
(2001) 01 GUJ CK 0024
In the Gujarat High Court

Shamalsha Girdhari Co.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 09-01-2001

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1947 — Section 5(a)(iii)

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(2), 2(6), 3(6), 34(2) (a), 63

Constitution of India, 1950 — Article 14, 19, 226, 227, 31B

Citation : (2002) 22 GLH 77 : (2001) 4 GLR 3180

Hon'ble Judges : D.M. Dharmadhikari, C.J.; P.B. Majmudar, J

Bench : Division Bench

Judgement

P.B. Majmudar, J.—The petitioner, by filing this petition under Articles 226/ 227 of the Constitution of India, has challenged the order passed by the Gujarat Revenue Tribunal in Revision Application No. TEN. B.A. 236 of 1981 by which the G.R.T. has confirmed the orders of the Deputy Collector as well as the Mamlatdar.

2. It is the case of the petitioner that he is holding certain agricultural land in the State of Karnataka and he has purchased certain agricultural land in the State of Gujarat and sale deed was executed in his favour. At the time of purchase, relevant entry to that effect was posted in the revenue record. The authorities found that the transaction in question is contrary to the provisions of Section 63 of the Bombay Tenancy & Agricultural Lands Act, 1948 ("the Act" for short), and therefore, proceedings u/s 84-C were initiated by the Mamlatdar, Valsad. The aforesaid proceedings were numbered as Tenancy case 94-C/4704/78. After hearing the concerned parties, the Mamlatdar and A.L.T., Valsad vide order dated 20-1-1979 came to the conclusion that the purchaser, i.e., the petitioner was holding certain agricultural land in Karnataka, but he has no agricultural land in Gujarat, and therefore, he cannot purchase any agricultural land in the State of Gujarat. In that view of the matter, it was found that the transaction was contrary to the provisions of the Tenancy Act and accordingly, order was passed.

3. The aforesaid order was carried in appeal by the petitioner before the Deputy Collector, Valsad. The said appeal was registered as Tenancy Appeal No. 92 of 1980. The Deputy Collector confirmed the order of the Mamlatdar and dismissed the appeal.

4. In the revision application filed by the petitioner, the G.R.T., also confirmed the aforesaid orders of the Deputy Collector and the Mamlatdar, and ultimately, the revision application was dismissed on the ground that the petitioner could not have purchased any agricultural land in Gujarat as he was not having any agricultural land in Gujarat. The petitioner has challenged the aforesaid order before this Court by way of filing the present petition.

5. The petitioner has also challenged vires of Section 63 of the Act on the ground that the aforesaid provisions of Section 63 are ultra vires the provisions of Articles 14 and 19 of the Constitution of India.

6. Since vires of the provisions of the Act are under challenge, the matter was placed before the Division Bench.

7. At the time of admission of the petition, this Court has specifically observed that challenge to Section 63 does not survive in view of Article 31B of the Constitution.

8. Mr. Mehta for the petitioner has also fairly submitted that he is not challenging vires of the aforesaid provisions, and therefore, the only ground which now requires to be considered is whether the authorities below have committed any error of law or of jurisdiction in passing the impugned orders.

9. Mr. Mehta for the petitioner argued that in view of definition u/s 2(6) of the Act regarding personal cultivation, it can be said that the petitioners even if he carries on agricultural operations with the help of his own labour or by the labour of any members of his family, can still be covered under the definition "to cultivate personally". He relied upon the definition of "to cultivate personally" occurring in Section 2(6) of the Act. The definition of "to cultivate personally" u/s 2(6) of the Act is as under:

2. (6) "to cultivate personally" means to cultivate 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 or 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 the land, the entire area of which-

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

(b) is so situate that no piece of land is separated from another by a distance of

more than five miles; or

(c) forms one compact block.

Mr. Mehta submitted that subsequently, there was amendment in 1985 by which distance part which was originally there is taken away. Therefore, according to him, now it is open for him to purchase the land irrespective of any distance as was there originally in the provisions of law.

10. Mr. Mehta has also relied upon the judgment of the Bombay High Court in the case of Abdul Karim Pirsahab Sheikh Vs. Laxman Bapu Bhosale and Others, . In the said judgment, it has been observed by the High Court that the fact that intending purchaser is an agriculturist within the State of Karnataka is sufficient for the purpose of recording a finding that he is an agriculturist. He need not be an agriculturist in the State of Maharashtra. According to Mr. Mehta, it is not in dispute that he is having agricultural land in Karnataka, and therefore, he is an "agriculturist" within the meaning of the Act. According to him, it is not necessary that he must be having agricultural land in Gujarat. At this stage, a reference is required to be made to the decision of this Court in the case of Devji Meghji Gangar v. Lalmiya Mossamiya 1977 GLR 515. While interpreting provisions of Section 3(6) of the Act, this Court has observed as under:

3. The Preamble of the Act in terms recites that it is an Act to amend the law relating to tenancy of the agricultural land and to make certain other provisions in regard to these lands. The preamble recites as under:

Whereas it is necessary to amend the law which governs the relations of landlords and tenants of agricultural lands:

And whereas on account of the neglect of a holder or dispute between a landholder and his tenants, the cultivation of his estate has seriously suffered, or for the purpose of improving the economic and social conditions of peasants or ensuring the full and efficient use of land for agricultural, it is expedient to assume management of estates held by land-holders and to regulate and impose restrictions on the transfer of agricultural lands, dwelling houses, sites and lands appurtenant thereto belonging to or occupied by agriculturists, agricultural labourers and artisans in the province of Bombay and to make provisions for certain other purposes hereinafter appearing; it is hereby enacted as follows.

Therefore, the Preamble itself makes it clear that the whole object was to impose restrictions on the transfer of agricultural land, dwelling houses and sites and lands appurtenant thereto, belonging or occupied by agriculturists, agricultural labourers, artisans in the province of Bombay, and to make provisions for certain other purposes, because the State Legislature which was legally competent to enact this legislation in the matter of such agricultural land within the State wanted to place these restrictions to help; these unprotected agriculturists, agricultural labourers and artisans who were personally cultivating land in this State of Bombay. It is settled legal principle of construction that ordinarily

extraterritorial operation would not be intended by the legislature and the legislature which is conversant with the needs of the subjects of the State would be making legislation for their benefit only. Even though language of the Statute as such may be silent, in such case preamble would always be the key which would unravel the meaning behind the Statute. The legislature has enacted the definition of agriculturist in Section 2(2) as meaning any person who cultivates land personally. This concept of personal cultivation is also defined in Section 2(6) as 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 or 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 situate that no piece of land is separated from another by a distance of more than five miles, or
 - (c) forms one compact block.

Therefore, the concept of agriculturist is not a simple concept of a cultivator of land wherever situate, but it is implicit that the land must be within the State of Bombay. The second ingredient is also expressly specified that he must be personally cultivating such land. Personal cultivation concept is defined in Section 2(6) as the cultivation on one's own account, by one's own labourer, by labour of member of one's family or under personal supervision of oneself or any member or one's family by hired labour or by servants on wages payable in cash or kind, but not on crop share. Therefore, a further limitation is obviously introduced to narrow down this concept of personal cultivation by taking within its ambit only such land, the entire area of which:

- (a) is situate within the limits of a single village, or
- (b) is so situate that no piece of land is separated from another by a distance of more than five miles, or
- (c) forms one compact block.

Therefore, the personal cultivation as envisaged in this narrow concept is actual personal cultivation not of lands howsoever separated, but lands which are situate within the limits of one single village or which are so situate that no piece of land is separated from one another by more than five miles distance or when they form one compact block. If the lands are situate beyond such limits of the single village or five miles limit distance or when they did not form any compact block, such lands could never be said to be satisfying the definition of personal cultivation of the entire areas so as to give the person concerned status of

agriculturist within the narrow definition of Section 2(2) of the Act. Therefore, when this special definition of an agriculturist has to be examined qua any land it would have to be examined from this narrow test of land being situate within the State of Bombay and the land being personally cultivated by such agriculturist so that all these lands of which he claims this status of agriculturist must form the entire area, whether situate within the limits of one single village or not separated from one another by more than five miles distance or which has formed one compact block. It is in the light of this settled scheme of an agriculturist that we will have to consider restrictions placed by this Statute for transfer of land u/s 63. Section 63 envisages a prohibition by enacting in Clause (1) - "save as provided in this Act,-

(a) no sale including sales in execution of a decree of a civil Court for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue, gift, exchange or lease 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, on such conditions as may be prescribed. It is further provided 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. Even when a landlord intends to sell a land u/s 64, restrictions are placed that he shall apply to the Tribunal for determination of reasonable price and under the provision the first offer has to be made to the tenant in actual possession, and thereafter, also only to persons and bodies mentioned in the priority list. Thereafter, Section 84 provides for summary eviction of person unauthorisedly occupying or wrongfully in possession of any land-

(a) the transfer or acquisition of which either by the act of parties or by the operation of law is invalid under the provisions of the Act;

(b) the management of which has been assumed under the said provisions, or

(c) to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons.

Therefore, this scheme of the relevant restrictions in the shape of such mandatory prohibition would show that such sale can be valid only when these restrictions are scrupulously observed, otherwise, sale to a person who is not an agriculturist or who being agriculturist cultivates personally land not less than the ceiling area or who is not an agricultural labourer would not be valid, unless the Collector grants permission for such sale on prescribed conditions. Even then the permission could not be granted where the 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. Therefore, the whole object of this benevolent provision is to see that the land remains with the tiller or person personally cultivating land, and personal cultivation even has very narrow meaning under the restrictive scheme of Section 63 read with Section 2(6) of the Act, as such agriculturist to whom the sale is proposed of any land must satisfy this concept of personal cultivation of the entire land by fulfilling this unnecessary ingredient that the entire area which he would thereby get by such purchase would be situated within the limits of the same village or would not be separated by a distance of more than five miles or would form one compact block with his land. If this relevant test is not fulfilled, the person would not be agriculturist qua that particular land and such land could not be sold to such a person who is not an agriculturist in view of bar of Section 63(1). That is why Section 63(1) has advisedly used this categorical prohibitory phraseology that no sale shall be valid in favour of the person who is not an agriculturist or who being agriculturist cultivates personally land not less than the ceiling area. Therefore, even if the definition of agriculturist personally cultivating land is satisfied, Section 63 still puts a further fetter that even for such an agriculturist who was cultivating land personally, the limit of his holding should not exceed the ceiling area, because if the limit exceeded, the prohibition would again come in, if the interpretation put by Mr. Shah is accepted, the whole purpose of this benevolent provision would be totally frustrated as any man anywhere throughout the country could come in for purchase of this land and claim this special status of agriculturist so as to get out of the statutory bar of Section 63. The said view of such benevolent provision is supported by sufficient authority. In *Tukaram Savalram v. Narayan Balkrishna* 54 BLR 88, Chagla, C.J., had to interpret term "land" in the context of the benevolent provision of the Bombay Agricultural Debtors' Relief Act, 1947, Section 5(a)(iii) and he held that the land referred to in that provision was land only referred to in that provision was land only within the province of Bombay and not land anywhere in the world. The learned Chief Justice pointed out that if the language of a section was clear, it was not permissible to look at the preamble; but when the language was not clear and was ambiguous, it was open to the Court to construe a section in the light of the preamble, because the preamble supplied a clear guide as to what was the object of the legislature in placing a certain law on the Statute book, to which in that case, the relief of agricultural debtors in the Province of Bombay. The relief was not to be given merely to a debtor in the Province of Bombay but to agricultural debtor in the Province of Bombay, and to only that debtor in the Province of Bombay. The Legislature was interested in those people who were cultivating land within its territorial jurisdiction and to whom relief was to be given because they were indebted. It was, therefore, impossible to believe that the Legislature wanted to give relief to agriculturists from other parts of India merely because they might have become indebted in the Province of Bombay. Therefore, the relevant provision was construed in the light of the Preamble by holding that the land was not intended as land anywhere in the world, but covered land only within the Province of Bombay. The same view is reiterated in *Chinubhai*

Karansang v. Serdul Mansang 58 BLR 463, which has been relied upon by the Revenue Tribunal. Their Lordships construed the expression "other land" in Section 34(2)(a) of the Act, in the light of this concept "personal cultivation" in Section 2(6) and held that the other land referred to in Section 34(2)(a) of the Act must be restricted to land in the State of Bombay. It was pointed out at page 464 by the learned Chief Justice Chagla C.I., speaking for the Division Bench that the ordinary-principle of construction was that the Legislature was dealing with the subject-matter situated within its own territorial jurisdiction. The Legislature was not concerned with improving the lot of any person outside the State of Bombay; nor was it conversant with the conditions prevailing outside the State. The tenant for whose benefit the legislation is put on the Statute book and who has been defined and the landlord who has been correspondingly defined were tenant and landlord in the State of Bombay. Therefore, the limit of 50 acres in Section 34(2)(a) was held to have been laid down from the point of view of conditions prevailing in the State of Bombay. Therefore, it was held that the legislature was indifferent to what was the landlord's holding outside the State of Bombay. It was further in terms observed that the Legislature had defined the expression "cultivating personally" in Section 2(6) also looking to the conditions prevailing in the State of Bombay. The conditions in other existing area of Saurashtra or any other parts of the world might be entirely different. Therefore, the expression "land" in Section 34(2)(a) was restricted to land in the State of Bombay.

11. It is not in dispute that the petitioner is not having any land in Gujarat and considering the provisions of law and the preamble and the legislative intention, it is clear that one has to read the definition of "personal cultivation" by applying the test as laid down by this Court in 1977 GLR 515, otherwise any person holding land at any place in the country or outside the country can claim to be an agriculturist for the purpose of purchasing agricultural land. It is not, therefore, possible to accept the view taken by the Bombay High Court and we are in full agreement with the decision rendered to in 1977 GLR 515.

12. So far as amendment in the provisions of the Act is concerned by which restriction of distance is taken away, it may be mentioned that the amendment was made in 1985. Proceedings in the case of the petitioner were decided much prior to the aforesaid date. Proceedings u/s 84-C were initiated as far back as in the year 1978 and the petitioner lost in revision before the G.R.T. as far back as in the year 1984, and therefore, his rights were already decided and adjudicated before the aforesaid amendment came into force.

13. In these circumstances, what is required to be considered now is whether the authorities below have committed any error while passing the impugned order. The authorities under the Act have clearly considered the question that the petitioner is not having any agricultural land in Gujarat, and therefore, under the provisions applicable at the relevant time the petitioner could not have purchased the land in question in Gujarat without taking any prior permission from the

Collector as provided in Section 63 of the Act. Since, the petitioner was not having any agricultural land in Gujarat and considering the provisions of law applicable at the relevant time, his holding in the State of Karnataka may not be sufficient ground for him to brand himself as an agriculturist so as to purchase the land in question in Gujarat. In that view of the matter, the petitioner being a resident of another State, could not have purchased agricultural land in the State of Gujarat at the relevant time as per the provisions of law prevailing then. In the circumstances, it cannot be said that any error of law has been committed by the authorities below while interpreting the provisions of Section 63.

14. We, therefore, do not see any substance in the petition. Petition is, therefore, dismissed. Rule is discharged, with no order as to costs.

15. We make, it clear that it will be open for the petitioner to apply to the Collector for permission as contemplated by Section 63 of the Act, if he is entitled to make such application. If such application is made, it will be decided by the authority in accordance with law.