(2007) 03 GUJ CK 0064

In the Gujarat High Court

Case No : Special Civil Application No''s. 5985 and 5989 to 5990 of 2007

Shamlabhai Mamaiyabhai APPELLANT

Vs

District Collector and Others RESPONDENT

Date of Decision : 06-03-2007

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Gujarat Land Revenue Rules, 1972 — Rule 106, 107, 108, 108(5), 108(6)

Citation : (2007) 27 GLH 731

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Jagdish H. Mehta, for the Appellant; Satyam Chhaya, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—Rule. Mr. Chhaya, learned AGP waives service of notice of Rule for Respondents No. , 2 and 3 and in view of the order passed by this Court hereinafter, as the matters are being heard on the preliminary contentions of maintainability of the petition, presence of respondents No. 4 and 5 may not be required.

2. The only question, which arises for consideration at this stage before this Court is whether the Collector, Bhavnagar has the jurisdiction to entertain the revision against the order passed by the Dy. Collector under the Bombay Land Revenue Code (hereinafter referred to as ''the Code'') read with the Gujarat Land Revenue Rules, 1972 (hereinafter referred to as ''the Rules'').

3. The short facts of the case are that the entry came to be mutated in the revenue record for the transaction of sale dated 23.10.2002 vide No. 3625 and the said entry was certified on 26.3.2003 by Mamlatdar. It appears that as per the Gujarat State Cooperative Agriculture and Rural Development Bank Limited, there was a charge of the said Bank and without releasing the charge, the sale had taken place as per the Bank and, therefore, as the entry was certified of the

transaction of sale, the bank preferred appeal before the Dy. Collector under Rule 108(5) of the Rules being Appeal No. 11 of 2006-07. The Dy. Collector ultimately passed the order on 13.12.2006 in Appeal, whereby the appeal is allowed and the entry No. 3625 dated 26.3.2003 is set aside. The revision was preferred before the Collector against the order of the Dy. Collector and in the revision the Collector has passed the interim order dated 8.2.2007 pending the revision, whereby it is directed to maintain status-quo of the land in question and it is under these circumstances, the present petitions.

4. In the other two Special Civil Applications No. 5989 and 5990 of 2007, more or less the same situations are there, except that there is a change in the entry No. 3624 and 3622, since the transaction of sales were different.

5. I have heard Mr. Mehta, learned Counsel for the petitioners and Mr. Chhaya, learned AGP for the State Authorities on the preliminary contentions of maintainability of the petition.

6. Mr. Mehta, learned Counsel appearing for the petitioners contended that the impugned order passed by the Collector is without jurisdiction inasmuch as, as per the Rule 108(6) of the Rules, the Collector has no jurisdiction, but the power of entertaining the revision is with the State Government and, therefore, the order is ab initio void. In support of his contention, he relied upon the decision of this Court in case of Heirs of Jeshanker P. Mehta v. Additional Special Secretary, Revenue Department, Gujarat State and Anr. reported in 2000(2) GLR, 1127 and contended that as per the view taken in the said decision by this Court, the State Government is only competent to exercise the power under Rule 108(6) of the Rules and the Collector has no jurisdiction. He, therefore, submitted that the petition is maintainable as the order is without jurisdiction. He also submitted that if the Collector has exercised the power under the Rule 108(6), which is of the State Government, such an order cannot be challenged before the State Government and, therefore, there is no remedy available to the petitioners under the Rules and, therefore, this Court may entertain the present petition even on merits and the petition can be maintained.

7. Mr. Chhaya, learned AGP submitted that the reliance placed upon the provisions of Rule 108(6) of the Rules by the learned Counsel appearing for the petitioners is not correct and he submitted that Rule 108(6) is amended and Sub-rule (6-A) is also added and, therefore, the Collector has the power of entertaining the revision under Rule 108(6) of the Rules and there is further remedy of revision before the State Government under Rule 108(6-A) of the Rules. He, therefore, submitted that the petition is not maintainable.

8. Mr. Mehta, learned Counsel appearing for the petitioners did rely upon the Rule 108 of the Gujarat Land Revenue Rules, 1972 published in the book of M.L. Zindal, April 2000 Edition. However, as there was rival contentions on the existence of the Rule, the official copy of the Government was called for and it appears that Rule 108 reads as under:

108(1) Disputes entered in the register of disputed cases shall ordinarily be disposed of by the Mamlatdar''s First Karkun or by the Mamlatdar, but may be disposed of by the District Inspector of Land Records or by any revenue officer of superior rank to that of First Karkun.

(2) The enquiry shall ordinarily be made in the village in which the lands is situate or where the interested parties reside.

(3) The officer making the enquiry shall record his order disposing of the dispute in the said register and shall than make such entry in the Diary of mutations as may be necessary.

(4) Such officer shall certify the entry in the Diary of mutations to be correct.

(5) An appeal against an order under this rule shall, if the order has been made by the Mamlatdar''s First Karkun, the Mamlatdar, the District Inspector or a revenue officer of lower rank than that of a Deputy Collector, lie to the Sub-Divisional Officer or to an officer appointed by the Collector in this behalf and if the order has been made by the Sub-Divisional Officer, the Superintendent of Land Records or by a revenue officer of a rank not lower than that of a Deputy Collector, to the Collector, such appeal shall be presented within sixty days from the date on which the copy of the order was served on the appellant or was otherwise intimated to him.

Provided that the appellate authority may after recording its reasons in writing admit an appeal after the aforesaid period of sixty days if it is satisfied that the appellant had sufficient cause for not presenting the appeal within such period.

Subject to the provisions of ''Sub-rule (6) and (6-A)'' the decisions of the appellate authority shall be final. There shall be no appeal against the order of the Collector. No second appeal shall lie in any case.

(6) The collector may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under Rules 106, 107 and Sub-rules 1 to 5 of this rule for the purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings.

If, in any case, it shall appear to the Collector that any proceeding so called for or any decision or order made in such proceedings should be modified, annulled or reversed, he may pass such order thereon as he deems fit. (6-A) The State Government may call for and examine the record of proceedings in respect of any order passed by the Collector under Sub-rule (5) of Sub-rule (6) for the purpose of satisfying itself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings. If, in any case, it appears to the State Government that any proceedings so called for or any decision or order made in such proceedings should be modified annulled or reversed it may pass such order thereon as it deems fit;

(7) If the appellate order or the orders passed in revision confirms the previous decision it shall be noted in the remarks column against the entry which is confirmed. If it alters it, the change shall be entered as a fresh, but not disputable mutation.

9. It appears that Rule 108, which is reproduced in the aforesaid book of Zindal''s edition is not the correct reproduction of Rule 108, but the correct reproduction of the Rule 108 as available from the Government''s First Edition of Gujarat Land Revenue Rules, 1972 of the year 1975 is as reproduced hereinabove.

10. In view of the aforesaid provisions of Rule 108(6), the Collector has the revisional power against the order passed by the Dy. Collector under Rule 108(5) and against the order of the Collector, the State Government has also revisional power under Rule 108(6-A). Therefore, it appears that the contention as sought to be canvassed on behalf of the petitioners by Mr. Mehta is factually misconceived inasmuch as Sub-rule (6) upon which the reliance was placed by the learned Counsel for the petitioners is not in existence in the statute book and the position is otherwise.

11. It also appears that when this Court considered the matter in case of Heirs of Jeshanker P. Mehta v. Additional Special Secretary (supra) attention of this Court was not brought either by the learned Counsel appearing for the petitioner or by the learned Government Pleader, who appeared for the respondent State Government. Therefore, as the provisions of the Rule as prevailing then and as prevailing now, more particularly Sub-rule (6) and Sub-rule (6-A) authorising the revisional power with the Collector and further with the State Government, were not considered since they were not brought to the notice of this Court and hence, the said decision can be said as per in curium.

12. In the result, it cannot be said that the order passed by the Collector, which is impugned in the present petition is without jurisdiction and further the petitioners have the remedy under Rule 108(6-A) of approaching before the State Government against the order of the Collector. It is an admitted position that the petitioners have not exhausted the said remedy. It is well settled that when the statutory remedy is available to the parties to the proceedings, this Court, by way of self-imposed restrictions, would normally not entertain the petition under Article 226 or 227 of the Constitution of India. Hence, as the statutory remedy is available to the petitioner and as the same is not exhausted, the present petition does not deserve be maintained.

13. Mr. Mehta, learned Counsel appearing for the petitioners, attempted to submit that the Collector has referred to Section 210 of the Land Revenue Code while passing the impugned order and, therefore, he submitted that the order may be treated only u/s 210 of the Code, which provides for appellate power and not the revisional power and, therefore, he submitted that the order of the Collector may be examined as only u/s 210 of the Code. I am afraid such

contention can be accepted and the reasons obvious is that the nomenclature or the reference of the Section would not change the character of the order or the exercise of the power by the Collector in revisional jurisdiction. If the revisional power is exercised and the interim order is passed merely because there is incidental reference to other section of statutory provisions would not change the order or the character of the exercise of the power or the source for the exercise of the power. The impugned order is an order passed by the Collector exercising the revisional jurisdiction and the interim order passed therein and such an exercise is under Rule 108(6) of the Rules. Hence, a different view cannot be taken as sought to be canvassed on behalf of the petitioners.

14. In view of the above, the petition is not entertained and hence, the same is dismissed. Subject to the aforesaid observations, Rule discharged. No order as to costs. It is clarified that the present order shall not operate as a bar to the petitioners to prefer revision before the State Government against the order of the Collector, as may be permissible in law.

