(2006) 10 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No''s. 9848 of 2003 and 13710 of 2004

State of Gujarat and Another — APPELLANT

Vs

Ramji Devjibhai Rabari and Another — RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43, 63A, 64, 64(7), 64(8)

Citation : (2006) 10 GUJ CK 0003

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Siraj Gori, AGP for Petitioner 1, for the Appellant; A.R. Majmudar and N.K. Majmudar for Respondent 1 and U.M. Shastri, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—Pursuant to the order passed by this Court on 03.10.2006 in Civil Application No. 10887 of 2006, Civil Application No. 10888 of 2006, the main matters are finally heard today.

2. The short facts of the case are that the respondent No. 2 Laxmidas Mohanlal Patel (hereinafter referred to as the original holder of ''the land/vendor'') was the owner of various lands situated at Danteshwar Taluka, Vadodara. The respondent No. 1 Ramji Devjibhai Rabari(hereinafter referred to as ''the purchaser''), in the revenue proceedings was shown as tenant of the land and before the proceedings were finalised under the provisions of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as ''the Act''), by Registered Sale Deed dated 04.05.1961, the land was purchased by respondent No. 1 from respondent No. 2. It appears that thereafter, in the tenancy proceedings being No. 16 of 1967, the factum regarding transfer of the land by Registered Sale Deed was considered by the Mamlatdar & ALT and vide order dated 29.06.1986, fine was imposed of Rs. 1/- and the sale was treated as bona fide and pursuant to the same, revenue entry was also mutated. However, when the revenue entry

was mutated, it was mentioned by the Revenue Secretary that the land is subject to restriction u/s 43 of the Act. As the aforesaid noting in the revenue record was to create a clog over the property of the purchaser namely Ramji Devjibhai Rabari, who was also in the tenancy proceedings described as tenant, an application was moved by him to the Mamlatdar & ALT for deleting the restriction u/s 43 of the Act recorded in the entry No. 1654 for the registered Sale Deed. The proceedings were treated as Tenancy Case No. 80/93 by the Mamlatdar & ALT and on 03.08.1993, the Mamlatdar and ALT dismissed the application observing that when the entry was mutated, the purchaser did not challenge the same.

3. It appears that the purchaser, respondent No. 1 herein carried the matter before the Assistant Collector in Tenancy Appeal No. 118/93 and the said appeal came to be dismissed on 31.03.1995. The purchaser, respondent No. 1 herein further carried the matter before the Gujarat Revenue Tribunal being TEN:BA:321/96 and the Tribunal delivered Judgment on 10.04.2002, whereby the revision is allowed and the order of the Mamlatdar as well as of the Assistant Collector is set aside and it is declared that as the sale is regularised, the restriction imposed over the land shall stand cancelled. It is under these circumstances, the State Government has approached to this Court by preferring Special Civil Application No. 9848 of 2003.

4. The original holder/vendor has preferred separate petition being Special Civil Application No. 13710 of 2004 before this Hon''ble Court challenging the very order of the Tribunal mainly on the ground that that the Tribunal passed the order without giving opportunity of hearing or without hearing to him and therefore, the order is in breach of the principles of natural justice.

5. I have heard Mr. Gori, learned AGP for State Government, who is petitioner of Special Civil Application No. 9848 of 2003 and Mr. Shastri for the petitioners-vendor of Special Civil Application No. 13710 of 2004, and I have also heard Mr. A.R. Majmudar appearing for the purchaser in both the matters.

6. The contention raised on behalf of the State Government by Mr. Gori, learned AGP is that even if the tenant in respect of whom the proceedings are pending has purchased the land from the landlord by Registered Sale Deed, the restriction u/s 43 of the Act would apply and therefore, the Tribunal has committed error in not considering the said aspects. In support of the submission, the learned AGP relied upon the Government circular/resolution dated 16.03.1959 issued by the Government of Bombay clarifying the position that as per the provisions of Section 64 of the Act, the transfer is invalid. However, such transfer can be regularised on imposition of fine, but even if such transfers are regularised by collecting fine, the restriction u/s 43 of the Act to the land in question would continue to apply and therefore, the submission of the learned AGP is that is Section 43 of the Act applies of the restricted tenure. It is submitted that if the purchaser wants to transfer the property to any person, the requisite permission would be necessary and the premium may also be required

to be paid to the Government and therefore, as the aforesaid aspects are not considered by the Tribunal, the order passed by the Tribunal deserves to be quashed and set aside.

7. There is no dispute on the point that the land held by vendor/original holder was of unrestricted tenure/old tenure. It is true that in the revenue record of village Form No. 7 & 12, the name of the purchaser in the year 1961, 1962 was shown as that of cultivator. However the pertinent aspect is that, before the tenancy proceedings are initiated, the purchaser, who was shown as a cultivator and subsequently in the Government proceedings was described as tenant, has purchased the land by Registered Sale Deed dated 04.05.1961. It appears that the tenancy proceedings are initiated in the year 1967 being Tenancy Case No. 16/67. Therefore, as such, if the transfer has already been effected before the tenancy proceedings are initiated, it would be a case of transfer implicit of a land by the vendor to the purchaser and consequently, the purchaser will get all rights as that were held by the vendor, which would mean that the transfer of the land as unrestricted tenure.

8. Even if it is considered that the father of the purchaser was shown as cultivator even prior to 1960-1961 and could be said as tenant of the land in question, which was held by the vendor, then also, by the provisions of Section 64 of the Act, it cannot be said that the sale by the landholder of the land in question is completely banned. Section 64 of the Act provides for the sale of the land in favour of permanent tenant and other tenant and the manner and method of fixing of price is provided. Sub-section (7) also provides for enabling the landholder to sell any land to the tenant in actual possession at a price mutually agreed between him and the tenant, subject to the provisions of Section 63A. If such an application is made, it has been provided that the Tribunal shall grant permission, if it is satisfied that the price has been agreed voluntarily by the tenant. Sub-section (8) provides that any sale made in contravention of this Section shall be invalid. The object of the Act is to confer benefit upon the tenant who is actually cultivating the land and Section 64 including Sub-section (7) and (8) are essentially to see that the rights of the tenants are protected and he may not be subjected to compulsion to purchase the land at a price for which, he has not voluntarily agreed. It appears that with a view to see that the landholder may not be in a position to sell the land frustrating the rights of the tenant over the land, Sub-section (8) provides for sale in contravention to Section 64 as invalid, but thereby, it cannot be said that if it is a voluntary sale entered into by the landholder in favour of the tenant without taking benefit of the Act, the rights which may be acquired by the tenant shall be subject to the restriction u/s 43 of the Act inspite of the fact that the landholder who transferred the land was holding the land as unrestricted tenant. The possession of the land acquired by the tenant under the statute by fixation of price and the sale by the Mamlatdar and ALT cannot be equated with the position of the person, who may be in revenue record as tenant after having purchased the land from the landholder by paying full consideration/price of the

land and the landholder having voluntarily transferred the land in favour of such persons.

9. In the present case, the additional circumstance, which has been rightly recorded by the Tribunal is that, even in the proceedings of the Tenancy Case No. 16/67, the transaction of sale is held to be bona fide and therefore, it is not in any case with a view to frustrate the provisions of the Act. If the transaction is held to be bona fide, then as per the provisions of the Transfer of Properties Act, the purchaser will acquire all rights as held by the vendor over the land in question. If such an analogy is applied in the present case, the Tribunal has rightly observed that the land, which is purchased by the purchaser under the Registered Sale Deed, which is held to be bona fide in the Tenancy Case proceedings, would not be subject to the restrictions u/s 43 of the Act.

10. It cannot be said that the Tribunal has committed any jurisdictional error nor can it be said that the exercise of discretion by the Tribunal is perverse in any manner.

11. Under the above circumstances, in view of the aforesaid observations, the petition preferred by the Government is meritless and the same deserves to be dismissed.

12. So far as Special Civil Application No. 13710 of 2004 is concerned, the Tribunal in the impugned order has recorded that the notice has been served to the respondent No. 2 before the Tribunal and who is petitioner herein, but none has remained present. As such, in view of the observations and conclusions recorded hereinabove on merits, the order of the Tribunal deserves to be upheld. Further, as such, the petitioner is a person who has already transfered the land as back as in the year 1961, after having received the consideration and it was essentially a matter between the purchaser and the State Government, since the matter related to the restriction u/s 43 of the Act qua the rights of the Government and it was not as such relating to any claim for rights of the petitioners herein. In normal circumstances, if the parties to the proceedings is served with the notice and inspite of the same, has chosen not to remain present, may be on one ground or the another and if the Tribunal has proceeded further, such an exercise of the power by a quasi judicial authority cannot be said to be having committed any jurisdictional error nor can it be said that the exercise of power is improper.

13. Therefore, under these circumstances, I find that no useful purpose would be served in interfering with the order passed by the Tribunal on the ground that the petitioner who was respondent No. 2 in the proceedings before the Tribunal was not heard.

14. Further, while examining the legality and validity of the order passed by the Tribunal, I have also heard Mr. Shastri appearing for the petitioners on merits. On merits, Mr. Shastri has adopted the contentions raised by Mr. Gori, learned AGP for the State Government and therefore, when on merits, there is no case to

upset the decision of the Tribunal, no useful purpose would be served in interfering with the order passed by the Tribunal on the contentions as sought to be canvassed on behalf of the petitioners on the alleged ground of breach of principles of natural justice. In view of the above, and in view of the observations and conclusions recorded by this Court in Special Civil Application No. 9848 of 2003, Special Civil Application No. 13710 of 2003 also deserves to be dismissed.

15. Under the above circumstances, both the petitions are dismissed. Rule discharged. Interim relief if any shall stand vacated.

