
(1988) 01 GUJ CK 0010
In the Gujarat High Court

Purshottambhai Ramdas Patel

APPELLANT

Vs

Appellate Officer and District Registrar (Co-Operative Societies) Rural Debt and Others

RESPONDENT

Date of Decision : 28-01-1988

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 73A
Constitution of India, 1950 — Article 227
Gujarat Rural Debtors Relief Act, 1976 — Section 8(2)

Citation : (1988) 2 GLR 1001

Hon'ble Judges : P.M. Chauhan, J

Bench : Single Bench

Judgement

P.M. Chauhan, J.—By this petition under Article 227 of the Constitution of India, the petitioner has challenged the orders passed by respondents Nos. 2 & 1 in proceeding No. S Gram-18-412: 14 on January 31, 1979 and in Appeal No. 31 of 1979 on April 7, 1979 respectively under the provisions of the Gujarat Rural Debtors' Relief Act, 1976, directing the petitioner to hand over possession of the land bearing Survey No. 16 admeasuring 3 Acres of village Dhanshera, taluka Sagbara, Dist. Broach. The respondent No. 3 Suriabhai, claiming to be a marginal debtor under the Gujarat Rural Debtors' Relief Act (to be referred as "the Act") prayed for possession of the said land.

2. The notice was published under the provisions of Section 7 of the Act by the Sagbara Gram Panchayat on January 21, 1978. Subsequently a notice u/s 8(2) of the Act was served by the Debt Settlement Officer to the petitioner as well as to Gomiabhai Govabhai Vasava. Gomiabhai did not remain present before the Debt Settlement Officer, but the petitioner remained present and contended that the land of respondent No. 3-Suriabhai was purchased on April 4, 1964 by Gomiabhai Govabhai Vasava by registered sale deed and subsequently on June 6, 1969 the petitioner purchased said land by registered sale deed from Gomiabhai and the relationship of debtor and creditor never existed between the parties. It transpires from the order of the Debt Settlement Officer that he has verified the

revenue records and ascertained that the respondent No. 3, original applicant Suriabhai had sold the land by registered sale deed dated 4-4-1964 to Gomiyabhai Govabhai Vasava. It also transpires that Gomiyabhai was in possession of the land for two years prior to April 4, 1964 because of the money transactions. From the findings of the Debt Settlement Officer and the Appellate Authority it is apparent that the land was sold by respondent No. 1-Suriabhai to Gomiyabhai-on April 4, 1964 and there was no relationship of debtor and creditor between them. It is also clear that the petitioner purchased land from Gomiyabhai by sale deed dated June 6, 1969. No relationship of the debtor and creditor existed between the petitioner and Suriabhai or Gomiyabhai or between Suriabhai and Gomiyabhai.

3. Debt as defined in Clause (c) of Section 2 of the Gujarat Rural Debtors' Relief Act means any liability (inclusive of interest) which is due from a debtor, in cash or kind, whether secured or unsecured, or whether payable under a decree or order of any Civil Court or otherwise, and subsisting on and legally recoverable on or after the appointed day. What is, therefore, necessary is the existence of the debt between the parties and the subsisting debt must be legally recoverable on or after the appointed day. Appointed day is the date on which the Act came into force i.e. August 15, 1976. On August 15, 1976, therefore, debt should subsist between the parties and from the findings of the Debt Settlement Officer or the Appellate Authority it does not transpire that the debt was subsisting on that particular day. The object of the Act is to provide for relief from indebtedness to certain classes of farmers, rural artisans and rural labourers in the State of Gujarat.

4. There is no dispute that the respondent No. 3 is a marginal farmer. Under the scheme of the Act the debt can be discharged or reduced as provided in Section 3 of the Act. The debtor or the creditor has to furnish particulars of debt to the local authority u/s 6 of the Act and after that the local authority has to prepare and publish the statement of the debt as provided in Section 7 of the Act. The State Government has appointed Debt Settlement Officer u/s 5 of the Act and as provided in Section 8 of the Act, the inquiry is to be held by the Officer whose powers are specified in that section. An application is required to be submitted regarding the dispute to the Debt Settlement Officer and notice is required to be served to the other side. As provided in Sub-section (3) of Section 8 the Debt Settlement Officer can call for further information or particulars in relation to the debt in question and if required, hold inquiry and in case of satisfaction of the existing debt, order discharging the debt completely or reduce it and grant a certificate for that. The order of the Debt Settlement Officer is appealable u/s 13 of the Act. The jurisdiction of the Civil Court to decide the issue regarding the status of the debtor or farmer and the existence of the liability is barred and exclusive jurisdiction is conferred on the Debt Settlement Officer under Sections 11 and 12 respectively of the Act. From the scheme of the Act, therefore, it is clear that the complete Code and procedure are provided in the Act for wiping or reducing the debt of such Rural debtors. It is apparent that the enactment is for

the benefit of the Rural debtors. It is, therefore, necessary that for the application of the Act, debt should exist on the appointed day. From the findings of both the authorities it is clear that no such debt was existing. As such there is no clear finding by the said authorities that any such debt was existing on that particular day.

5. It pears that the Competent Authorities were much influenced because of the provisions of Section 73A of the Bombay Land Revenue Code and observed that the transfer by the respondent No. 3 to Gomiyabhai and ultimately to the petitioner was in violation of the said provisions and it appears that relying on the said provisions the authority considered the transaction void and assumed the jurisdiction and directed to hand over possession. The respondent No. 2-Debt Settlement Officer observed that sale deed dated April 4, 1964 is void as provisions of Section 73A Land Revenue Code are applicable from April 1, 1961.

6. It is not necessary to consider in details the relevant provisions of Sections 73A, 73AA, 73AB, 73AD of the Bombay Land Revenue Code. The said provisions restrict the transfer of the occupancy right of a tribal to the non-tribal, with a view to protect the interest of the tribals. Even provision is made for re-transfer of such unauthorised transfer of the occupancy right. Such transaction can be only entered into by the previous sanction of the Collector. Collector is authorised under certain circumstances to declare such transfer void. The authority to take action for violation of the said provisions of the Bombay Land Revenue Code is the Collector and not the Debt Settlement Officer or the Appellate Authority under the Gujarat Rural Debtors' Relief Act. It appears that the Debt Settlement Officer and the Appellate Authority confused themselves about the said powers and assumed powers and jurisdiction under the Land Revenue Code. It transpires from the order of the Debt Settlement Officer that the proceedings u/s 73A Bombay Land Revenue Code were pending while it is stated in the order of the Appellate authority that entry is made in the record of rights that the said transaction is in violation of Section 73A Bombay Land Revenue Code and, therefore, void. It is not clear as to whether the proceedings under Land Revenue Code was disposed of by the Collector. However, if any such proceeding was pending it was for the Collector to decide on merits. Even if proceedings under the Land Revenue Code is finalized the Competent Authority under that Code has power and jurisdiction to take action. That, however, does not confer any jurisdiction on the Debt Settlement Officer to pass any order under the Gujarat Rural Debtors' Relief Act.

7. As discussed above, no debt was existing on the appointed day and, therefore, the Debt Settlement Officer or the Appellate Authority under the Gujarat Rural Debtors' Relief Act had no jurisdiction to pass any order and, therefore, the order passed by both the said authorities is without jurisdiction and should be quashed. It should, however, be made clear that merely because the orders passed by the Debt Settlement Officer and the Appellate Authority under the provisions of the Gujarat Rural Debtors' Relief Act are set aside that would not,

in any way, prevent the Competent Authority under the Land Revenue Code to take legally permissible action or effect such action, if any, already taken by said authority.

8. The petition is allowed. The order dated January 31, 1979 in proceedings No. S-Gram-18-412: 14 by the Debt Settlement Officer and the order dated April 7, 1979 by the Appellate Authority in Appeal No. 31 of 1979 are quashed and set aside. No order for costs. Rule made absolute.