
(2000) 03 GUJ CK 0042

In the Gujarat High Court

Case No : Special Civil Application No. 1491 of 1999

Prathmesh Farms Pvt. Ltd.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 14-03-2000

Acts Referred:

Citation : (2001) 21 GLH 359 : (2000) 3 GLR 392

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : A.J. Patel, for the Appellant; J.M. Thakore, Learned A.G. and Umesh Trivedi, Learned AGP, for the Respondent

Final Decision : Allowed

Judgement

M.R. Calla, J.—The petitioner herein is a registered Company under the Companies Act, 1956. Its case is that being desirous to be an agriculturist and so as to introduce Drip Irrigation System, it moved an application for the purpose of permission under Sec. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, which will be hereinafter referred to as "the Tenancy Act". The permission is said to have been applied for under several Circulars issued by the State Government including the directions dated 20th May 1991. The State of Gujarat had issued instructions to the respondent no.2, i.e. the Collector, Mehsana, to take into consideration the income of the Company and the net income of the Managing Director of the Company. The application moved by the petitioner was for purchase of several pieces of lands with a view to introduce the Drip Irrigation System and such permission was granted by the Deputy Collector, exercising powers of the Collector by order dated 6th February 1995. A copy of this order has been annexed with the petition as Annexure.B. Pursuant to the aforesaid permission, the petitioner and other Companies entered into various sale deeds as per the details given in Annexure.C. On purchase of the land in question, the Companies were inducted and the mutation entries were effected in the revenue records. One mutation entry no.7943 was certified by the competent

authority on 21.2.1995 and the copy of which has been annexed with the petition as Annexure.D. The other mutation entry was effected in the records being entry no.946 which was certified on 21.7.1995, i.e. Annexure.E with the petition. It is further the case of the petitioner that all the Companies have been cultivating the land in question and that the respondent no.1 had initiated the proceedings against some other Companies in respect of the permission obtained by other Companies. When the matter reached the Gujarat Revenue Tribunal by way of revision application no.TEN/ 473 and 475 of 1975, the Tribunal by judgment dated 20th March 1997 held that the permission had already been acted upon and unless there was violation of the conditions, it would not be proper and appropriate on the part of the State Government to initiate any proceedings against the Companies. According to the averments made by the petitioner, this judgment of the Revenue Tribunal has attained finality. The respondent no.1 State of Gujarat issued instructions to the Collector conveying that the State of Gujarat had decided to grant permission as per the judgment rendered by the Gujarat Revenue Tribunal and such communication as was sent to the Collector, Ahmedabad has been placed on record as Annexure.G with the petition.

2. It is also the case of the petitioner that the petitioner Company spent money on the improvement of the land and for cultivation of the land as per the conditions which were indicated in the order, but suddenly the respondent no.1 issued Circular dated 23rd November 1998, a copy of which has been annexed with the petition as Annexure.H and instructions have also been issued to several officers functioning under the provisions of the Tenancy Act that only a biological person should be considered to be a person within the meaning of the definition of "person" occurring in Sec. 2(11) of the Tenancy Act. On the basis of the aforesaid Circular issued by the State Government, the Mamlatdar, Kalol, issued notices to the petitioner under Sec. 84(c) of the Tenancy Act directing the petitioner to show cause as to why the sale in question that had taken place after the permission that was obtained should not be held to be violative of the provisions of Sec. 84(c) in view of the Circular dt: 23.11.98. A copy of such notice as issued by the Mamlatdar has been annexed with the petition as Annexure.I. Another notice of the same date, i.e.8th December 1998 was issued by the Mamlatdar, a copy of which has been annexed with the petition as Annexure.J and one more notice dated 25th Nov.1998 has been annexed as Annexure.K.

3. Aggrieved from these notices Annexures.I, J and K, and the Circular dated 23rd Nov.1998, the present petition was filed before this Court on 26th Feb.1999 and when the matter came up before the Court on 1st March 1999, Rule was issued along with the notice as to interim relief and ad-interim order was also passed. On 18th March 1999, learned Advocate General Mr.J.M.Thakore appeared on behalf of the respondents and on the request of both the sides, the matter was directed to be listed for final disposal on 24th March 1999 as it was submitted that only pure question of law is involved in this case. No return has been filed on behalf of the respondents.

4. In the facts of this case, the questions which arise for the consideration of this Court are as under:

(i) Whether the Circular dated 23rd Nov.1998 issued by the State of Gujarat is contrary to the provisions of the Bombay General Clauses Act and the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948?

(ii) Whether the Circular dated 23rd Nov.1998 can be applied retrospectively so as to deprive the status of agriculturist as had already been conferred at the relevant time in accordance with the Rules?

5. It has been submitted that the definition of "person" occurring in the Tenancy Act also includes charitable persons as is inherent in the Tenancy Act as can be made out from the reading of certain other provisions of the Tenancy Act. Section 32P(2)(C)(i) refers to a co-operative farming society, the members of which are agricultural labourers, landless persons, or small holders or a combination of such persons and clause (5) of Sec. 32P(2)(c) refers to co-operative farming society of agriculturists who hold land either as owners or as tenants or partly as owners or partly as tenants and landless in the areas where it can be holding who is artisan. Sub-clause (c) of Sec.32P refers to co-operative farming societies of different kinds.

14th March 2000:

6. So far as the provisions of S.2(11) of the Bombay Tenancy and Agricultural Lands Act, 1948 are concerned, the definition of the "person" as has been given is an inclusive definition and it only says that "person" includes a joint family. Thus, the definition of the word "person" as such has not been given in this Act and all that has been stated is that it includes a joint family. However, Section itself begins with the words, "In this Act, unless there is anything repugnant in the subject or context". Therefore, definition of "person" as has been given in this Act has to be considered in the context of the provisions of this Act and keeping in view that it should not be repugnant to the subject. Referring to the provisions of Bombay General Clauses Act, 1984, the word "person" as has been defined in S.3(35) is as under:-

"3(35) "Person" shall include any company or association or body of individuals, whether incorporated or not"

According to this definition under the Bombay General Clauses Act, the "person" includes any company or association or body of individuals, whether incorporated or not. In this regard, reference has also been made to S.32P of the Bombay Tenancy And Agricultural Lands Act, 1948 and sub clause under S.32P(2)(c) refers to a co-operative farming society, the members of which are agricultural labourers, landless persons or small holders or a combination of such persons. Sub clause (vii) refers to any other co-operative farming society. In fact it is a priority list of the persons for the purpose of disposal under the said Sec.32P. Thus a co-operative farming society has been included in the category of persons

holding land either as an owner or as a tenant or partly owner or partly a tenant.

Sec.32P(2)(c)(i) and (vii) are reproduced as under:-

"(i) a co-operative farming society, the members of which are agricultural labourers, landless persons or small holders or a combination of such persons;"

"(vii) any other co-operative farming society."

Sec.37 of the Gujarat Co-operative Societies Act, 1961 is reproduced as under:-

"A society on its registration shall be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings, and to do all such things as are necessary for the purpose for which it is constituted."

Thus the Co-operative Society on its registration becomes a body corporate. Sec.43A provides that certain provisions of the Tenancy Act will not apply to the land leased to or held by any industrial or commercial undertakings other than a co-operative society approved by the State Government, meaning thereby that the industrial or commercial undertakings which are not approved by the State Government would be governed by all the provisions of the Tenancy Act. Clause (b) of Sec.43A provides for leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock. Thus, bodies or persons defined in clause (b) would be exempt from the operation of the provisions of Tenancy Act as mentioned in S. 43A of the Tenancy Act. Other bodies, which are not specified in clause (b) would also be entitled to hold agricultural lands though they would be artificial or juridical or legal persons.

Sec.88B of the Tenancy Act provides for exemption to local authorities, Universities and Trusts. According to Mr.A.J.Patel there is an inherent indication in the Tenancy Act itself that an artificial or legal or juridical person would be entitled to acquire land. In this regard support has also been sought with the aid of the provisions of Gujarat Agricultural Lands Ceiling Act, 1960 as applicable to the State of Gujarat and it has been contended that "company" is a person entitled to acquire land and even under this Act under S.2(21), the "person" includes a joint family. Reference has also been made to S.3(1) of the Ceiling Act providing for exemption of lands. Sec.3(1)(b) refers to the land belonging to or held on lease by a local authority or University or an institution in the State of Gujarat. There may be some Institutions which are not entitled to avail this exemption but they are entitled to hold agricultural lands. Sec.3(1)(cc) refers to the lands which are the property of a public trust for a hospital existing on the specified date. Clause (d) refers to lands which are the property of a public trust for an educational institution imparting education in agriculture. Clause (dd) refers to the lands held by a Panjarapole or a Gaushala for the purpose of grazing of cattle. Sec. 3(1)(f) refers to the lands leased or held by an industrial

undertaking and an industrial undertaking could be an artificial person. Clause (h) refers to lands held or leased by a Land Development Bank and other Banks specified therein. Clause (i) refers to lands held or leased by Co-operative Societies while clause (j) refers to lands held by a Bhoodan Samiti recognised by the State Government.

Section 27 of the Ceiling Act provides for acquisition of land needed for the formation of compact block out of lands to be allotted to a co-operative farming society. The Co-operative farming society is obviously a legal person. Sec.29 provides for allotment of land vesting in Government to co-operative farming society. Sec.29 as a whole deals with allotment of land to different kinds of co-operative societies. Sec.30(1)(b)(ii)(c) and (d) of the Ceiling Act refers to the industrial or commercial undertaking or educational or charitable Institutions and clause (d) of the said Section refers to Co-operative farming society.

Provisions of Gujarat Agricultural Lands Ceiling Act deal with agricultural lands only. The Ceiling Act is a State Statute which defines certain expressions which are identical in nature as the expressions defined in the Tenancy Act.

7. Keeping in view the scheme of the Act and the various provisions therein i.e. under the Tenancy Act and the Ceiling Act, to which reference has been made hereinabove, it is clear that the word "person" has not been kept confined only to natural born person. A right to acquire land has been given not only to the natural born person but also to the bodies as a part of the local self Government as also co-operative societies, Universities and like Institutions.

8. In this context, learned Advocate General had placed strong reliance on the statement of objects and reasons of the Bombay Tenancy Act, 1939 as published at page 295 of the Bombay Government Gazette, dated July 23, 1948. It has been submitted that prior to the enactment of the Bombay Tenancy Act, 1939, the relations between landlords and tenants in the Province of Bombay were governed by the provisions of the Bombay Land Revenue Code, 1879 and other legislations applicable to local areas. These provisions did not ensure equal status for contract or agreement to the contracting parties, i.e., tenants were in much inferior position. Many tenants who held the same lands for generations did not obtain rights of permanency but continued to be tenants at will liable to be deprived of their tenancy at the will of their landlords. The working of the Bombay Tenancy Act, 1939, as amended in 1946 throughout the Province disclosed certain difficulties in the administration due to the variety of tenures, customs and usages prevailing in the different parts of the Province. In this statement of objects and reasons it was also noted that the change in the political status of the country has also necessitated the shaping of a definite policy of agrarian reforms to achieve improved production and agricultural efficiency. Thus, in order to implement this ideal, it was considered necessary to assume management of estates held by landholders, to impose restrictions on transfer of agricultural lands, to prevent uneconomic cultivation and to create and encourage peasant proprietorship in respect of holdings of suitable sizes.

9. Learned Advocate General has cited the case of *Buvasaheb Tatyasaheb v. Yesu Krishna*, reported in *Bombay Law Reporter Vol.62* at page 219. In this case, the question which came up for determination before the court was as to whether by reason of the language used in Sec.34 and the definition of the words "personal cultivation" in Sec.2(6) of the *Bombay Tenancy And Agricultural Lands Act, 1948*, a Manager or a Shebait of Devasthan property is entitled to maintain an application for recovering possession of the land cultivated by a tenant on the ground of personal cultivation. While examining this question, the Court found that there is no separate definition of the word "landlord" under the Act and the legal ownership of the land vests in the idol and, therefore, the land in question belongs to that idol, the contention that the petitioner in that case is the landlord cannot be sustained. His position in law being that of a mere Vahiwardar or a manager, all rights as to possession and management of the property, no doubt, lie in such a manager; nonetheless he cannot be deemed to be the landlord of the property. Ultimately it was concluded that the definition contained in S.2(6) of the Act "to cultivate personally" clearly debars the petitioner from maintaining such an Application.

10. In *Bombay Law Reporter Vol.66* at page 519, the decision of the Nagpur Bench in the case of *Kesheoraj Deo Sansthan v. Bapurao* has been reported. In this case also the principal contention which was raised was that the Sansthan or the idol of the Kesheoraj Maharaj is the owner of the property or not? In this case, it was observed that in order to claim a right to a personal cultivation, there must be established a direct nexus between the person who makes such a claim, and the agricultural processes or activities carried on the land. In other words, all the agricultural operations, though allowed to be done through hired labour or workers must be under the direct supervision, control, or management of the landlord. It is in that sense that the word "person" has to be understood. The requirement of personal supervision under the third category of personal cultivation provided for in the definition contained in Sec.2(12) of the Act does not admit of an intermediary between the landlord and the labourer, who can act as agent of the landlord for supervising the operations of the agricultural worker. If that is not possible in the case of one landlord, we do not see how it is possible in the case of another landlord merely because the landlord in the latter case is a juristic person. The provision of such a facility will not be available for the landlord who is a natural person also. The whole emphasis in the Act is on insisting cultivation of land by persons who want to get benefit out of the land. Thus, by the very definitions of the words, namely, "to cultivate" and "to cultivate personally" given in the definition clause, the Legislature seems to have made it abundantly clear that so far as cultivation of the land is concerned, it must be by human beings themselves i.e. by natural persons and not by legal persons. However, in the same Judgment, in the later part of it, the Court has observed that on the other hand, land held by other juristic persons such as companies or other legal persons are subject to the same restrictions and limitations as other landlords, like individuals or joint families.

11. The entire reading of this judgment shows that so far as cultivation is concerned, according to this judgment, it has to be by human being by themselves and not by legal persons, nevertheless this fact relates to the question of actual cultivation. So far as holding of the land is concerned, even according to this Judgment, the land may be held by a juristic person such as Companies or other legal persons. May be that such Companies and such juristic person or other legal persons are subject to same restrictions and limitations as other landlords, like individuals or joint families.

12. In the case of Shri Kalanka Devi Sansthan Vs. The Maharashtra Revenue Tribunal, Nagpur and Others, , the Court held that Hindu idol is juristic person - it cannot cultivate personally and it is deity or the Sansthan which owns and holds the properties and it is only the possession and the management which vest in the manager. Thus owning or the holding of the land by deity or the Sansthan has been found to be valid.

13. Mr.Umesh Trivedi, learned A.G.P. had also cited the case of Narayan Bhimji Vadangale and another Vs. Hukumchand Chunilal Thole and another, . In this case the Supreme Court held that it could not be said that a partnership firm being an inanimate person could not cultivate land personally and cannot therefore be an agriculturist or non agriculturist. The firm is a name given compendiously to a group of people who comprise its partners, and those people who comprise its partners, and those people have naturally to be live persons. When we talk of a firm cultivating land we mean to convey that it is the partners of the firm who cultivate the land and in that sense the firm cultivates it personally. The firm may be inanimate but the partners comprising thereof are people in flesh and blood. Whether the firm is agriculturist or non agriculturist would depend upon the activities of its partners. Thus the name of the firm, whether it is agriculturist and non agriculturist, would depend upon the activities of the partners. I fail to understand as to how the ratio of this decision helps the respondents for the purpose of the point which is under consideration in this case. On the contrary, this judgment postulates that a firm can be an agriculturist in a given case, meaning thereby that the firm as such, which is not a natural person and is a legal entity, may be an agriculturist firm. The ratio comes to that even the firm can hold the land and can be an agriculturist firm and so far as the question of cultivation is concerned, it may be cultivated only through its partners. But that would not deprive the status or legal position as to whether the firm can hold the land or not. Whether it is under personal cultivation or not that may depend upon the activities of the partners.

14. Thus the entire discussion of the scheme and the provisions therein and the various decisions, clearly show that for the purpose of holding the land it is not necessary that it can be held only by a natural person and it can certainly be held even by a juristic person as a legal entity. Such being the position, it appears that while issuing the Circular dt.23.11.98 i.e. Annexure "H" the Government did not address itself to the relevant provisions of the Act and this

Circular dt.23.11.98 is held to be contrary to the provisions of the Bombay General Clauses Act, 1984 and the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 and the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960. Question No.1 is answered accordingly.

15 So far as the second question is concerned, as to whether the Circular dt.23.11.98 can be applied retrospectively so as to deprive the status of agriculturist as had been conferred at the relevant time according to the Rules, it may be straight away pointed out that the Government can certainly change its policies in accordance with its objectives and frame necessary law accordingly for the purpose of implementation of such policies and may nullify the earlier policy decisions by appropriate amendments in law. In the instant case, the Circular dt.23.11.98 is not an amendment in any Statute. If any policy is to be changed, then appropriate amendments are to be made in the relevant law and in case any Memorandum is issued like the impugned circular, such circulars have to be in conformity with the existing provisions of the law. In no case, such executive circulars can be made applicable retrospectively. The status of the agriculturist, if it was validly conferred in accordance with rules and law, such status could not be deprived of by way of executive fiat as has been sought to be done in the instant case. If at all there is any misuse by any party or Company there are appropriate provisions in the existing law to take care of it and if need be, amendment can also be made to take care of such misuse even with retrospective effect. The Legislature is fully competent for that purpose to make such amendment even with retrospective effect but this circular, which has been issued, is neither an amendment in the Act nor an amendment in the Rules. It is only by way of an executive circular by describing various provisions. The interpretation, as found in the Circular, does not appear to be correct interpretation. Even if the author of the Circular seeks to interpret in the manner in which it has been done, at the most it could be given effect to prospectively and it could not have any retrospective effect. The second question is also, therefore, answered accordingly.

16. In the result the impugned Circular dt.23.11.98 is hereby quashed and consequently notices at Annexures "I", "J" and "K", issued on the basis of the impugned Circulars, are also quashed and set aside. This Special Civil Application is allowed. Rule is made absolute. No order as to costs.