
(2010) 10 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 14890 of 2004

Savji Malde Gorad

APPELLANT

Vs

Deputy Collector and Others

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 10 GUJ CK 0021

Hon'ble Judges : H.B. Antani, J

Bench : Single Bench

Advocate : Mehul S. Shah and Suresh M. Shah, for the Appellant; L.R. Pujari, Asstt. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

H.B. Antani, J.—The Petitioner, by filing the petition under Articles 226 and 227 of the Constitution of India, has challenged the order of respondent No. 2 confirmed in Appeal by respondent No. 3 whereby the order passed by respondent No. 1 came to be taken in review as without any basis or reason and the suo motu change in tenure of survey number 60 from old tenure to new tenure in spite of the fact that it is an old tenure land.

2. Learned Advocate for the Petitioner submitted that the ancestors of the Petitioner were granted land of survey number 60 of village Joshipura, adjoining to Junagadh district on 22.5.1927 by the then Native State Ruler of Junagadh and Lekh No. 89 of survey number 1982 was issued as occupant thereof and the Petitioner has ultimately inherited the same and he is in occupation and possession of the land. On 31.5.1978, the Circle Inspector recorded after the measurement of survey No. 60 in the Form No. 8-A as old tenure land in the name of the ancestors of the Petitioner stating therein as Sarkari Khalsa in possession of the occupant shortly recorded as Sa. Kha. K as understood and followed in the order of respondent No. 1 on 29.7.1999. This land, for the first time, was shown in the name of ancestors of the Petitioner in 1953 and

thereafter, the same is also shown in Form 7/12 of the village form in the name of ancestors of the Petitioner without stating old or new tenure till 1979-80 without any basis or material at all. On 22.4.1999, the Petitioner came to know about the mistake of showing this land in revenue records as new tenure land and thereafter he preferred application to respondent No. 1 to correct it. On 25.6.1999 respondent No. 1 called for report of the Mamlatdar and after enquiry passed the order to correct the revenue record and corrected the mistake by recording old tenure in place of new tenure land in the revenue record for the land of survey No. 60. In December, 1999, respondent No. 2 took the matter in suo motu revision and granted it without any valid reason or basis and reviewed the order passed by respondent No. 1 on 29.7.1997. On 30.9.2004 respondent No. 3 rejected the revision application preferred by the Petitioner. Being aggrieved by the order passed by respondent No. 2, the Petitioner has filed the present petition challenging the orders Annexure "B" and "C" as ex-facie illegal and deserve to be quashed and set aside as the land which was granted by the Native State Ruler in 1927 to the ancestors of the Petitioner was not new tenure land. It is submitted that respondents No. 2 and 3 have acted illegally and contrary to the Lekh as long back as in 1927 which was issued when there was never a grant of land as new tenure land and the system started only in the year 1991. The order at Annexure "A" which was passed by the authority cannot be reversed because the respondent No. 1 had passed the order by placing reliance of the revenue records and the previous notings and the basic Lekh of 1927 and subsequent Khata No. 24, and therefore, the impugned orders at Annexures "B" and "C" have been passed without appreciating all the facts right from the date of issuance of the Lekh in 1927 by the Native State Ruler and the Khata No. 24 and as such both the orders are required to be quashed and set aside.

3. Learned Advocate for the Petitioner has placed reliance on the Lekh which was given by the District Registrar's office, Junagadh as well as the Form No. 7/12 issued by the District Collector's office, Junagadh. In support of the above mentioned contention, the learned Advocate submitted that considering the reasons assigned by the Deputy Collector vide order dated 29.7.1999, the reasons given therein require to be upheld and the orders passed vide Annexures "B" and "C" deserve to be quashed and set aside.

4. Learned APP Mr. L.R. Pujari placing reliance on the order passed vide Annexure "B" and "C", submitted that the authorities have not committed any error in reversing the order passed by the Deputy Collector, Junagadh dated 29.7.1999. The orders at Annexure "B" and "C" have been passed after taking into consideration the entire material which was placed on the record of the case as well as the revenue record which was also placed for perusal of the concerned authority and, therefore, no interference is called for in the writ petition filed by the Petitioner. Learned APP has also placed reliance on the detailed affidavit-in-reply filed on behalf of the State by the Mamlatdar, Junagadh and submitted that in view of the exhaustive reply filed by the State and the averments made therein, the petition deserves to be dismissed.

5. I have heard Mr. S.M. Shah, learned Advocate for the Petitioner and Mr. L.R. Pujari, learned APP for the State at length and in great detail. I have considered the reasons assigned by the Deputy Collector vide order dated 29.7.1999 by which the Deputy Collector has held that on perusal of the Lekh which was produced on behalf of the Petitioner, the land of survey No. 60 ad measuring 2 acres and 60 gunthas was given to the ancestors of the Petitioner on permanent basis. On perusal of the revenue record, more particularly Form No. 7/12, nowhere it is mentioned that it was new tenure land. However, since 1981 to 1989-90, it has been mentioned as new tenure land in Form 7/12. How the entry has been made in Form 7/12 has not been mentioned, and the word used as new tenure land is used by mistake and even the Mamlatdar, Junagadh on an enquiry report, has submitted that by mistake the land of survey No. 60 ad measuring 2 acres and 60 gunthas has been shown as new tenure land and it requires to be corrected. In view of the enquiry report submitted by the Mamlatdar, the same was corrected and, therefore, the Deputy Collector held that the new tenure land which has been mentioned in Form 7/12 with regard to survey No. 60 ad measuring 2 acres and 60 gunthas is required to be deleted and it should be considered as old tenure land. The aforesaid order was taken in suo motu revision by the Collector and he set aside the order passed by the Deputy Collector on which the revision application was preferred by the Petitioner before the Secretary, Revenue Department at Ahmedabad who confirmed the order passed by the Collector. However, on perusal of the detailed reasonings given in the order passed by the Dy. Collector, Junagadh vide order dated 29.7.1999 as well as the Lekh which is produced by the learned Advocate for my perusal as well as the extract of Form 7/12, it becomes clear that the land was old tenure land bearing survey No. 60 ad measuring 2 acres and 60 gunthas situated in Joshipura village, adjoining to Junagadh which was given to the ancestors of the Petitioner way back on 22.5.1927 and, therefore, on perusal of the documentary evidence as well as the reasonings given by the Deputy Collector on the basis of enquiry report submitted by the Mamlatdar, the land in question is rightly considered as old tenure land.

6. The State has filed affidavit-in-reply and the same is filed by the Mamlatdar who had given the opinion to consider the land as old tenure land and not new tenure land and on the basis of the enquiry and the report submitted by the Mamlatdar, Deputy Collector had ordered necessary correction in the revenue record. It is surprising that the same Mamlatdar who has given the opinion to consider the land of the Petitioner as old tenure land, has filed affidavit-in-reply opposing the petition stating therein that it is new tenure land and it is required to be treated as new tenure land. Be that as it may, considering the Lekh as well as the form 7/12 and the reasons assigned by the Deputy Collector vide order dated 29.7.1999 vide Annexure "A", I am of the view that the order passed by the Collector, Junagadh vide Annexure "B" and the order at Annexure "C" passed by the revisional authority confirming the order passed by the Collector deserve to be quashed and set aside.

7. For the foregoing reasons, this petition is allowed. The impugned orders issued by the Collector, Junagadh at Annexure "B" and "C" are hereby quashed and set aside and the order passed by the Deputy Collector at Annexure "A" is restored. Rule is made absolute accordingly. No order as to costs.