(2022) 04 GUJ CK 0101

In the Gujarat High Court

Case No : R/Special Civil Application No. 11055 Of 2021

Singhal Shankerlal Ratanlal Through Poa Mithil Vijaykumar Patel — APPELLANT

Vs

Special Secretary (Appeals), Revenue Department — RESPONDENT

Date of Decision : 27-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Land Revenue Rules, 1972 — Rule 108(6)
Bombay Tenancy And Agricultural Lands Act, 1948 — Section 43, 63, 135(d)

Citation : (2022) 04 GUJ CK 0101

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Vimal A Purohit, Shrenik R Jasani, Dhwani Tripath

Final Decision : Allowed

Judgement

DR. A. P. Thaker, J

1. Being aggrieved and dissatisfied with the order dated 09.07.2020 passed by the learned Special Secretary (Disputes) Revenue Department in Revision Application No.HKP/VDD/17 of 2019 whereby revision preferred by the petitioner came to be rejected and the order of the District Collector dated 07.12.2013 passed in Suo motu revision being RTS/SUO-MOTTO/REVISION/CASE No.163 of 2011 came to be confirmed, the petitioner has preferred this petition under Article 226 of the Constitution of India inter alia praying for the following reliefs:-

“A) YOUR LORDSHIP 'S may be pleased to admit and allow the present petition;

(B) YOUR LORDSHIP'S may kindly be pleased to issue a writ of mandamus or any other appropriate writ in the nature of mandamus, order or direction quashing and setting aside the order dated 09.07.2020 passed by the Ld. The learned Special Secretary, Revenue Department in Revision Application HKP/VDD/17 of 2019 as well as 07.12.2013 passed by the learned District Collector, Vadodara in

RTS/ SUO MOTTO/REVISION/CASE/163 OF 2011 And further be please to direct revenue authorities to restore Mutation Entry no. 1000 and be further pleased to hold and declare that such exercise of powers by the Ld. Dist. Collector amounts to Cross uti1ization and is without jurisdiction

(C) During the pendency and final disposal of the present petition, YOUR LORDSHIP 'S may be pleased to stay operation, implementation and execution of the order dated 09.07.2020 passed by the Ld. the learned Special Secretary, Department Revenue in Revision App1ication HKP/VDD/17 of 2019 as wel1 as 07.12.20013 passed by the learned District Collector, Vadodara in RTS/SUO-MOTTO/REVISION/CASE NO. 163 OF 2011 and further be pleased to direct the respondent authority to maintain the status-quo f the land in question;

(D) Any other and further relief that may deem fit by this Hon'ble Court in the interest of justice."

2. The brief facts of the petition are as under:-

2.1. The land bearing block no.324, Village Radhavpura, Taluka & Distrcit Vadodara were owned and occupied by Rasikbhai Fulabhai Patel and respondent no.5 i.e. Subhashbhai Fulabhai Patel. That Rasikbhai Patel bequeathed the land in question to the petitioner and other by exectuting the 'WILL' on 29.01.2003 upon demise of Rasikbhai Patel on 07.10.2003, names of petitioners and private respondents were entered into revenue records on the basis of the said WILL and mutation entry no.1000 came to be mutated and it was came to be certified on 12.12.2003. Thereafter, the petitioner and respondent no.5 approached the concerned Civil Court to avail appropriate certificate by filing Probate Miscellaneous Application No.201 of 2004, wherein, public notice was issued inviting the objections from the public at large. That no objections were received from the public at large. Thereafter, the Civil Court granted the Probate Certificate vide order dated 03.12.2009.

2.2. That the learned District Collector Vadodara on 20.12.2011 issued notice exercising powers under Rule 108 (6) of Gujarat Land Revenue Rules, 1972, the petitioner, taking the mutation entry no.1000 dated 12.12.2003 in suo motu revision after a period of 8 years. Learned District Collector observed that the WILL is unregistered and no Probate Certificate is taken from the Civil Court and hence such entry ought not to have been certified and it was also observed that the WILL seems to be bequeathed in favour of the petitioner and private respondents only with the motive to get the status of agriculturist as petitioner and respondent nos.6 to 13 are not legal heirs of late Rasikbhai Fulabhai Patel and therefore also by way of WILL, land in question could not have been bequeathed in favour of the strangers. On this observation, learned District Collector, Vadodara vide his order dated 07.12.2003 cancelled the mutation entry no.1000 dated 12.12.2006.

2.3. According to the petitioner, they could not remain present before the Collector and could not produce the copy of the Probate Certificate granted by the Civil Court. It is contended that the respondent no.5 appeared before the learned District Collector and submits that the WILL is false and fabricated and no Probate Certificate is availed by the petitioner. It is contended that thus, on the basis of incorrect submissions of the respondent no.5, learned District Collector has passed the impugned order.

2.4. Against the order of the learned District Collector, Vadodara, the petitioner preferred a revision application before the learned SSRD which has also came to be dismissed. Hence, the present petitioner has preferred this petition contending that the authorities below has grossly erred in arriving at the conclusion that WILL is not genuine and seems to be bogus though the Probate Certificate was produced before the authorities. It is contended that nobody has challenged WILL or Probate Certificate. It is also contended that the order passed by the Revenue Authorities is without jurisdiction. It is contended that while dealing with the RTS proceedings, the Collector has also observed in respect of breach of provisions of Gujarat Tenancy and Agricultural Land Act, 1948, which is not permissible. While referring various judgments in the petition, the petitioner has prayed to allow the present petition by quashing and setting aside both the order and direction to the Revenue Authorities, to restore the entry no.1000.

3. Heard learned advocate Mr.Vimal Purohit for the petitioner and learned AGP Ms.Dhwani Tripathi appearing for the respondent State at length. Perused the material placed on record as well as decision cited at bar.

4. Learned advocate Mr.Vimal Purohit for the petitioner has vehemently submitted the same facts which are narrated in the petitioner memo and has submitted that the land in question was bequeathed in favour of the petitioner and others by the deceased Rasikbhai Patel and after his death, name of the petitioner and others were mutated in the revenue record. He has also submitted that the petitioner and respondent no.5 have applied before the Civil Court for Probate Certificate of the WILL of Rasikbhai Patel and after due procedure, the Civil Court has granted Probate Certificate. He has also submitted that after almost 8 years of the mutation entry, learned District Collector has taken the entry no.1000 in Revision Suo motu. According to him, the exercise of the powers by the Collector is beyond the period of reasonable time. He has also submitted that since none has challenged the WILL and Probate Certificate thereof issued by the Civil Court, the learned District Collector ought not to have cancelled the entry, holding that WILL is bogus and sham. According to him, learned Collector has exceeded his jurisdiction as when the Civil Court has already granted the Probate Certificate, the Revenue Authorities cannot decide the legality of such WILL in revenue proceedings. He has also submitted that while dealing with the suo motu revision, the Collector has also tried to exercise his powers under the Gujarat Tenancy and Agricultural Land Act, 1948, which is cross utilization of the power and therefore, the impugned order of the learned Collector is without jurisdiction and so also the order of the learned SSRD is not sustainable in the eyes of law. He has prayed to allow this present petition. He

has relied upon the following decisions.

(i) In case of State of West Bengal V. Kailash Chandra Kapur reported in 1997 (2) SCC 387.

(ii) The order of Co-ordinate Bench of this Court dated 20.11.2019 passed in Special Civil Application No.15321 of 2014 in case of Legal Heirs of Raghuvirsinh Saluja V. Special Secretary (Appeals) & 5 Other (s).

(iii) Order of the Co-ordinate Bench of this Court dated 28.10.2020 passed in Special Civil Application No.10487 of 2020 in case of Ahemadbhai Ibrahimbhai Patel V. State of Gujarat.

(iv) Oral judgment of Co-ordinate Bench of this Court dated 13.01.2020 passed in Special Civil Application No.5546 of 2004 in case of Chimanlal Bhukandas V. Special Secretary (Appeals) & 5 Other(s).

5. Per contra, learned AGP has vehemently submitted that there was no name of the testator of the WILL in the revenue records. It is also submitted that learned Collector has taken into consideration all the facts and the revenue records and has properly considered and passed the impugned order. She has submitted that the person cannot become agriculturist on the basis of the WILL. She has submitted that the impugned order of the learned revenue authorities are in consonance with the facts and law. She has submitted that both the orders are sustainable in the eyes of law and therefore, the petition filed by the present petitioner be dismissed.

6. (i) In case of State of West Bengal Supra, the Apex Court has observed thus in para 12 as under:-

“Transfer connotes, normally, between two living persons during life; Will takes effect after demise f the testator and transfer in that perspective becomes incongruous. Though, as indicated earlier, the assignment may be prohibited and Government intended to be so, a bequest in favour of a stranger by way of testamentary disposition does not appear to be intended, in view of the permissive language used in clause (12) of the covenants. We find no express prohibition as at present under the terms of the lease. Unless the Government amends the rules or imposes appropriate restrictive covenants prohibiting the bequest in favour of the strangers or by enacting appropriate law. There would be no statutory power to impose such restrictions prohibiting such bequest in favour of the strangers”.

(ii) In case of Legal Heirs of Raghuvirsinh Saluja Supra, this Court has observed in para 18 that the authorities while considering the question of mutation entry, could not go into the issue of violation of provisions of Section 63 without holding an proper inquiry under the Bombay Tenancy Act.

(iii) The Co-ordinate Bench of this Court dated 28.10.2020 passed in Special Civil Application No.10487 of 2020 in case of Ahemadbhai Ibrahimbhai Patel Supra, has observed, in Para Nos.9 and 10, thus:

“9. It is also pertinent to note that the issue is also squarely covered by the decision of the Division Bench of this Court in Rajenbhai Baldevbhai Shah (supra), wherein, it is held as under:

“14. The expression `transfer' was interpreted by the Apex Court in the context of Punjab Security of Land Tenures Act, 1953. Apex Court in State of Punjab (Now Haryana) and others V/s. Amar Singh and another, AIR 1974 SC 994 held the expression `transfer' is wide enough to cover transfer by operation of law unless expressly excluded. Special exclusions to save transfer by way of inheritance and compulsory land acquisition by State have been made which would have been supererogatory had involuntary transfers automatically gone out of the pale of Section 10-A(b) . Apex Court held that the triple objects of the agrarian reform projected by the Act appear to be (a) to impart security to tenure (b) to make the tiller the owner and

(c) to trim large land holdings, setting sober ceiling. The Apex Court held that basic judicial approach must be to discover this soul of the law and strive to harmonize the many limbs to subserve the pervasive spirit and advance the social project of the enactment. The Apex Court in Dayandeo Ganapat Jadhav V/s. Madhav Vitthal Bhaskar and others, 2005 8 SCC 340 while interpreting the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 held that the Act has been enacted with a view to protect the tenants and the provisions of the Act, therefore, must be construed in favour of a weaker class of society to ensure that the object underlying the Act is fulfilled. The Act has been described as a beneficial legislation to protect the tenants as well as the agriculturists and parties cannot be allowed to defeat the object and purpose of the Act by executing testamentary disposition. We are, therefore, of the considered view that if the agriculturist is permitted to dispose agricultural property through testamentary disposition to a nonagriculturist the same will defeat the very purpose and object of the Tenancy Act which cannot be permitted by a Court of law, therefore, we hold that decision rendered by the learned Single Judges referred above earlier, otherwise, are not correct enunciation of law and stand over-ruled. We, therefore, hold that Section 63 of the Bombay Tenancy Act also bars the transfer of agricultural land by an agriculturist to a non-agriculturist for non-agricultural purpose unless permission is obtained from the Collector or any authorised officer as provided in that Section. We are informed by the learned counsel for the petitioner that large number of agricultural lands have already been transferred through testamentary disposition to non agriculturists and are in use and if the settled position is unsettled the same will cause considerable prejudice and inconvenience to the parties. We are of the view that there are matters to be considered by the learned Single Judge depending upon facts of each case and equities can be worked out accordingly, on which, we express no opinion. We are only called upon to answer the scope of Section 43 and 63 of the Tenancy Act, which we have already answered.”

10. In view of the above dictum of law, the impugned orders passed by both the authorities below are contrary to the settled legal position, as the Revenue Authorities cannot arrive at a conclusion under Sections 43 and 63 of the Act, 1948 to hold that the petitioner is nonagriculturist only on the basis of the Will and the probate produced by the petitioner because the bequeath by will cannot be termed as transfer and even the probate was also not necessary as per the provisions of the Indian Succession Act,1925, as the land is situated in Gujarat."

(iv) In the Oral judgment of Co-ordinate Bench of this Court dated 13.01.2020 passed in Special Civil Application No.5546 of 2004 in case of Chimanlal Bhukandas Supra, this Court in Para No.14 has observed thus:-

"14. Thus, it is settled legal position that in RTS proceedings, viz. proceedings under rule 108(6) of the rules, the revenue authorities are vested with limited powers. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. In the facts of the present case, if the Collector was of the view that there is any breach of the provisions of the Tenancy Act or the Fragmentation Act, proceedings could have been initiated under the relevant provisions of the said enactments. However, in proceedings under rule 108(6) of the rules, the question of breach of the provisions of the Tenancy Act or the Fragmentation Act could not have been decided. Since the show-cause notice under rule 108(6) of the rules has been issued for breach of the provisions of the Tenancy Act and the Fragmentation Act, the very basis for taking the mutation entry No.595 in suo motu revision is invalid and beyond the scope of powers under rule 108(6) of the rules. The impugned orders passed by the Collector as well as the revisional authority, therefore, cannot be sustained."

7. Having considered submissions made on behalf of both the sides, coupled with the records and various observations made and various decisions referred to hereinabove, it emerges from the record that name of the petitioners and private respondents came to be entered into revenue record on the basis of the WILL of deceased Rasikbhai Patel. It appears from the copy of the Probate Certificate at the page no.36 of the paper book that learned 2nd Additional Senior Civil Judge, Vadodara has issued Probate Certificate after following the due process thereof. It is admitted facts that nobody has challenged the same. It also reveals that before the issuance of that Probate Certificate, public notice was issued (paper book at page 40). Thus, when the WILL was already been held as legal one by the competent Civil Court, the revenue authorities has no jurisdiction to decide the question of legality or existence of any WILL. On perusal of the impugned order of the Collector, it appears that he has initiated the suo motu proceedings on the basis that WILL is on the plain paper and there is no date mentioned in the same and there is no proof of issuance of the notice under Section 135(d) as well as there is no proof of person being agriculturist. It is admitted facts that

the revenue entry no.1000 came to be mutated on 12.12.2003 on the basis of the WILL and thereafter a Probate Certificate was obtained in the year 2009. Thus, when the Collector has taken the mutation entry in revision, there was already declaration of the Civil Court regarding the validity of the WILL and therefore the exercise taken up by the learned Collector is not justified. Not only that, but it also appears that when the original entry was made in the revenue record in the year 2003, it was within the knowledge of the revenue authorities, but till 2011, no action was initiated.

8. Further, as observed earlier when the Civil Court has already declared the WILL to be legal one and issued Probate Certificate thereof, unless and until it is set aside by the competent Court, no revenue authorities can decide the question of illegality of the WILL. It is bounden duty of the revenue authorities to abide by the order of the competent Civil Court. Moreover, while exercising powers under the RTS Proceedings, the Collector cannot exercise powers of other enactment nor can decide Civil rights of any party.

9. Considering the facts of this case, it clearly transpires that the Collector has exceeded has jurisdiction and has taken a revision suo motu after 8 years of the revenue entry and has also dealt with the legality of the will in question, which was duly held legal by the competent Civil Court. The same mistake has been also reiterated by the learned SSRD in confirming the order of the learned Collector. Under these circumstances, both the orders of the revenue authorities are not sustainable in the eyes of law and both deserves to be quashed and set aside.

10. In view of the above, the present petition is hereby allowed. The impugned order dated 09.07.2020 passed by the learned Special Secretary (Disputes) Revenue Department in Revision Application No.HKP/VDD/17 of 2019 and the order of the District Collector dated 07.12.2013 passed in Suo motu revision being RTS/SUO-MOTTO/REVISION/CASE No.163 of 2011 are quashed and set aside. The consequential effect may be given accordingly in the revenue record. No order as to costs. Direct service is permitted.

