(2007) 02 GUJ CK 0041

In the Gujarat High Court

Case No : Special Civil Application No. 3219 of 2007

Ramanbhai Ramsinhbhai Parmar APPELLANT

Vs

Mamlatdar (Rural), Anand and Others RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 203, 39A
Gujarat Panchayats (Amendment) Act, 1993 — Section 267, 267(2), 267(4), 57

Citation : (2007) 2 GLR 1789

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Rajesh K. Shah, for the Appellant; Satyam Chhaya, A.G.P. for Respondent No. 1 and H.S. Munshaw, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—The petitioner has preferred the petition for challenging the Notice dated 8-2-2006 issued by the Mamlatdar for recovery of the amount of Rs. 3,40,870/- from the petitioner under the Bombay Land Revenue Code.

2. Heard Mr. Shah, learned Counsel for the petitioner, Mr. Chhaya, learned A.G.P. for the State authorities-respondents No. 1 to 4 and for respondent Nos. 5 and 6, though served, they have chosen not to appear. I have also heard Mr. Munshaw, learned Counsel for the newly added respondent No. 7, D.D.O., Anand. All learned Advocates are heard for final disposal.

3. It appears that since certain observations were made by this Court in its order dated 25-3-2005 in Spl.C.A. No. 10881 of 2004 with Civil Application No. 8256 of 2004 for vacating of the interim relief while examining the legality and validity of the order of removal u/s 57 of Gujarat Panchayats Act (hereinafter referred to as "the Act"), the District Development Officer communicated to the Mamlatdar to recover the amount of Rs. 3,40,870/- being loss caused to the Gram Panchayat and the Mamlatdar, in turn, issued notice for recovery of the amount as per the Bombay Land Revenue Code for recovery to the petitioner and under these

circumstances, the present petition. As per the petitioner, the petitioner also preferred appeal u/s 203 of the Bombay Land Revenue Code before the Dy. Collector, however, the appeal was not entertained, and therefore, the petitioner was constrained to approach before this Court.

4. This matter was heard on the earlier occasion after issuance of the notice and on 13-2-2007, this Court had passed the following order:

It has been stated on behalf of the Mamlatdar, Anand by the learned A.G.P. that the Taluka Development Officer vide communication dated 30-9-2005, intimated to the Mamlatdar that the proceedings be initiated u/s 267 of the Act and the Mamlatdar based on the said letter has issued notice to the petitioner for recovery of the amount.

Prima facie it appears that there is no adjudication either under 267 of the Act or u/s 39A of the Bombay Land Revenue Code before the competent authority under the Gujarat Panchayat Act or under the Bombay Land Revenue Code. In any case, such aspects will be further considered after District Development Officer, Anand is served with the notice, and therefore, the presence of the District Development Officer may be required.

At this stage, Mr. Shah prays for joining the District Development Officer as party respondent No. 7.

Permission granted. Notice to the newly added party returnable on 28th February, 2007. District Development Officer shall report to this Court as to whether any adjudication has taken place u/s 267 of the Act before any competent authority of the Panchayat for fastening of the financial responsibility. If yes, the details thereof on the next returnable date. D.S. permitted.

5. Thereafter, pursuant to the order passed by this Court, today Mr. Munshaw, learned Counsel for respondent No. 7 - D.D.O., in presence of the D.D.O., declared before the Court that no proceedings are undertaken by D.D.O. u/s 267 of the Act for fastening of the financial responsibility and he submitted that the power for such purpose of holding inquiry and of ascertaining the financial responsibility u/s 267 of the Act are with the Mamlatdar.

6. Mr. Chhaya, learned A.G.P., during the course of the hearing, also placed on record the notification of the Government dated 26-7-1994 in exercise of the powers under the Panchayat Act, whereby the power u/s 267(2) are delegated to the Mamlatdar in the case of village Panchayat. He further placed on record the communication dated 27-2-2007 from the Mamlatdar, Anand, informing that no procedure is undertaken for holding of the inquiry u/s 267 of the Act by the Mamlatdar.

7. Under the above circumstances, it appears that the matter is at the stage, where as per the D.D.O., there is financial loss caused by the petitioner in capacity as the Sarpanch of the Gram Panchayat and such financial loss was caused to the Gram Panchayat. Therefore, the D.D.O. informed to the Mamlatdar

for taking action u/s 267 of the Act. As per the scheme of 267 of the Act, even if the liability is to be fastened upon the members of the Gram Panchayat, the inquiry is required to be held u/s 267(2) of the Act by the concerned authority, and thereafter, the directions can be issued calling upon such person to pay the amount to the extent of the loss caused or the waste or misapplication. After such direction issued at the conclusion of the inquiry, the said amount can be recovered as arrears of the land revenue. Further, the aggrieved person has right of appeal before the District Court against such decision of the Mamlatdar for fastening of the financial responsibility and for recovery of the amount u/s 267(4) of the Act. Therefore, without there being any inquiry held for such purpose by the Mamlatdar, upon mere communication made by the D.D.O. to the Mamlatdar, recovery could not be affected as the arrears of the land revenue.

8. Mr. Chhaya, learned A.G.P., under the instructions of Mr. P. A. Khrishti, Dy. Mamlatdar, Anand (Rural), declared before the Court that in view of the communication received by Mamlatdar from D.D.O., the Mamlatdar will hold an inquiry u/s 267(2), and the Mamlatdar thereafter, take appropriate decision in accordance with law. Even otherwise also, as observed earlier, until the inquiry is held and the order is passed for fastening of the financial responsibility, the amount could not be recovered as the arrears of the land revenue. Further at the inquiry, which may be held by the Mamlatdar u/s 267(2) of the Act, the petitioner may raise all defence, as may be available in law and after considering the material available on record, the Mamlatdar will be required to take appropriate decision u/s 267 of the Act. At this stage, since the inquiry is yet to be held and the final order is yet to be passed u/s 267(2) of the Act, no further discussion may be required. However, in view of the aforesaid observations, the action of the Mamlatdar for recovering the amount as the arrears of the land revenue at this stage can be said as not warranted under the law and such a recovery can be affected only after the decision is taken u/s 267(2) of the Act and such decision is not stayed by any higher forum known to law.

9. In view of the above, I find that the following directions shall meet with the ends of justice:

(a) The Mamlatdar shall hold an inquiry u/s 267(2) of the Act after giving opportunity of hearing to the petitioner as well as to the other effected parties, and then, shall take final decision in accordance with law within some reasonable time, preferably within a period of six months from the date of receipt of the order of this Court.

(b) In the event the decision of the Mamlatdar is against the petitioner, the petitioner may have remedy as may be permissible in law.

(c) If the order u/s 267(2) of the Act of the Mamlatdar is not stayed by any higher forum known to law, the Mamlatdar thereafter may proceed for recovery of the amount of the arrears of the land revenue.

(d) In view of the aforesaid directions, the impugned notice issued by the

Mamlatdar under Bombay Land Revenue Code for recovery of the amount of Rs. 3,40,870/- would not survive and shall not be given effect.

10. The petition is disposed of in terms of the aforesaid directions. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs. Direct Service is permitted.

