

(2013) 06 GUJ CK 0016

In the Gujarat High Court

Case No : Special Civil Application No. 341 of 1999

Ratilal Maganlal Intwala Since Decd. Through Heirs and
Others

APPELLANT

Vs

Special Secretary (Appeal) and Others

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Citation : (2013) 3 GLR 2520

Hon'ble Judges : R.P. Dholaria, J

Bench : Single Bench

Advocate : Vimal A. Purohit, Mrugesh A. Barot for Petitioner Nos. 1.1 - 1.5, 2.1 and 2.3, for the Appellant; H.B. Punani, Assistant Public Prosecutor for Respondent Nos. 1 to 3, P.V. Hathi for Respondent Nos. 4 and 5 and Ms. Khyati P. Hathi for Respondent Nos. 4 and 6, for the Respondent

Final Decision : Allowed

Judgement

R.P. Dholaria, J.—By this petition under Arts. 226 and 227 of the Constitution, the petitioners challenge the order dated 14-12-1998 passed by respondent No. 1, Special Secretary, Revenue Department (Appeals), State of Gujarat as well as the order dated 4-9-1996 passed by the Collector, Surat in suo motu proceedings. Facts in brief may be noted at the outset. The petitioners as well as the respondent Nos. 4 and 5 are relatives as uncle and nephew; they are heirs of the common ancestor. The record of the case reveals that there was a family settlement amongst the parties to the proceedings regarding the H.U.F. property.

2. In pursuance of the aforesaid family settlement, more particularly in execution of Clause 4 at page No. 7 of the aforesaid family settlement, Entry No. 1279 in Village Form No. 6 was entered in the revenue record maintained by Talati of Village: Unn, Taluka: Choryasi, District: Surat. Thereafter, the Deputy Mamlatdar after verifying the deed of family settlement issued notice under Sec. 135(d) of the Bombay Land Revenue Code to all concerned and after recording the statements of all concerned certified the aforesaid Entry No. 1279 on 27-4-1989

and the same, was running in the revenue record, accordingly.

3. It further emerges from the record that on 26-6-1996, after a lapse of about seven years, the Collector, Surat under Rule 108(6) of the Gujarat Land Revenue Rules initiated proceedings of suo motu revision by serving a notice that the aforesaid entry is in breach of the provisions of Hindu Succession Act, 1956 and Secs. 2(6) and 63 of the Bombay Tenancy and Agricultural Lands Act and Rule 36(1)(f) of the Bombay Tenancy and Agricultural Lands Rules.

4. Upon the aforesaid notice, the Collector, Surat vide his order dated 4-9-1996 cancelled Entry No. 1279 dated 18-1-1989 holding that the aforesaid entry was entered in breach of the provisions of Secs. 2(6) and 63 of the Bombay Tenancy and Agricultural Lands Act read with Rule 36(1)(f) of the Bombay Tenancy and Agricultural Lands Rules as well as the Hindu Succession Act.

5. Being aggrieved by and dissatisfied with the aforesaid order, the present petitioner approached the Special Secretary, Revenue Department (Appeals), Gandhinagar by way of preferring revision under Rule 108(6)(a) of the Bombay Land Revenue Rules. The Special Secretary by his order dated 14-12-1998 dismissed the revision application and confirmed the order passed by the Collector.

6. Precisely, being aggrieved by the aforesaid order of the Special Secretary, Revenue Department, confirming the action of exercising the powers of suo motu revision by the Collector, Surat the present petitioners have approached this Court challenging both the orders by way of filing the present petition.

7. Heard Mr. Vimal Purohit, learned Advocate for the petitioners, Ms. H.B. Punani, learned A.G.P. for the respondent Nos. 1, 2 and 3 and Ms. Khyati Hathi, learned Advocate for the respondent Nos. 4 and 5.

8. Learned Advocate for the petitioners has contended that the exercise of suo motu powers of revision undertaken by the Collector after a long period of seven years is bad in law and without jurisdiction. He has contended that the Collector, Surat is not authorized to issue the notice to the parties to the proceedings for the alleged breach of the provisions of Hindu Succession Act as well as Bombay Tenancy and Agricultural Lands Act. He has contended that there are number of judgments rendered by this Court that while exercising suo motu revisional powers under Rule 108(6), the Collector has no power to delve into breach of provisions of other law, which the Collector is not empowered to look into.

9. Learned Advocate for the petitioners has further argued that as the Collector was not authorised to invoke and exercise suo motu revisional powers, the order passed by the Collector, is without jurisdiction and illegal and requires to be quashed and set aside. In support of his contentions, learned Advocate for the petitioners has relied upon the following decisions:

(1) Shambhuram Videshram Morya Vs. State of Gujarat and Others wherein the Division Bench of this Court has observed in Paragraph No. 12 as under:

12. For the first time, in the case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, the Supreme Court held that powers under Sec. 211 of the Bombay Land Revenue Code (for short, "the Code") have to be exercised within reasonable time and what would be a reasonable time would depend upon the facts of each case and the nature of the impugned order. The Supreme Court in the case of *Raghav Natha (supra)* was constrained with the exercise of revisional powers under Sec. 211 of the Code. Section 211 of the Code prescribes no period of limitation for exercise of powers thereunder. The concept of reasonable time qua Sec. 211 of the Code has been applied to the powers exercised by the authorities, inter alia, under Sec. 84C of the Tenancy Act in several rulings of the Apex Court as well as this High Court in various matters.

(2) In the case of *Rameshbhai Ambalal Shah Vs. State of Gujarat and Another*, a Division Bench of this Court, considering various judgments on this point, held that-

17. It is clear from the various judgments of the Hon'ble Supreme Court that where a statute provides any suo motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is "reasonable time" has to be determined on the facts of each case. While exercising such power, several factors need to be kept in mind such as effect on rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as Land Ceiling Act) etc. Even the two judgments of the Supreme Court which have been relied upon by the learned Counsel for the appellants explain the same principles of law that a reasonable period would be taken upon the factual circumstances of the concerned case. There cannot be any empirical formula to determine the question. The Court/authority considered the question whether the period is reasonable or not as to take into account surrounding circumstances and the relevant factors to decide that question. In the present case, we find that the original owner i.e. the appellants very consciously entered into a transaction way back in the year 1970 and sold land to respondent No. 1. It is not their case that at the relevant point of time they were misled by respondent No. 1 herein in any manner or that any fraud was played upon them by respondent No. 1 in entering into the transaction and on their own free will and volition they executed the sale deed in favour of the respondent No. 1 and accepted the sale consideration. No steps were taken by them for a period of almost 15 years and it is only when the Mamlatdar and A.L.T., Gandhinagar thought fit to take transaction in suo motu review that all of a sudden a thought came in the mind of the appellants to say that the transaction was illegal or invalid and now the land should be restored to them as it is.

(3) In the case of *Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State*, this Court while considering the inordinate delay in initiating suo motu revision observed

that-

11. In the present case the petitioner-Society purchased the land in a public auction held at the instance of Special Recovery Officer, Surat on 25-5-1971. 77 members of the petitioner-Society contributed towards the cost of the land and paid an amount of Rs. 2,45,000/-. An entry was accordingly made in the revenue record and later on certified by the competent authority. Exemption was granted by the competent authority under Sec. 21 of the Gujarat Urban Land Ceiling and Regulation Act and the petitioner-Society got the construction plans approved by Surat Municipal Corporation which is the local authority and appropriate authority under the provisions of the Gujarat Town Planning and Urban Development Act, 1976. The petitioner-Society constructed about 60 tenements which are now occupied by its members. It was, therefore, too late in the day for the Revenue Authorities to cancel the entry made in favour of the petitioner so as to create a cloud on the Society's title. Thus, the impugned orders passed by the Collector and the Additional Chief Secretary, Revenue Department are bad having been passed after unreasonable delay.

10. As against the aforesaid arguments, learned A.G.P. appearing for the respondent Nos. 1, 2 and 3 has argued that the Collector initiated the proceedings well within the time, this Court should not interfere while invoking the provisions under Arts. 226 and 227 of the Constitution of India and the petition deserves to be dismissed.

11. Learned Advocate for the respondent Nos. 4 and 5 has stated that the affidavit-in-reply filed on behalf of the respondent Nos. 4 and 5 may be considered as her submissions.

12. As can be seen from the above decisions relied upon by the Counsel for the parties, this Court has, time and again, considered the initiation and exercise of the revisional powers by the Collector in the nature of suo motu revision under the provisions of the Bombay Land Revenue Code and/or Bombay Land Revenue Rules. Over and above the aforesaid decisions, there are several judgments wherein this Court as well as Hon'ble Apex Court have laid down the ratio that suo motu revisional power should be exercised within a reasonable period and may be decided considering the facts and circumstances of the case. Such exercise of powers under the provisions of the Bombay Land Revenue Code and/or Bombay Land Revenue Rules, by no stretch of imagination can be extended upto seven years in view of the principles laid down in the aforesaid decisions. There can be no dispute that the Collector can initiate the proceedings within a reasonable time, but in the present case, the Collector has initiated the proceedings after passage of seven years, which cannot be said to be within a reasonable period, considering the facts and circumstances emerging from the record.

13. Learned Advocate for the petitioners has further argued that in R.T.S. proceedings, the Collector was not authorized to issue the notice calling upon the

petitioners for alleged breach of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 and Hindu Succession Act. On this point, learned Advocate for the petitioners has drawn the attention of this Court to the provisions of Secs. 2(2), 2(6), 63, 84C of the Bombay Tenancy and Agricultural Lands Act and Rule 36(i)(f) of the Bombay Tenancy and Agricultural Lands Rules which read as under:

2(2) "agriculturist" means a person who cultivates land personally;

xxx xxx xxx

2(6) "to cultivate personally" means to cultivate land on one's own account-

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or

(iii) under the personal supervision of oneself any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share,

being land, the entire area of which :-

(a) is situate within the limits of a single village, or

(b) is so situated that no piece of land is separated from another by a distance of more than five miles, or

(c) forms one compact block;

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63. Transfers to non-agriculturists barred:- (1) Save as provided in this Act,-

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenues or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, or

(c) no agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein--

Shall be valid in favour of a person who is not an agriculturist (or who being an agriculturist cultivates personally land not less than the ceiling area whether as an owner or tenant or partly as owner and partly as tenant or who is not an agricultural labourer):

Provided that the Collector or an officer authorised by the (State) Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage (or for such agreement), on such conditions as may be prescribed:

(Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousand rupees.)

(2) Nothing in this Section shall be deemed to (prohibit the sale, gift, exchange or lease, or the agreement for the sale, gift, exchange or lease, of) a dwelling house or the site thereof for any land appurtenant to it in favour of an agricultural labourer or an artisan (or a person carrying on any allied pursuit).

(3) Nothing in this Section shall apply or be deemed to have applied to a mortgage of any land or interest therein effected in favour of a cooperative society as security for the loan advanced by such society (or any transfer declared to be a mortgage by a Court under Sec. 24 of the Bombay Agricultural Debtors' Relief Act, 1947)

(4) Nothing in Sec. 63A shall apply to any sale made under sub-sec. (1).

xxx xxx xxx

84C. Disposal of land, transfer or acquisition of which is invalid:- Where in respect of the transfer or acquisition of any land made on or after the commencement of the amending Act, 1955, the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in Sec. 84B and decide whether the transfer or acquisition is or is not invalid.

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36. Conditions on which permission for sale etc. of land under Sec. 63 may be granted:- (1) The Collector or officer authorised under the proviso to sub-sec. (1) of Sec. 63 shall not grant permission for sale, gift, exchange, lease or mortgage of any land in favour of a person who is not either an agriculturist or an agricultural labourer or who, being an agriculturist, cultivates personally land not less than the ceiling area whether as owner or tenant or partly as owner and partly as tenant unless any of the following conditions are satisfied:-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(f) the land is required for cultivating personally by a person, who, not being an agriculturist, intends to take to the profession of agriculture and to whom the Collector after having regard to the order of priority mentioned in clause (c) of sub-sec. (2) of Sec. 32P, has given a certificate that such person intends to take to the profession of agriculture and is capable of cultivating land personally; or

14. From the above provisions, it can be seen that. If any question arises as to whether a person is an agriculturist or not, such a question can only be determined under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. The aforesaid Act is self-sufficient in nature which provides the definition of the authority, determination of status and machinery for remedies thereof.

15. Indisputably, in the present case, the Collector raised two questions with regard to Entry No. 1279. The first question as to whether the petitioners are agriculturists or not and the second question is with regard to the petitioners acquiring right of inheritance under the provisions of Hindu Succession Act, 1956? Examining the first question, in view of the provisions contained in the Bombay Tenancy and Agricultural Lands Act, 1948; only the Mamlatdar is empowered to determine the status of a person as to whether he is an agriculturist or not. That question cannot be decided by revenue authorities in R.T.S. proceedings. Even otherwise, revenue laws do not authorise him to do so in absence of any such provision. Although, the Collector is head of the Revenue District, this position does not authorise him to usurp the power of Mamlatdar and decide the said issue. Now, coming to the second question as to whether the petitioners are having right of inheritance in the agricultural land or not, that question also the Collector is not empowered to decide. As and when there is a dispute regarding the right of inheritance that can only be decided by the competent Civil Court.

16. In view of the aforesaid discussion, this Court is of the view that the exercise of powers of suo motu revision by the Collector under Rule 108(6) of the Bombay Land Revenue Rules is without jurisdiction and barred by period of limitation.

17. According to settled principles of law, a writ Court would be justified in correcting an error of law apparent on the face of the record. As revealed from the material on record, the revenue authorities have acted without jurisdiction. That would certainly constitute an error of law apparent on the face of record. Under the circumstances, interference of this Court therewith would be clearly justified. For the reasons recorded above, the petition is allowed. The order passed by the Special Secretary, Revenue Department (Appeals) dated 14-12-1998 in SRD/HKP/ST/8/97 as well as the order passed by the Collector, Surat in suo motu revision No. RTS/Revision/479/Choryasi dated 4-9-1996 are quashed and set aside. Rule is made absolute. No order as to costs.

Direct service is permitted.