

(2012) 12 GUJ CK 0097

In the Gujarat High Court

Case No : Special Civil Application No. 10593 of 2011

Sondabhai Sarabhai Since Decd. Through Heirs

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 12 GUJ CK 0097

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Nirad D. Buch, for the Petitioners No. 1, for the Appellant; Viral J. Dave, Assistant Government Pleader for the Respondent(s) No. 1-2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Smt. Justice Abhilasha Kumari

1. Rule. Mr. Viral J. Dave, learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondents. On the facts and in the circumstances of the case and with the consent of the learned counsel for the respective parties, the petition is being heard and finally decided.

2. This petition, under Article 226 of the Constitution of India has been preferred with the following prayers:

[A] Your Lordships may be pleased to admit and allow this petition;

[B] Your Lordships may be pleased to call for the record and proceedings of Revision application No. JMN/BVN/1/2006 from the office of the Respondent No. 1 and after perusing the same, Your Lordships may be pleased to issue a writ of Certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside the impugned orders dated 22.12.2005 and 24.05.2011 passed by the Respondent No. 2 and 1 respectively at

ANNEXURE. A and B, and further be pleased to permanently restrain the respondents, their agents, servants, employees, officers, representative etc. from taking over possession of, or creating any interference/obstacles/obstruction in peaceful enjoyment of right to possess and use the land in dispute from the petitioner.

[C] Pending admission hearing and final disposal of this petitioner, Your Lordships may be pleased to stay the implementation, execution and operation of the impugned orders dated 22.12.2005 and 24.05.2011 passed by the Respondent No. 2 and 1 respectively and may further be pleased to restrain the respondents, their agents, servants, employees, officers, representatives etc. from taking over possession of, or creating any interference/obstacle/obstruction in peaceful enjoyment of right to possess and use the land in dispute from the petitioner;

[D] Your Lordships may be pleased to grant ad interim relief in terms of PARA. 9[C].

[E] Your Lordships may be pleased to pass such other and further order as the Hon"ble Court may deem fit in the interest of justice;

3. Briefly stated, the facts of the case are that land bearing Survey No. 74 paikee, ad-measuring 6 Acre 00 Gunthas situated at village Sidsar, District Bhavnagar, was granted to Sondabhai Sarabhai, the father of the petitioner, by the order dated 1.6.1955 passed by the Deputy Collector, subject to certain terms and conditions. The land was of new and impartible tenure.

4. Upon the death of the original grantee, the name of his heir and legal representative was mutated in the revenue record. As per the case of the petitioner, the land in question is still in his possession, as on date. On 26.7.2002, the Collector, Bhavnagar, issued a show-cause Notice to the petitioner, stating therein that the land in question had been alienated without prior permission of the Competent Authority, which could not have been done as it was of new tenure. The petitioner was asked to show-cause as to why the land in question be not forfeited to the State Government.

5. The petitioner replied to the show-cause Notice. However, the reply did not satisfy the Collector, who passed the impugned order dated 22.12.2005, holding that as the land in question has remained idle for a considerable period of time, it may be forfeited to the State Government. Aggrieved by the order of the Collector, the petitioner approached the Special Secretary (Appeals), Revenue Department (respondent No.1) by filing a Revision Application. The respondent No.1 rejected the Revision Application by confirming the order passed by respondent No. 2, holding that there is material on record to show that the land in question has remained uncultivated, therefore, no interference with the order of respondent No. 2 is required. Under the circumstances, the petitioner has approached this Court, by way of the present petition.

6. Mr. Nirad D. Buch, learned advocate for the petitioner has submitted that both

respondents Nos. 2 and 1, have erred in passing the impugned orders, as the said orders have travelled beyond the scope of the show-cause Notice issued to the petitioner. The said show-cause Notice clearly mentions that the proceedings were initiated against the petitioner only in respect of the breach of the condition regarding transfer/alienation of the land without prior permission of the Competent Authority. There was no mention in the show-cause Notice regarding the land having remained idle or uncultivated and the petitioner was not asked to reply show-cause Notice regarding this aspect, at any point of time. It is further submitted that a clear finding has been recorded in the order passed by respondent No. 2 that there is no evidence of any transfer of the land by the petitioner. This finding has not been disturbed by respondent No. 1, while passing the impugned order. Rather, it has been confirmed. Learned counsel for the petitioner has further contended that once a finding has been recorded regarding the issue for which the show-cause Notice has been issued to the petitioner, the respondents could not have travelled beyond the scope of the Notice and recorded a finding on another issue, for which the petitioner was neither given a show-cause Notice, nor an opportunity of hearing.

7. On the above grounds, it is prayed that the impugned orders be quashed and set aside.

8. Learned Counsel for the petitioner has placed reliance upon the following Judgments, in support of the submissions made by him:

[A] Nasir Ahmad Vs. Assistant Custodian General, Evacuee Property, Uttar Pradesh, Lucknow and Another, .

[B] Godrej Industries Limited and Another (Formerly known as Godrej Soaps Limited) v. Commissioner of Central Excise, Mumbai and Another, (2008) 17 SCC, 471.

9. Mr. Viral J. Dave, learned Assistant Government Pleader for the respondents has taken the Court through the averments made in the affidavit-in-reply, filed on behalf of the respondents. It is submitted that while examining the matter for which the show-cause Notice was issued, the authorities found that the petitioner had committed another breach by not cultivating the land and, therefore, the respondents were well within their rights to direct the land to be forfeited to the State Government on this ground. It is submitted that the impugned orders may not be quashed and set aside, only because forfeiture of the land has been directed, for another reason than that mentioned in the show-cause Notice, namely, that the land has remained uncultivated, as this is also one of the conditions, contained in the order of allotment.

10. I have heard learned counsel for the respective parties, perused the averments made in the petition and the documents on record.

11. A scrutiny of the show-cause Notice dated 26.7.2012, clearly reveals that petitioner was asked to reply only with regard to the breach of the condition of

transfer/alienation of the land in question, without prior permission of the Competent Authority. There is no mention in the show-cause Notice regarding the land having remained idle or uncultivated. It is, therefore, apparent that the petitioner was never asked to show cause against the breach of this condition. The petitioner has given a reply to the show-cause Notice, confining it to the issue of transfer of the land without permission, for which the Notice was issued. In the impugned order dated 22.12.2005, passed by the respondent No. 2, there is a clear finding based upon the material on record, to the effect that there is no evidence that the petitioner has transferred the land. The matter ought to have ended there. However, respondent No. 2 went on to discuss various other aspects, such as the land having remained uncultivated and idle, which are extraneous to the show-cause Notice, and regarding which the petitioner has not been provided with any opportunity of hearing. The impugned order has been passed by respondent No. 2, solely on the ground that the land has remained idle and uncultivated, and it has been directed that the land be forfeited to the State Government. This order has been confirmed by respondent No. 1 in Revision.

In *Nasir Ahmad Vs. Assistant Custodian General, Evacuee Property, Uttar Pradesh, Lucknow and Another*, , the Supreme Court has held as below:

3. The foundation of a proceeding u/s 7 is a valid notice and an inquiry which travels beyond the bounds of the notice is impermissible and without jurisdiction to that extent. Therefore the declaration that the appellant was an evacuee under clauses (i) and (ii) of Section 2 (d) of the Act must be held invalid.

(emphasis supplied)

In *a Godrej Industries Limited and Another (Formerly known as Godrej Soaps Limited) v. Commissioner of Central Excise, Mumbai and Another*, (2008) 17 SCC 471, Supreme Court has found that the Tribunal, in its order, exceeded its jurisdiction by recording a finding which is beyond the scope of the show-cause Notice and could not be sustained.

12. In the present case, there can be no dispute regarding the fact that the findings recorded by respondent No. 2 in the impugned orders travel beyond the scope of the show-cause Notice issued to the petitioner, as the orders are based upon an issue that has not even been mentioned in the show-cause Notice. The petitioner was asked to reply only on the ground of the alleged transfer of the land without prior permission. The reply to the show-cause Notice was confined only to that aspect. Considering the reply of the petitioner and the other material on record, respondent No. 2 has found that there is no evidence of the transfer of the land in question. The matter should have ended there, as the issue for which the show-cause Notice was issued has been found in favour of the petitioner. Instead of this, respondent No. 2 has embarked upon a discussion upon an issue, extraneous to the show-cause Notice, for which no opportunity of hearing has been granted to the petitioner.

13. From the material on record, there can be no doubt that the impugned orders passed by the respondent authorities are in violation of the principles of natural justice. The rule of Audi Alteram Partem enjoins upon the respondents to grant an opportunity of hearing before passing an order. As no show-cause Notice has been issued regarding the issue of the land being uncultivated, which is the reason for its forfeiture, the impugned orders cannot be sustained in law.

14. In the view of this Court, the petitioner has suffered a miscarriage of justice as the impugned orders have been passed without granting him an opportunity of hearing on the issue for which the land has been directed to be forfeited. The injustice done to the petitioner becomes even more palpable, in the face of the clear findings recorded by respondent No. 2 that there is no evidence that the land has been transferred in breach of the condition of grant by the petitioner, for which the show-cause Notice has been issued.

15. For the aforesaid reasons, the impugned order dated 22.12.2005 passed by respondent No. 2 and the order dated 24.5.2011 passed by respondent No. 1, are quashed and set aside.

16. It is, however, clarified that the respondents are not precluded from issuing a fresh show-cause Notice, in accordance with law. In that event, the petitioner shall be granted an adequate opportunity of hearing before any order is passed. It is clarified that the decision, after the fresh show-cause Notice, if any, shall be made without being influenced by the earlier orders that are impugned in this petition.

17. The petition is allowed, in the above terms. Rule is made absolute, accordingly. There shall be no orders as to costs. Direct service of this order is permitted.