(2000) 07 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No. 1655 of 1999 and Civil Application No. 12240 of 1999

Ramaben Panubhai Patel through P.O.A. Manojbhai Bhalchandra Jermanwala and Another — APPELLANT

Vs

M.B. Parmar and Others — RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:
Constitution of India, 1950 — Article 14, 226
Registration Act, 1908 — Section 23, 24, 25, 25(1), 26

Citation : AIR 2001 Guj 28 : (2001) 1 GLR 144

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : A.S. Vakil, for the Appellant; H.M. Bhagat, for the Respondent

Final Decision : Allowed

Judgement

M.S. Shah, J.—In this petition under Article 226 of the Constitution the petitioner challenges the order dated 6-2-1999 passed by the Inspector General of Registration, Gujarat State, rejecting the petitioners'' application u/s 70 of the Registration Act, 1908 (hereinafter referred to as ''the Act'') and confirming the order dated 9-10-1998 passed by the Sub-Registrar, Documents u/s 34 of the Act levying fine of Rs. 1,02,800/- for condoning delay in presenting the document for registration.

2. The facts leading to filing of this petition, as averred by the petitioner and briefly stated are as under :-

2.1 On 19-1-1998 petitioner No. 1-Smt. Ramaben Panubhai Patel executed Sale Deed in favour of petitioner No. 2-Smt. Sandhyaben B. Shah for selling the property in question which is described in paragraph No. 2.1 of the petition being a plot of land admeasuring 284.28 sq. mtrs. at Rajpur-Hirpur in Ahmedabad for a consideration of Rs. 17 lakhs. The Sale Deed was presented personally by petitioner No. 1-Smt. Ramaben for registration with respondent No. 4, Sub-

Registrar-(I) - hereinafter referred to as ''Sub-Registrar-(I) on the same day i.e., on 19-1-1998. The registration fee of Rs. 25,707/- payable under the Act was also paid vide receipt dated 19-1-1998 at Annexure-D to the petition. Petitioner No. 1 also admitted the execution of the Sale Deed before the Sub-Registrar-(I) as per the declaration made before the Sub-Registrar-(I). Thereafter, on or around 4-3-1998 petitioner No. 2 received a letter purported to be dated 19-1-1998 from Sub-Registrar-(I) to the effect that Sale Deed is required to be presented before respondent No. 3, Sub-Registrar-(VII) - hereinafter referred to as ''Sub-Registrar-(VII) for Rajpur-Hirpur area. Sub-Registrar-(I) also informed the petitioners to collect the Sale Deed and other papers.

2.2 After receiving the said letter, petitioner No. 1 (through her Power of Attorney Manojbhai Bhalchandra Jermanwala) and petitioner No. 2 immediately presented on 6-3-1998 the Sale Deed (already executed on 19-1-1998) before Sub-Registrar-(VII) for registration vide Receipt No. 639 of even date (Annexure-E). An endorsement was also made on the said receipt that an amount of Rs. 25,700/- was already deposited with Sub-Registrar-(I) on 19-1-1998. On that day i.e., on 6-3-1998 petitioner No. 1 appeared through her Power of Attorney, Manoj B. Jermanwala, as stated above, before Sub-Registrar-(VII) with the original Power of Attorney dated 5-8-1996 but Sub-Registrar-(VII) refused to register the Sale Deed on the basis thereof and required him to obtain a fresh Power of Attorney from petitioner No. 1 who was at the relevant time in the U.S.A.

2.3 Petitioner No. 1 executed a fresh Power of Attorney dated 24-3-1998 (Annexure-G) in the U.S.A. in favour of the same Power of Attorney i.e. Manoj B, Jermanwala. The said Power of Attorney was received in India in April, 1998 but the Stamp Office was under transfer from Ahmedabad to Gandhinagar, and therefore, stamping formalities could not be completed on the second Power of Attorney. After the same was stamped, petitioner No. 1 through her Power of Attorney petitioner No. 2 approached Sub-Registrar-(VII) on 8-6-1998. However, Sub-Registrar-(VII) refused to register the Sale Deed on the ground that there was delay in presenting the documents for registration as the same was not presented from the date of execution. Hence, the petitioners were required to make an application for condonation of delay with a prayer to waive the penalty that may be leviable under the Act. The Power of Attorney accordingly gave an application on 15-6-1998 (Annexure H) u/s 34 of the Act for condonation of delay as well as for waiving fine, if any, that may be leviable under the Act. Since nothing was heard from the concerned officers, the petitioners sent letters dated 16-6-1998 (Annexure-I) and 21-8-1998 (Annexure-J) and also a letter dated 18-11-1998 (Annexure-K) to the Inspector General. According to the petitioners, they are not served with any notice of hearing before the Sub-Registrar or the Registrar or the Inspector General of Registration, but when the petitioners were not informed about any development. However, when personal enquiry was made around 24-12-1998, the petitioners were informed that an order was passed by the Registrar on 9-10-1998 levying fine of Rs. 1,02,800/- and issuing directions to the Registering Officer as contemplated u/s 34(3) of the Act.

2.4. Aggrieved by the above order, the petitioners preferred an application u/s 70 of the Act before the Inspector General of Registration for waiving the fine. That application came to be rejected by the Inspector General by the impugned order dated 6-2-1999 (Annexure-A).

2.5 The petitioners have, therefore, preferred this petition under Article 226 of the Constitution.

3. At the hearing of this petition, the learned Counsel for the petitioners raised the following contentions.

(i) Sale Deed in question was very much presented within time-limit, and therefore, there was no question of any delay in presenting the document, and therefore, the question of condonation of delay or payment of fine did not arise at all.

(ii) Even if there was any delay, the petitioners had shown sufficient cause for the delay and the authorities ought to have accepted the explanation and condoned the delay without levying any fine whatsoever.

(iii) In the alternative, even if the authorities were justified in levying any fine at all, the fine imposed by the authorities is arbitrary and exorbitant, illegal and violative of petitioners'' right under Article 14 of the Constitution.

4. On the other hand, Mr. Bhagat, learned Counsel for the respondents opposed the petition and made the following submissions :

(i) Section 23 of the Act stipulates time-limit of four months from the date of execution for presenting the document for registration. Since the document was executed on 19-1-1998 but presented on 8-6-1998 there was delay in presenting the document.

(ii) The Sub-Registrar had power and jurisdiction to impose fine upto ten times the amount of the proper registration fee involved, but instead of doing that the authority had taken a lenient and reasonable view and imposed fine only to the tune of four times of the amount of registration fee involved. Hence, the amount of fine imposed is neither arbitrary nor exorbitant.

5. Before considering the rival contentions, it is necessary to set out the relevant statutory provisions of the Registration Act, 1908. Section 3 empowers the State Government to appoint Inspector General of Registration for the territories subject to the State Government; proviso also empowers the State Government to direct that all or any of the powers and duties conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers and within such local limits, as the State Government appoints in this behalf. Sees. 5 and 6 provide for formation of districts and sub-districts and Registrars and Sub-Registrars of the districts and sub-districts.

"Section 5 - Districts and sub-districts :-

(1) For the purposes of this Act, the State Government shall form districts and sub-districts, and shall prescribe and may alter the limits of such districts and sub-district.

(2) The districts and sub-districts formed under this Section, together with the limits thereof, and every alteration of such limits, shall be notified in the official Gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned."

"Section 6 - Registrars and Sub-Registrars :- The State Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively."

Section 23 prescribes time-limit for presenting documents as under :-

"Section 23 - Subject to the provisions contained in Sees. 24, 25 and 26, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution."

Part VI of the Act contains the provisions for presenting documents for registration. Sections 32 to 35 of the Act insofar as are relevant for the purposes of this petition, provide as under :-

"Section 32 - Persons to present documents for registration :- Except in the cases mentioned in Sees. 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office -

(a) by some person executing or claiming under the same, or

(b) by the representative or assign of such person, or

(c) by the agent of such person, representative or assign, duly authorised by Power of Attorney executed and authenticated in manner hereinafter mentioned."

Section 33 of the Act reads as under :-

"Section 33 - Power of Attorney recognisable for purposes of Section 32 :-

(1) For the purposes of Section 32, the following Powers of Attorney shall alone be recognised, namely,

(a) if the principal at the time of executing the Power-of-Attorney resides in any part of India in which this Act is for the time-being in force, a Power-of-Attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;

(b) if the principal at the time aforesaid resides in any part of India in which this Act is not in force, a Power-of-Attorney executed before and authenticated by any Magistrate;

(c) if the principal at the time aforesaid does not reside in India, a Power of Attorney executed before and authenticated by a Notary Public, or ...

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the Power-of-Attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) ...

(4) Any Power of Attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf."

Section 34 - Enquiry before registration by Registering officer - (1) Subject to the provisions contained in this Part and in Sees. ..... no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under Sees. 23, 24, 25 and 26 :

Provided that, if owing to urgent necessity or unavoidable accident ail such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable u/s 25, the, document may be registered.

(2) .....

(3) .....

(4) .....

Section 35 provides that if all the persons executing the document appear personally before the registering officer and are personally known to him or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document or in case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, the registering officer shall register the document as directed in Sees. 58 to 61. For the purpose of arriving at such decision, the registering officer is also empowered to examine any one present in his office.

Section 58 provides for the particulars to be endorsed on documents admitted to registration. Format No. 1 contains the format of kabulatnama to be executed along with document. Section 70 of the Act provides powers of the Inspector

General to remit fees.

"Section 70 : Power of Inspector General to remit fines :- The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied u/s 25 or Section 34, and the amount of the proper registration fee."

6. A conspectus of the above statutory provisions of the Registration Act clearly reveals that the real purpose of registration procedure is to ensure that the document being presented for registration is executed by the person who represents himself or herself to be the executant or such a representation may be made by representative, assign or agent of the executant.

7. In the instant case, there is no dispute about the fact that petitioner No. 1-Ramaben P. Patel had herself appeared before the Sub-Registrar on 19-1-1998 and that petitioner No. 1 had also executed the kabulatnama u/s 58 of the Act. However, the document was still not registered only on the ground that the vendor and vendee appeared before the Sub-Registrar-(I) whose jurisdiction was different and the property fell within the jurisdiction of Sub-Registrar-(VII) for Rajpur-Hirpur area. It is also not in dispute that till 4-12-1997 all the documents were being presented for registration before Sub-Registrar-(I) at Gheekanta where the office of the Registrar of Documents, is situate and that it was only from 4-12-1997 that the Sub-Registrars were appointed territory-wise meaning thereby that the office of Sub-Registrars for each registration in Ahmedabad City was shifted to the individual sub-district that is how the office of Sub-Registrar-(VII) for Rajpur-Hirpur area was shifted from Gheekanta to Odhav. The change had come very recently, and therefore, the vendor and vendee were not aware of this change in the territorial distribution of work amongst the Sub-Registrars. The very fact that Sub-Registrar-(I), Gheekanta area himself accepted the document and the registration fees of Rs. 25,000/- on 19-1-1998 shows that the parties had acted bona fide in presenting the document for registration before Sub-Registrar-(I); secondly, the fact remains that vendor, petitioner No. 1, Ramaben P. Patel herself had very much admitted before the Sub-Registrar the execution of the Sale Deed dated 19-1-1998 and the Sub-Registrar-(I) had also made endorsement to that effect on the Sale Deed. It appears that it was subsequently after more than a month that the office of the Registrar realised that as per the territorial division the document was required to be presented for registration before Sub-Registrar-(VII), and therefore, a letter purporting to be dated 19-1-1998 was sent to petitioner No. 2 in the first week of March, 1998. By that time, vendor petitioner No. 1, Ramaben P. Patel had already left India for the United States, and therefore, her Attorney Manoj Jermanwala along with purchaser petitioner No. 2 approached Sub-Registrar-(VII) for presenting the documents on 6-3-1998.

It appears that Sub-Registrar-(VII) however did not accept the Power of Attorney dated 5-8-1996 (Annexure-F) presented by Manoj Jermanwala because the vendor herself had executed the document on 19-1-1998 and the Power of

Attorney dated 5-8-1996 was not executed by the vendor before the Sub-Registrar of Documents as required by Section 33 of the Act. Hence the vendor was required to execute another Power of Attorney. Accordingly, vendor Rainaben P. Patel executed another Power of Attorney in March, 1998. Having seen the original Power of Attorney (hereinafter referred to as ''second Power of Attorney'') it clearly transpires that the said Power of Attorney was printed on a computer printer and was expected to be signed on 24th day of March, 1998, and therefore, the date was accordingly printed. It is the submission of Mr. A. S. Vakil for the petitioners that vendor Ramaben Patel approached the Notary Public of New Jersey on the 23rd day of March, 1998 and that is why the Power of Attorney was executed by Ramaben Patel on 23-3-1998. That Power of Attorney was again required to be stamped in India before presentation before the Sub-Registrar, Documents, which process took some time in view of shifting of Stamp Office from Ahmedabad to Gandhinagar as already stated above and this assertion is not disputed on behalf of the respondents. Hence, the second Power of Attorney was presented by Manoj Jermanwala before Sub-Registrar-(VII) on 8-6-1998. The Sub-Registrar was required to accept the second Power of Attorney and in any case he has accepted the same by the impugned order dated 9-10-1998 by which the petitioners have been called upon to pay fine of Rs. 1,02,800/-.

8. The principal question which is required to be determined is whether there was any justification for the Registrar to impose fine of Rs. 1,02,800/- and consequently whether the Inspector General of Registration was justified in not remitting the said fine u/s 70 of the Act. If Mr. Vakil''s contention were to be accepted that the document was already presented for registration before Sub-Registrar-(I) on 19-1-1998 and that there was no delay whatsoever then obviously the impugned orders would fall to the ground. However, in view of the provisions of Section 5 of the Act requiring and empowering the State Government to form districts and sub-districts for accepting and admitting documents for registration under Sees. 5, 6, 7 of the Act, the documents were required to be presented for registration before Sub-Registrar-(VII) for the area for which he has power where the immovable property in question was situated. This Court, however, would not like to express any final opinion on this aspect as the petition deserves to be allowed on the alternative contention of Mr. Vakil for the petitioners that there was no justification for levying fine in the facts and circumstances of the case.

9. Mr. A. S. Vakil relied on a decision of the Apex Court in the case of Jugraj Singh and Another Vs. Jaswant Singh and Others, for contending that when the second Power of Attorney was presented in June, 1998, it related back to 6-3-1998 when the Power of Attorney had presented the document before Sub-Registrar-(VII). However, the facts of that case were different. The vendor in that case was in the U.S.A., at the time of execution and presentation of the Sale Deed. The first Power of Attorney was not duly, authenticated. Hence, the vendor subsequently executed second Power of Attorney which was found to be duly

authenticated and in which it was stated that first Power of Attorney being defective and the same was being ratified. Thus, the second Power of Attorney validated the transaction and registration even though both being earlier to the second Power of Attorney. It was, therefore, held that such ratification relates back to date of act done and agent is put in same position as if he had authority to do it at that date.

In the instant case, however the first Power of Attorney dated 5-8-1996 was held to be not valid because it was being used for the purpose of presenting document for registration, after the document having already been executed by the owner but the Power of Attorney was not executed before the Registrar/ Sub-Registrar of Document as required by Section 33 of the Act. Hence, when the second Power of Attorney dated 23-3-1998 neither referred to first Power of Attorney nor purported to ratify the act of Attorney in presenting the document for registration before Sub-Registrar-(VII) on 6-3-1998, this decision is no avail Eo the petitioners.

10. As already stated above, territorial distribution, under which the work relating to Rajpur-Hirpur was shifted from Gheekanta to Odhav, was done only about a month prior to the date of presentation of the document. The very fact that Sub-Registrar-(I) at Gheekanta accepted the registration fees on 19-1-1998 corroborates the petitioner''s case that the petitioners could not be blamed for presenting the document for registration at Gheekanta since they were not apprised of the change. Moreover, the explanation given by the vendor and the power of attorney for the delay in presentation of document indicates that there was sufficient cause for the delay in presenting the document. In this connection, the Court would like to refer to the following principles laid down by the Apex Court in the case of Hindustan Steel Ltd. Vs. State of Orissa, :

"Under the Act penalty may be imposed for failure to register as a dealer; Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penally does not arise merely upon proof of default in registering as a dealer. An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer.

Granting that they erred, no case for imposing penalty was made out."

11. A perusal of the aforesaid principles clearly shows that in the facts and circumstances of the present case, there was no justification for the Registrar to levy fine u/s 34 of the Act and more particularly when initial acceptance of the document for registration and acceptance of the registration fee was made by the Sub-Registrar-(I) himself on 19-1-1998 when the vendor (petitioner No. 1) herself was very much present in the office of the Sub-Registrar, had herself presented the Sale Deed in favour of petitioner No. 2 and had also filed a declaration to that effect in the form as prescribed u/s 58 of the Act. Even if the Registrar was of the view that the only discretion was regarding quantum of fine (no minimum fine not having been prescribed) the Registrar was not justified in levying such heavy fine of four times the amount of registration fee. In view of the principles laid down by the Apex Court, even where the statute prescribes a minimum fine, there will be no justification of levying fine if the breach is technical or venial breach of the provisions of the Act.

In the instant case, this principle is clearly applicable, and therefore, in the peculiar facts and circumstances of the case and more particularly since Sub-Registrar-(I) did accept the registration fee on 19-1-1998 but did not inform the parties till March 1998 about the requirement to present document before Sub-Registrar-(VII) at Odhav the Registrar of Document ought not to have imposed any fine and for the same reason the Inspector General of Registration failed to exercise the jurisdiction vested in him in not remitting the fine levied u/s 34 by the Sub-Registrar.

12. In view of the above discussion and in view of the fact that the petitioner had already paid registration fees of Rs. 25,000/- as far back as on 19-1-1998 (Annexure-D) and in view of the fact that by the impugned order dated 9-10-1998 (Annexure-C) the Registrar has already directed registration of the document and in view of the fact that this Court has found imposition of fine by the authorities absolutely arbitrary and unjustified, the petitioner is entitled to claim the reliefs prayed for.

13. Even while holding that the impugned orders at Annexures-A and C passed by the respective Registration Officers are required to be quashed and set aside, the question would be what relief should be granted to the petitioners. Ordinarily, this Court would have remanded the matter to the authorities to decide the matter afresh in light of the observations made in the judgment. Similarly, the Court would have directed the respondents to pay cost to the petitioners because the petitioners have been driven to this litigation on account of unreasonable and arbitrary stand adopted by the respondent-authorities. However, keeping both the above aspects in mind, the Court is of the view that the interests of justice would be served if on the one hand the respondents are not saddled with costs and on the other hand the petitioner is not exposed to the further risk of proceedings before the respondent-authorities by remanding the matter to the respondents to pass fresh orders in accordance with observations made in the

judgment that is to consider imposition of token penalty but looking to the irresponsive, insensitive conduct of the respondents in the past in respect of these petitioners in respect of the same transaction the petitioners may again be confronted with an order of penalty which will drive the petitioners to further litigations. Keeping these factors in mind, this Court while setting aside the orders at Annexures-A and C directs the authorities not to levy any penalty for late presentation of the Sale Deed in question before Sub-Registrar-(VII) because both the vendor as well as vendee had themselves personally presented the Sale Deed before the Sub-Registrar on 19-1-1998 and Sub-Registrar-(I) had accepted the registration fees of Rs. 25,000/- and that for a period of two months the petitioners were not informed that the document was not required to be presented to him, but was required to be presented before Sub-Rcgistrar-(VII). The Court, therefore, does not remand the matter to the authorities. The Court, therefore, does not award any costs in favour of the petitioner.

14. In the result, the impugned orders dated 9-10-1998 (Annexure-C) passed by the District Registrar and the order dated 6-2-1999 passed by the Chief Inspector, Registration (Annexure-A) are quashed and set aside and Sub-Registrar-(VII), respondent No. 3 is directed to register the Sale Deed dated 19-1-1998 executed by Ramaben Patel, petitioner No. 1 in favour of petitioner No. 2-Smt. Sandhyaben Shah within one month from the date of receipt of a certified copy of the judgment or writ of this Court whichever is earlier.

15. Rule is made absolute to the aforesaid extent with no order as to costs.

16. Since the main petition is disposed of Civil Application No. 12240 of 1999 does not survive and is accordingly disposed of.

17. Petition allowed.

