

(1985) 07 GUJ CK 0013
In the Gujarat High Court

Sayed Yasin Sayed Mohmad	Vs	APPELLANT
Bai Chani and Others		RESPONDENT

Date of Decision : 10-07-1985

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43C, 88(1)(b), 88(1)(b)
Gujarat Devasthan Inams Abolition Act, 1969 — Section 31, 31

Citation : (1986) 1 GLR 117

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—The following substantial questions of law have been formulated by me court at the time of admission of this Second Appeal:

1. Whether in the facts and circumstances of the case, the lower appellate court has committed a substantial error of law in treating the decision of the Tenancy authority that the respondent-detendant had become the deemed purchaser of the land though admittedly the provisions of the Tenancy Act were not applicable to the lands in question since they are within the limits of Surat Municipal Corporation?

2. Whether in the facts and circumstances of the case, the lower appellate court committed substantial error of law in holding that the relevant provisions of the Tenancy Act, inter alia that contained in Section 32G apply to the lands in question by virtue of Section 31 of the Gujarat Devasthan Inam Abolition Act, 1969?

3. Whether in the facts and circumstances of the case, the lower appellate court, therefore, consequently committed substantial error of law in holding; that the appellants-plaintiffs have no right to file the suit?

2. This Second Appeal arises out of a suit filed by the present appellant on the ground, that he is a beneficiary under the religious public trust owning the suit land bearing Section No. 494 situated in Katargam Taluka Chorasi Dist. Surat and

the suit land is a graveyard and the defendants have no right to destroy the said graveyard. Respondents Nos. 1 to 4 are the trustees of the public trust and Respondent No. 5 is the tenant and deemed purchaser of the suit land. The lower appellate court has held that Respondent No. 5 was a tenant of the suit land and on the abolition of the Devasthan Inams he became the deemed purchaser and he had also paid the purchase price fixed u/s 32G of the Tenancy Act. The trustees had carried the matter in appeal under the Tenancy Act and had failed and thus the right, title and interest of the trust in the suit land had become extinguished and, therefore, the plaintiff who claimed to be a beneficiary under the trust, had no right to maintain the suit. The lower appellate court had also held that the suit land was not used for Sandal Uras; that is a clear finding of fact and no question has been raised on this count.

3. The first question of law raised is based on Section 43C of the Bombay Tenancy and Agricultural Lands Act, which provides that nothing in Sections 32 to 33R (both inclusive) and 43 shall apply to lands in the areas which on the date of the coming into force of the Amending Act, 1955, are within the limits of a municipal corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949. On the basis of this provision the learned Counsel for the appellant has submitted that since Katargam is within the limits of the Municipal Corporation of Surat, the provisions of Sections 32 to 32R are, not applicable and, therefore, the decisions and orders of the tenancy authorities are illegal and without jurisdiction. This argument suffers from several fundamental fallacies and is without any factual basis. Even though these questions are being, raised for the first time in Second Appeal, no attempt has been made to provide factual data and the relevant dates. The learned Counsel for the appellant has submitted that Surat Municipal Corporation had come into existence sometime in 1968. Assuming that this is so, on 1-8-1956 Surat Municipal area was not included within any municipal corporation. It is also not shown that on 1-8-1956 Katargam was within the municipal limits of Surat. In fact, it was admitted that prior to inclusion of Katargam in the municipal corporation, it was a gram panchayat. On 1-8-1956 Surat was a municipal borough and Clause (c) of Section 43C also included a municipal borough; but that Clause has been deleted by Gujarat Act No. 16 of 1960. Therefore from that time onwards Section 43C was not applicable to Surat municipal area and, therefore, the provisions of Section 32 to 32R were applicable. This is on assumption that Katargam was included in the municipal area; but there is nothing to show that Katargam was included within the municipal borough of Surat. Since it is not shown that on 1-8-1956 the area of Katargam was within the limits of Surat Municipal Borough or Surat Municipal Corporation there is no scope for any argument whatsoever that proceedings under the Tenancy Act were without jurisdiction.

4. The second question is based on the provisions of Section 88B of the Tenancy Act, which provides that certain provisions of the Tenancy Act shall not apply to lands which are properties of a trust for an educational purpose, a hospital, Panjarapole or Gaushala or "an institution for public religious worship". These

exemptions in favour of institution for public religious worship were deleted by Gujarat Act No. 16 of 1969. It is only because of abolition of Devasthan Inams as well as of the exemptions in favour of institution of public religious worship that the tenant in the present case became entitled to benefit under Tenancy Act and the provisions of Tenancy Act had become applicable and only thereafter the proceedings u/s 32G were held for fixing the purchase price. Therefore this argument is also without any basis.

5. It was lastly contended that under the provisions of Section 88(l)(b) the provisions of Sections 1 to 87 of the Tenancy Act are not applicable to the area of Surat Municipal Borough because that area was notified u/s 88(l)(b) by the State Government as being reserved for non-agricultural or industrial development by a notification dt. 1-8-1956. On 1-8-1956 Katargam was not in the municipal area of Surat Municipal Borough. The argument is that as and when the municipal limits of Surat Municipal Borough are extended this exemption automatically gets extended. This argument also cannot be upheld; more particularly in view of proviso to Section 88(1)(b) which expressly negatives such an argument and provides that if after a notification in respect of any area the limits of the area so notified are enlarged on account of addition of any other area thereto, then merely by reason of such addition, the reservation as made by the notification shall not apply and shall be deemed never to have applied to the area so added. In view of this proviso, no further discussion is necessary.

In the result all the contentions raised by the appellant fail and the Second Appeal is dismissed with costs.