

(2013) 06 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 996 of 1997

Rameshbhai Mathurbhai Patel and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 27-06-2013

Acts Referred:

Citation : (2013) 3 GLR 2276

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : Jitendra M. Patel for Petitioner Nos. 1, 2.2, 3 and 4, for the Appellant; Rindani, A.G.P. for Respondent Nos. 1 and 2, for the Respondent

Judgement

Ravi R. Tripathi, J.—Rameshbhai Mathurbhai Patel and others are before this Court being aggrieved by judgment and order dated 26-10-1990 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN. B.A. 345 of 1986; whereby, the learned Member of Gujarat Revenue Tribunal was pleased to dismiss the application on the point of limitation. The petitioner had filed a review application bearing No. TEN. C.A. No. 59 of 1990 which too came to be dismissed by order dated 4-12-1992 against which, the present petition is filed in the year 1997. The petitioner had approached the Gujarat Revenue Tribunal being aggrieved by an order passed by the Deputy Collector, Land Reforms (Appeals), Ahmedabad in Ceiling Appeal No. 10 of 1983 which was dismissed by the Deputy Collector by order dated 2-4-1983. The said appeal was filed against the order passed by Mamlatdar & A.L.T. (Ceiling) in Agriculture Land Ceiling Case Nos. 31/37 and 66 of 1980. The Mamlatdar & A.L.T. pleased to reject all contentions raised by the petitioners by judgment and order dated 18th October, 1982.

2. The facts of the case are that the present petitioner No. 1 who was minor at the relevant time through his mother Jiviben widow of Mayurbhai Ranchhodbhai was holding total 46 Acres and 14 Gunthas of land at Village, Timba and Village: Jetalpur but they had not filled in the Form No. 2 under the Agricultural Land

Ceiling Act, and therefore, they were directed by an order dated 18-7-1980 under Sec. 16(1) and under Sec. 10 to fill in the form on affidavit. As the petitioner had failed at the relevant time, the proceedings under Secs. 20 and 21 were initiated and it was in these proceedings, the Mamlatdar had an occasion to pass order dated 18th October, 1982. The facts as they stand and set out in the order of the Mamlatdar that the petitioner was holding various lands at Village: Jetalpur and at Village: Timba. The land at Village: Jetalpur, Taluka: Daskroi was 7 Acres, whereas, the land held at Village: Timba was 39 Acres and 20 Gunthas totalling to 46 Acres 20 Gunthas.

3. The land held by the petitioner were partly irrigated land and partly dry land. The land held at Village: Jetalpur, admeasuring 7 Acres was of irrigated one and out of the land admeasuring 39 Acres and 20 Gunthas at Village: Timba land admeasuring 28 Acres and 20 Gunthas was irrigated one. As per the provisions of the Gujarat Agricultural Land Ceiling Act 1960, ceiling areas are prescribed under Sec. 5 and while applying Sec. 5 of the said Act, Schedule I is required to be referred to. Scheduled I, provides for different classes of local areas and in those different classes of areas, different class of lands like: (i) Irrigated by source other than private source, (ii) Irrigated by private source, this type of land is called perennially irrigated land. Another class of land is seasonally irrigated land. Yet another class of land is superior dry crop land and last but not the least dry crop land. For every class of local area, different ceilings are provided by the said schedule. The same are provided in hectares as well as in acres. On the basis of this, table by making the equivalence between various types of lands, the calculation was made to ascertain the total land held by the petitioner. The land held by the petitioner is of two types; one, seasonally irrigated land and another, Dry crop. If a person is holding 1 Acre of land which is seasonally irrigated land, it will be considered to be 2 Acres of dry crop land. Such exercise is required to be undertaken because when a person holds different types of land to determine the entitlement of the person, all types of lands are required to be converted into one type and therefrom, permissible ceiling limit is to be deducted and remaining land is to be treated as excess land to deal with in accordance with law (Gujarat Land Ceiling Act).

4. In the present case, on calculation, Authorities found that petitioner was holding the total 82 Acres and 2 Gunthas of Dry crop land. Under the Ceiling law he is entitled to hold 36 Acres of land and thus 46 Acres and 2 Gunthas was declared to be excess land.

5. Initially, there was a confusion that though the petitioner was holding total land admeasuring 46 Acres and 20 Gunthas out of which 46 Acres and 2 Gunthas are declared to be excess land.

6. Learned A.G.P., Mr. Rindani, took all pains and obtained instructions from Mamlatdar and Deputy Mamlatdar in the matter, and thereafter, explained to the Court that what is declared excess is 46 Acres and 2 Gunthas (dry crop land) and accordingly, the petitioner was to surrender only part of the land and not the

total land as an excess land. Once, this confusion about declaration of 46 Acres and 2 Gunthas land as an excess land was cleared, the learned Advocate Mr. Patel proceeded with the matter on other points:

(i) Learned Advocate for the petitioner invited attention of the Court to the order passed by the Mamlatdar; wherein, a specific contention was raised that the land is treated to be irrigated land on the basis of the certificate issued by canal officer and at the relevant time, the mother of the petitioner had disputed the validity of that certificate. Not only that but at the relevant time, the Mamlatdar having found some substance in the said objection did write a letter to the Executive Engineer, District Panchayat, Irrigation Department on 28-5-1982. The said letter was replied by the Executive Engineer, Ahmedabad Panchayat, Irrigation Department by letter dated 21-9-1982, but then, it was felt that the clarification sought for is not required and the contents of the certificate are required to be accepted as it is.

(ii) Learned Advocate for the petitioner vehemently pressed this point into service and submitted that once the certificate issued by the canal officer declaring certain lands to be irrigated land is not legal and valid then the entire exercise of treating certain land of the petitioner to be excess land is vitiated and the same is required to be quashed and set aside by this Court. In support of the submission, learned Advocate for the petitioner relied upon a decision of this Court in the matter of Amratlal Bhikhabhai Patel Vs. State of Gujarat and Another, wherein this Court after careful consideration was pleased to hold that, "order declaring land to be excess of ceiling area prescribed for that area inquiry conducted for determining of the class of land for the purpose without giving any opportunity of hearing to petitioner. Held, certificate issued by competent officer under Sec. 2(6) determining class of land cannot be said to be legal and valid". It was further held that, "impugned order based on said inquiry cannot be sustained", and the Court was pleased to set aside the order.

(iii) Learned Advocate for the petitioner invited attention of the Court to Para 7 of the said judgment; wherein, the Court was pleased to refer to yet another decision of this Court. For ready perusal, Para 7 of the said judgment and order is reproduced as under:

7. I am fortified in ray view by the unreported ruling of this Court in Special Civil Application No. 3756 of 1983 and another allied matter decided on 24th September, 1985 (Per N.H. Bhatt, J.). The learned Single Judge, on examination of the scheme of Sec. 2(6) of the Act, has in a different context, come to the conclusion that the competent officer while conducting the inquiry for the purpose of issuing the necessary certificate under Sec. 2(6) of the Act is performing a quasi-judicial function and is a quasi-judicial authority. I am in respectful agreement with the view expressed by this Court in its aforesaid unreported ruling in Special Civil Application No. 3756 of 1983 and another allied matter decided on 24th September, 1985. Even otherwise, sitting as a Single Judge, I am bound by a ruling of this Court given by another Single Judge.

(iv) The learned Advocate for the petitioners submitted that in the present case, the contention was raised by the mother of the petitioners at the relevant time before the Mamlatdar that certificate issued by canal officer is not acceptable to them and that the land is wrongly classified as irrigated land by the canal officer. The learned Advocate for the petitioners submitted that Mamlatdar having found substance in that did write a letter to the Executive Engineer, but later on, dropped the point half way and accepted the certificate of canal officer and relying on that, held that, the lands set out in the certificate are irrigated lands and on the basis of that the excess land was determined.

(v) The learned Advocate for the petitioners also relied upon yet another decision of this Court in (Bharatsinh Khumansinh v. State of Gujarat) Special Civil Application No. 1112 of 1997 with Special Civil Application No. 1117 of 1997 (Coram: M.R. Shah, J.), dated 18-1-2013; wherein, the Court is pleased to consider the question in Paragraph No. 3.4, which reads as under:

3.4. It appears that thereafter, on remand the Mamlatdar and A.L.T. obtained fresh certificate from canal officer with respect to land bearing Block Nos. 4, 186, 173 and 141, however, did not obtained any fresh certificate with respect to Block No. 140, admeasuring 20 Acres and 9 Gunthas of land. That on considering the fresh Certificates of the Canal Officer with respect to the aforesaid four parcels of land, Mamlatdar and A.L.T. by order dated 25-5-1994 held that said Khumansinh is holding 64 Acres and 20 Gunthas of perennial irrigated land and held that said Khumansinh is entitled to only 1 Unit i.e. 36 Acres of land, and declared 28 Acres and 20 Gunthas of land as surplus land from the holding of said Khumansinh.

(vi) Learned Advocate also relied upon the following Paragraphs of the said judgment which reads as under:

3.9. It is further submitted by Mr. Patel, learned Advocate appearing on behalf of the petitioners that even otherwise, the order passed by the Mamlatdar and A.L.T. dated 25-5-1994 declaring 28 Acres and 20 Gunthas of land as surplus, is contrary to the directions issued by the Gujarat Revenue Tribunal in Revision Application No. 60 of 1987. It is submitted that the tribunal has materially erred in not appreciating fact that the Gujarat Revenue Tribunal vide passing judgment and order passed in Revision Application No. 60 of 1987, had remanded the matter to the Mamlatdar and A.L.T. only on the point of obtaining fresh certificate from the canal officer and after following the procedure as required. As held by the learned Single Judge in the case of Amratlal Bhikhabhai Patel Vs. State of Gujarat and Another, while considering the case afresh on remand, the Mamlatdar and A.L.T. obtained a fresh certificate from the canal officer with respect to four Survey Numbers being Survey Nos. 4, 186, 173 and 141, but did not obtain fresh certificate of the canal officer with respect to land bearing Block No. 140, admeasuring 20 Acres and 9 Gunthas.

3.10. It is submitted that as such even with respect to the parcels of land for

which fresh certificate of canal officer was obtained, the same was in breach of principles of natural justice, as no opportunity was given to the petitioners while holding inquiry by the canal officer and issuing certificate.

3.11. It is submitted that as held by the learned Single Judge in the case of Amratlal Bhikhabhai Patel (supra), opportunity of hearing will have to be given to the landlord while making inquiry as to the nature of the land. It is submitted that in the present case, no opportunity of hearing given to the petitioners while making inquiry as to the nature of the land, more particularly whether the land is perennial or seasonally irrigated land or dry land.

3.12. It is further submitted that even the officer who was examined was not the officer who issued Certificate and he had no personal knowledge. Therefore, relying upon the decision of this Court in the case of Amratlal Bhikhabhai Patel (supra), it is requested to allow both these Special Civil Applications and remand the matter to the Mamlatdar and A.L.T. to decide the case afresh, after obtaining fresh certificate from canal officer with respect to all parcels of land and after giving an opportunity of being heard to the petitioners with respect to nature of the land in question.

7. This Court is not deciding this issue at all. For the reason that this Court is of the opinion that the petitioner is not entitled to any relief under the discretionary jurisdiction of this Court more particularly, under Art. 226 of the Constitution of India. The petition can as well be said to be filed under Art. 226 as well as Art. 227 of the Constitution of India because the order passed by the Gujarat Revenue Tribunal is under challenge.

8. Learned Advocate for the petitioners submitted that the subsequent developments with regard to "taking over the possession and alienating that land to anybody else" should not weigh with the Court, if the Court on examination finds that the orders are vitiated on account of invalidity of the certificate issued by canal officer. In this regard, he submitted that all subsequent orders including that of grant of land to somebody are consequential of the order initially passed by the Mamlatdar declaring the land to be excess was based on the Certificate issued by canal officer which was confirmed by the Deputy Collector and revision against which is dismissed only on the ground of limitation. He emphatically submitted that, in fact, the contention of the petitioner is not decided on merits by Gujarat Revenue Tribunal as revision application is dismissed on limitation ground alone. The aforesaid submission of the learned Advocate cannot be accepted for the reason that this Court is of the opinion that the petitioner has not acted with due diligence and required promptness on his part and has acted in a manner which must go against the petitioners and he should remain without any effective relief at the hands of this Court.

9. The facts of the case are that after the Mamlatdar decided the matter by judgment and order dated 18th October, 1982, an appeal was filed before the Deputy Collector in the year 1983 which the Deputy Collector decided by

judgment and order dated 2-4-1983. This Court is of the opinion that if the Mamlatdar had not accepted the contention of the petitioner on the aspect of legality and validity of certificate issued by canal officer, the petitioner ought to have carried the matter to this Court at that stage because that was the point which was going to the root of the matter. Be that as it may. After the Deputy Collector decided the appeal by judgment and order dated 2-4-1983, revision was filed before Gujarat Revenue Tribunal only in the year 1986. The Gujarat Revenue Tribunal dismissed the revision application on the point of the limitation by judgment and order dated 26-10-1990 against which, the review application was preferred which came to be decided on 4-12-1992. It is thereafter, in the year 1997 (January, 1997), the petitioner approached this Court by way of present petition.

10. At this juncture, learned A.G.P., Mr. Rindani, invited the attention of the Court to the fact that the land in question i.e. the land declared excess was already taken possession on 28-11-1984 and not only that, that land is already granted to Harijan Samudaik Sahakari Kheti Mandali Ltd. The petitioner himself has produced 7/12 extracts of the land in question along with his petition showing this factual position.

11. The Court is required to consider whether in a matter like this, the Court will exercise its discretionary jurisdiction in favour of a person who is found to be "not vigilant" about his rights as is clear from the aforesaid dates.

12. At this juncture, learned Advocate for the petitioner emphatically submitted that the delay caused in approaching this Court after the revision application was dismissed by the Gujarat Revenue Tribunal in the year 1990 and review application in the year 1992, is sought to be explained in Paragraph No. 16 of the memo of the petition. Paragraph No. 16 is reproduced for ready perusal as under:

16. That the petitioners have not been intimated and/or communicated the order of the Tribunal Annex-D. That from the village people, the petitioners have come to know that there is a movement for taking the possession of the disputed lands and consequent thereupon the petitioners on inquiry from the Gujarat Revenue Tribunal came to know that their Review Application has been dismissed. The petitioners thus on personal inquiry on 7-1-1997 from the Tribunal came to know that the order passed is against them and on the same date the petitioners applied for the certified copy and which is received on 21-1-1992, and hence, this present petition is filed in time. That the petitioners much humbly state that the petitioners are illiterate agriculturist and village people and neither negligent nor careless nor there is any reason for the petitioners to be careless and negligent in filing of the present petition and delay if any is required to be condoned for the ends of justice. The petitioner submit in this context that the delay if is condoned the other side is not likely to suffer any loss and damage in view of the matter being decided on merits.

The averments made in Paragraph No. 16 are not found to be sufficient by this

Court to change its opinion about non-grant of relief to the petitioner, and therefore, this petition fails and the same is dismissed. Rule is discharged with no order as to cost.