
(1993) 12 GUJ CK 0034
In the Gujarat High Court

Rahubha Jivubha and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-12-1993

Acts Referred:

Constitution of India, 1950 — Article 227, 227

Citation : (1995) 1 GLR 805

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The order passed by the Mamlatdar and Agricultural Lands Tribunal at Dhandhuka ("the First Authority" for convenience) on 19th December 1985 in Ceiling Case No. 15 of 1976 as affirmed in appeal by the order passed by the Deputy Collector (Appeals) at Ahmedabad ("the Appellate Authority" for convenience) on 30th June 1986 in Ceiling Appeal No. 23 of 1985 as further affirmed in revision by the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad ("the Tribunal" for convenience) on 9th March 1990 in Revision Application No. TEN. B.A. 908 of 1986 is under challenge in this petition under Article 227 of the Constitution of India.

2. The facts giving rise to this petition move in a narrow compass. The petitioners are the heirs and legal representatives of one Rahubha Jivubha ("the deceased" for convenience). He was found holding in all 136 acres 25 guhthas of agricultural lands in village Parbadi, Taluka Dhandhuka, District Ahmedabad as on 1st April 1976. The ceiling area fixed for that local area under the Gujarat Agricultural Lands Ceiling Act, 1960 ("the Act" for brief) is 51 acres. Thereupon the necessary inquiry u/s 21 of the Act was undertaken by the First Authority. It came to be registered as Ceiling Case No. 15 of 1976. It appears that the case was decided earlier by the First Authority deciding that the holding of the deceased was in excess of the ceiling area by some 27 acra and odd guanthas. The aggrieved deceased thereupon carried the matter in appeal before the Appellate Authority. It appears that the Appellate Authority came to the

conclusion that the holding of the deceased was in excess of the ceiling area by 88 acres 25 gunthas and not what was found by the First Authority. He thereupon remanded the matter to the First Authority for giving choice to the deceased for surrendering the surplus land. The aggrieved deceased carried the matter in revision before the Tribunal by means of his Revision Application No. TEN. B.A. 460 of 1981. By its decision rendered on 26th March 1984 in the aforesaid revisional application, the Tribunal set aside the orders passed by both the lower authorities and remanded the matter to the First Authority for his fresh decision according to law. It is an admitted position on record that by that time the deceased had breathed his last some time in 1980. Despite this position, the First Authority continued the proceeding against the deceased without bringing his heirs and legal representatives on record. By his order passed on 19th December 1985 in Ceiling Case No. 15 of 1976, the First Authority came to the conclusion that the holding of the deceased was in excess of the ceiling area by 84 acres 25 gunthas and declared that area to be surplus. Its copy is at Annexure-A to this petition. That aggrieved the present petitioners as heirs and legal representatives of the deceased. They carried the matter in appeal before the Appellate Authority by means of their Ceiling Appeal No. 23 of 1985. By his order passed on 30th June 1986 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure-B to this petition. The aggrieved petitioners carried the matter in revision before the Tribunal by means of their Revision Application No. TEN. B.A. 908 of 1986. By its decision rendered on 9th March 1990 in the aforesaid revisional application, the Tribunal rejected it. Its copy is at Annexure-C to this petition. The aggrieved petitioners have thereupon moved this Court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the Appellate order at Annexure-B to this petition as further affirmed in revision by the impugned decision at Annexure-C to this petition.

3. This petition can be accepted on a short ground as submitted by Shri Jadeja for the petitioners. The undisputed position emerging from the record is that the deceased was no longer alive when the proceeding came to be remanded to the First Authority pursuant to the order passed by the Tribunal on 26th March 1984 in Revision Application No. TEN. B.A. 460 of 1981. Despite that position, the First Authority continued the proceeding against the deceased without bringing his heirs and legal representatives on record. It cannot be gainsaid that the function performed by the First Authority with respect to the inquiry u/s 21 of the Act was quasi-judicial in nature. It culminated into the impugned order at Annexure-A to this petition. It was, therefore, a quasi-judicial order.

4. In this connection a reference deserves to be made to the ruling of this Court in the case of *Jadavji Devshanker* (since deceased by his heirs) Vs. *Jiviben Lavji Rugnath*, . It has been held therein that a decree against or in favour of a dead man is nullity. It has come to be affirmed by the Division Bench of this Court in its ruling in the case of *Jiviben Lavji v. Jadavji* reported in 1977 (18) GLR 883. By

analogy the aforesaid rulings of this Court will be applicable in the instant case.

5. It cannot be gainsaid that a decree is a judicial order. What applies to a judicial order would apply with equal force to a quasi-judicial order. A quasi-judicial order against or in favour of a dead man would be a nullity.

6. In that view of the matter, the impugned order at Annexure-A to this petition has to be styled as a nullity. An order or a decision affirming a nullity would by itself be a nullity, in that view of the matter, the Appellate order at Annexure-B to this petition and (the decision at Annexure-C to this petition have also to be styled as null and void.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-A to this petition as affirmed in appeal by the Appellate order at Annexure-B to this petition as further affirmed in revision by the impugned decision at Annexure-C to this petition deserves to be quashed and set aside. The matter will have to be remanded to the First Authority for restoration of Ceiling Case No. 15 of 1976 to file and for his fresh decision according to law after giving an opportunity of hearing to the present petitioners as the heirs and legal representatives of the deceased. It is obvious that the case will have to be decided in the light of the position of law as obtainable on 1st April 1976. It would be open to the petitioners to canvass all points in the inquiry proceedings. If the deceased was entitled to the benefit u/s 6(3-B) of the Act, the parties would obviously be entitled to such benefits.

8. In the result, this petition is accepted. The impugned order passed by the Mamlatdar and Agricultural Lands Tribunal at Dhandhuka on 19th December 1985 in Ceiling Case No. 15 of 1976 at Annexure-A to this petition as affirmed in appeal by the Appellate order passed by the Deputy Collector (Appeals) at Ahmedabad on 30th June 1986 in Ceiling Appeal No. 23 of 1985 at Annexure-B to this petition as further affirmed in revision by the Gujarat Revenue Tribunal at Ahmedabad on 9th March 1990 in Revision Application No. TEN.B.A. 908 of 1986 at Annexure-C to this petition is quashed and set aside. The matter is remanded to the Mamlatdar and Agricultural Lands Tribunal at Dhandhuka for restoration of Ceiling Case No. 15 of 1976 to file and for his fresh decision according to law in the light of this judgment of mine after giving an opportunity of hearing to all the heirs and legal representatives of the deceased. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.