
(1993) 03 GUJ CK 0055
In the Gujarat High Court

Shamji Govind and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-03-1993

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 84(C)
Specific Relief Act, 1963 — Section 31

Citation : (1994) 1 GLR 492

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Judgement

R.K. Abichandani, J.—The petitioners have challenged the judgment and order of the Gujarat Revenue Tribunal dated 25th November, 1980 in Revision No. TEN. B.A. 17 of 1979 by which the Tribunal set aside the orders passed by the authorities below holding that the transfer of the disputed land which was effected by a sale deed dated 29th September, 1969 was in violation of the provisions of Section 89 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 (hereinafter referred to as the "Bombay Tenancy Kutch Area Act"), being in favour of non-agriculturists and therefore, the land was deemed to have been vested in the State Government free from all encumbrances liable to be disposed of as per the provisions of Section 122 of the Bombay Tenancy Kutch Area Act.

2. Admittedly, petitioner No. 1 had transferred by a registered sale deed dated 29th September, 1969, the lands bearing survey Nos. 9 and 10 admeasuring 7 Acres 27 Juntas and 8 Acres 23 Juntas respectively situated at Nani Man, Taluka Mandvi, Kutch in favour of petitioners Nos. 3 and 4. It is also admitted that these petitioners Nos. 3 and 4 who purchased the disputed land under the sale deed dated 29th September, 1969 were not agriculturists and were residents of Bombay. Respondents Nos. 2 and 3 were owning lands adjoining to the disputed land and they made an application to the Deputy Collector, Nakhatrana to declare the sale of the disputed lands as invalid on the ground that they were transferred to non-agriculturists in contravention of Sec, 89 of the Bombay Tenancy Kutch

Area Act, Thereupon, the Deputy Collector directed the Special Mamlatdar, Mandvi to hold an inquiry in the matter. It appears that in the mean time, petitioner No. 1 executed another sale deed of the same land on 16-11-1970 in favour of petitioner No. 2 who was an agriculturist. The Special Mamlatdar, by his order dated 28-2-1972 held that the sale deed dated 16-11-1970 being in favour of an agriculturist, did not contravene the provisions of Section 89 of the Bombay Tenancy Kutch Area Act and therefore, it was not necessary to start proceedings u/s 122 of that Act. The appeal preferred against that order was allowed by the Deputy Collector on 29-9-1969 holding that the first sale deed dated 29th September, 1969 contravened the provisions of Section 89 of the Bombay Tenancy Kutch Area Act and directing that the land be forfeited to the Government, holding the sale to be invalid. The Gujarat Revenue Tribunal in its Revisional jurisdiction set aside that order of the Deputy Collector and remanded the matter on 24-11-1974 and accordingly, the Deputy Collector in turn, passed the order date 12-10-1975 directing the Special Mamlatdar to conduct the case afresh. Thereafter, the Special Mamlatdar by his order dated 28-12-1978 passed in Remand Case No. 1 of 1978 held that the petitioner No. 1 had cancelled the earlier sale deed dated 29-9-1969 by executing the second sale deed on 16-11-1970 in favour of the petitioner No. 2 who was an agriculturist and therefore, there was no breach of the provisions of Section 89 of the Bombay Tenancy Kutch Area Act. The appeal filed against that decision was dismissed by the Deputy Collector, Bhuj on 29-11-1979. The Tribunal, after considering the provisions of Sections 89 and 122 of the Bombay Tenancy Kutch Area Act and the material on record, found that after the first sale deed dated 29th September, 1969, there remained no title in the petitioner No. 1 which he could have passed in favour of the petitioner No. 2 by the subsequent sale deed dated 16-11-1970. It was held mat the first sale being in contravention of the provisions of Section 89 was invalid and therefore, consequences of Section 122 of the Bombay Tenancy Kutch Area Act would follow. The Tribunal also found that the first sale deed was not properly cancelled.

3. Mr. Vora, the learned Counsel for the petitioners strongly contended that the first sale deed dated 29th September, 1969 which was executed by the petitioner No. 1 in favour of the petitioners Nos. 3 and 4 was cancelled by the petitioner No. 1 and the parties had not acted upon that sale deed and therefore, there was no transaction which would offend the provisions of Section 89 of the Bombay Tenancy Kutch Area Act. He further argued that Section 122 of the Bombay Tenancy Kutch Area Act did not contain provisions which would enable the parties to restore the earlier position prevailing prior to an illegal transfer, as are contained in Section 84(C) of the Bombay Tenancy and Agricultural Lands Act, 1948 as applicable to the Bombay area of the State of Gujarat and, therefore, any action taken under the provisions of Section 122 of the Bombay Tenancy Kutch Area Act would be discriminatory.

4. The petitioner No. 1 had admittedly transferred the disputed land under a registered sale deed executed on 29-9-1969 in favour of the petitioners Nos. 3

and 4 who were not agriculturists. The registered sale deed executed in this manner could not have been unilaterally cancelled by the petitioner No. 1 without resorting to the provisions of Section 31 of the Specific Relief Act and in any event, could not have been cancelled simply by execution of a subsequent sale deed by petitioner No. 1 in favour of petitioner No. 2 on 16-11-1970. The vendees of the earlier sale deed dated 29-9-1969 were not even confirming parties in the subsequent sale deed executed by the petitioner No. 1 on 16-11-1970. The sale deed dated 29-9-1969 was invalid as it was in favour of the petitioners Nos. 3 and 4 who were not agriculturists. Since the transfer made under the sale deed dated 29-9-1969 was invalid under the provisions of Section 89(1) of the Bombay Tenancy Kutch Area Act, the Mamlatdar could exercise powers u/s 122 of the Bombay Tenancy Kutch Area Act by issuing a notice in the prescribed form to the transferor and the transferee or the person acquiring such land, as the case may be, to show cause why the transfer should not be declared to be invalid. If after holding the inquiry, the Mamlatdar comes to a conclusion that the transfer is invalid, he shall make an order declaring the transfer to be invalid, as provided in Sub-section (2) of Section 122 of the Bombay Tenancy Kutch Area Act. On the declaration being made by the Mamlatdar under Sub-section (2), the land shall be deemed to vest in the State Government as provided in Sub-section (3) of Section 122. Thus, when admittedly, the registered sale deed was executed in respect of the disputed land by the petitioner No. 1 in favour of the petitioners Nos. 3 and 4, who were non-agriculturists, the consequences laid down for such invalid transfer in the provisions of Section 122 would follow and the transferor cannot set at naught these consequences simply by executing a subsequent sale deed which may not violate the provisions of Section 89(1). In the instant case, the earlier registered sale deed was not cancelled by any registered instrument nor did the petitioner No. 1 take any steps u/s 31 of the Specific Relief Act for the cancellation of the instrument. The subsequent attempt of the petitioner No. 1 to execute a sale deed of the same land in favour of petitioner No. 2 cannot absolve him from the consequences that an invalid transfer would entail as envisaged in Section 122 of the Bombay Tenancy Kutch Area Act. Therefore, the Tribunal was perfectly justified in holding that the transfer under the sale deed dated 29-9-1969 being in favour of non-agriculturists was in violation of the provisions of Section 89 of the Bombay Tenancy Kutch Area Act and therefore, invalid and hence, the land shall be deemed to vest in the State Government free from all encumbrances and the disposed of in accordance with the provisions of Section 122 of the Bombay Tenancy Kutch Area Act.

4.1. The learned Counsel for the petitioners contended that the petitioners should be given benefit of the amendment carried out in the provisions of Section 84(C)(2) of the Bombay Tenancy Act by Gujarat Act No. 16 of 1960 by which the parties to the invalid transfer can given an undertaking in writing that within a period of three months from the date as the Mamlatdar fixes, they shall restore the land alongwith the rights and interest therein to the position in which

it was immediately before the transfer and to restore the land within that period. Now, evidently, the provisions of Section 84(C) of the Bombay Tenancy Act as applicable to the Bombay area of Gujarat cannot be applied to Kutch area for which there is a separate law, namely, Bombay Tenancy Kutch Area Act. Section 122 of the Bombay Tenancy Kutch Area Act, which corresponds to the provisions of Section 84(C) of the Bombay Tenancy Act, does not contain the amendment which was incorporated in Section 84(C) by Gujarat Act No. 16 of 1960. Ordinarily, one would expect similar amendment to be there in the provisions of Section 122 of the Bombay Tenancy Kutch Area Act, when it was made in the corresponding provisions of Section 84(C) of the Bombay Tenancy Act, by Gujarat Act No. 16 of 1960. However, since the specific provisions as contained in Section 84(C) of the Bombay Tenancy Act is not incorporated in Section 122 of the Bombay Tenancy Kutch Area Act, which alone is applicable to the disputed and it is not for this Court to fill up the lacuna and read the portion which was inserted by Section 26(1)(a) of Gujarat Act No. 16 of 1960 in Section 84(C)(2) of the Bombay Tenancy Act also in Section 122(2) of the Bombay Tenancy Kutch Area Act. It would be for the Legislature to introduce similar amendment in the provisions of Section 122 of the Bombay Tenancy Kutch Area Act to enable the parties to get an opportunity to restore the land after an invalid transfer as has been given u/s 84(C)(2) of the Bombay Tenancy Act, in respect of the areas to which that Act applies. Therefore, the contention of the learned Counsel for the petitioners that this opportunity should also be read in Section 122 of the Bombay Tenancy Kutch Area Act cannot be accepted.

5. In view of the above discussion it is clear that the Tribunal has not committed any error in exercise of its jurisdiction and there is no warrant for interference with its decision. This petition is, therefore, rejected. Rule is discharged with no order as to costs. Ad-interim relief stands vacated.