and to dispose of the same in accordance with law. The said order has been placed at Annexure C to the petition.

6. Being aggrieved by the said order of the Learned Deputy Collector, the petitioner preferred Appeal No. 4/84 before the Learned Collector, Banaskantha at Palanpur which was also turned down by order dated 14.3.1984 placed at Annexure D to the petition.

7. Being aggrieved by the said order, the petitioner filed Revision Application No. SRD/LND/A1155 of 1984 before the Secretary (Appeals), Revenue Department, Government of Gujarat at Ahmedabad. However, there also he failed and the revision was dismissed by order dated 23.12.1985 which order is placed at Annexure E to the petition. The petitioner, feeling aggrieved by the said orders, has filed the present Special Civil Application challenging those orders on various grounds. The petitioner mainly contended that when the Government has power and authority to regularise the land on payment of appropriate penalty or other amount, the State Government and its officers have failed in exercising the said powers and therefore the orders are illegal. The petitioner also claims that the transaction is under a registered deed dated 11.7.1974 and therefore the action could have been taken immediately thereafter but there was inordinate delay in taking the said decision. That the first respondent has failed to see that the Government Resolution cannot have retrospective effect and it could be applied only prospectively. That even assuming that the land cannot be sold without obtaining prior permission from the competent authority then having regards to the facts of the case the first respondent ought to have directed to give postfacto permission for the said sale of 1974 by imposing nominal fine. That the government resolution dated 16.3.82 and 13.7.83 do not provide for regularisation is a misreading of the resolution by the competent authorities. That on the whole, the approach of the Government and the Officers of the Government is against the spirit of the government resolution and therefore the petitioner claims that the aforesaid orders are illegal. The petitioner therefore challenges the said orders of the respondents. Therefore the petitioner has prayed for appropriate writ order or direction quashing and setting aside the aforesaid orders. The petitioner also prays to grant injunction restraining respondent no.1 and its subordinates from taking possession of the land land bearing S.No. 63/2. Rule was issued and adinterim relief was granted protecting

the possession of the petitioner at the first instance.

8. The Learned Asst. Government Pleader appeared for the State and contested the present petition.

9. Now the documents are on record and it is very clear that the land in question S.No. 63/2 is a new tenure land and therefore it was not permissible for the respondents to sell the said land without prior permission of the competent authority to the petitioner. Therefore the proceedings initiated against the petitioner cannot be termed as illegal on the face of them. However the petitioner has contended that there are provisions for regularisation of the said land and the authorities have not appropriately considered the said aspects of the case. It is also contended that the respondents were very late in taking actions against the petitioner and therefore the said actions could not be taken after inordinate delay.

10. Now in the present case, the contention of the Learned AGP is that the sale itself is illegal on the face of it since it is a new tenure land and it cannot be sold without prior permission of the competent authority. However there are provisions of regularisation of the land and the petitioner has referred to some resolutions in the petition also. One such resolution can be found at Annexure A which is dated 11.6.1968. It shows that the sale can be regularised on certain conditions. Here it is a fact that the transaction took place in 1974. The possession has been transferred in favor of the petitioner and the proceedings were initiated in 1983. This shows that the proceedings have been initiated about 8 to 9 years after the sale in question. It is true that it appears from the record that the sale in contravention of the aforesaid GRs would be treated to be illegal. However when the action has been sought for after 9 years the State Government and its officers should have considered that aspect and could also consider that cancellation of sale after so many years would put the petitioner and the sellers to an awkward position.

11. Then there are decisions from this Court as well as from the Honourable Apex Court that if the actions are required to be taken then they should be taken within a reasonable time. One such decision for taking action u/s 211 of the Bombay Land Revenue Code can be gathered from State of Gujarat Vs. Patel Raghav Natha (1970) 1 SLR 335. There the Honourable Supreme Court has held that the powers u/s 211 of the Bombay Land Revenue Code must be exercised within a reasonable period. Here the period has exceeded and the action has been taken after about 8 to 9 years. It appears that the State Government and the subordinate officers have not appropriately considered that aspect of the case for regularising the sale in favour of the petitioners.

12. To that extent it becomes clear that the orders of the respondents and the subordinate officers have to be treated to be illegal and therefore they are required to be quashed. However, the Learned Deputy Collector may be at liberty to reconsider the case of the petitioner in light of the observations made above

and also in light of the government resolution and the aforesaid decision of the Honourable Apex Court showing that the action should be taken within a reasonable time. The Learned Deputy Collector may be at liberty to reconsider the case of the petitioner as aforesaid and the decision will be taken by him on merits without being influenced by the earlier observations made by him in his order as well as in the order of the Learned Collector as well as in the order of the Learned Secretary to the Revenue Department.

13. In aforesaid view of the matter, this petition is partly allowed. The orders passed by the Learned Deputy Collector, Learned Collector and the Learned Secretary to the Government (Appeals), Revenue Department dated 30.8.1983, 18.1.1984 and 23.12.1985 respectively are qua

14. However, the Learned Deputy Collector will be at liberty to take appropriate action in light of the background of the observations made hereinabove. Rule is made absolute to the aforesaid extent. However, there shall be no orders as to costs so far as this Special Civil Application is concerned.

