

(1999) 11 GUJ CK 0027

In the Gujarat High Court

Case No : Special Civil Application No. 6421 of 1998

State of Gujarat

APPELLANT

Vs

Abdulhamidkhan Husenyavakhan Jibabi

RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Citation : (1999) 11 GUJ CK 0027

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : Prashant G. Desai, Government Pleader, for the Appellant; A.J. Patel, for Respondent Nos. 1, 2, 3, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioners have challenged the order dated 25.5.1998 passed by the Additional Chief Secretary in Revision quashing the order of Collector and City Survey Officer, Rajkot dated 16.9.1992 and 13.11.1969 respectively.

2. Brief facts giving rise to this petition are as under : Hakk Choksi Officer on 13.11.1969 declared that the property situated in Ward No.7, Tika No.222, City Survey No.3531, Akar No.16 is owned by the Government (P.W.D.) (R & B). Feeling aggrieved against this order Ahmedkhan Huseinyavar Haji Babi filed Appeal which was traferred to the Collector, Rajkot as the order passed by the City Survey Inquiry Officer was of equal cadre of Deputy Collector. Annexure : B is the order dated 13.11.1969 passed by Hakk Choksi Records of Rights Officer, Rajkot. The Appeal was rejected vide Annexure : C. Feeling aggrieved Revision Application was filed before the Gujarat Revenue Tribunal, but it was subsequently directed to be filed before the Additional Chief Secretary (Appeals). The said revision in these circumstances became time barred, hence application for condonation of delay was moved. The said revision was allowed and the orders of the Collector were quashed so also the order of Record of Rights Officer. It is, therefore, this writ petition.

3. Learned Government Pleader Shri Prashant G. Desai for the petitioner and Shri A.J.Patel for the respondents were heard at length. The material on record was considered. Shri A.J.Patel proposed to argue the writ petition on the material submitted by the petitioners without filing any counter Affidavit.

4. Learned Government Pleader Shri Desai assailed the order contained in Annexure : A on the ground that it is illegal and cannot be sustained. His first contention has been that the Revisional Authority had no jurisdiction to decide the question of ownership. He further argued that a peculiar procedure was followed by the Revisional Authority by putting certain questions to the officers of the petitioner and placing reliance upon answers given by those officers the revision was allowed. According to Shri Desai, scope of revisional jurisdiction is very much limited and the revision could not be decided in this manner. His further contention has been that actually nothing has been decided by the revisional Authority and that the relevant papers were not considered by him. Number of documents have been filed in this writ petition. However, it appears from the Judgment, Annexure : A, that all the materials, which were placed by the respondents before the Appellate Authority as well as by the petitioners before the Appellate Authority and the record of Rights officers were given due consideration by the Revisional Authority. Shri Desai also contended that if the grievance of the respondent is that no notice was given by the Record of Rights Officer the matter may be remanded to the lowest Authority so that proper opportunity may be given to the respondents as well as the petitioners and the matter may be properly decided. To this suggestion Shri A.J.Patel objected and argued that whatever had been filed by the parties before the lower Authorities was duly considered and that no clinching document has been filed in this writ petition which may show that the State Government is owner of the property in question, hence the matter hardly requires remand.

5. Neither the Authorities below nor this Court in such proceedings is required to determine the question of ownership in the property in dispute. The only point to be seen is whether the entry Annexure : B as a result of Survey Settlement is legal entry which has been made in accordance with law after following due procedure or not. It is further to be seen whether the order of the Collector, Appellate Authority, confirming Annexure : B is also proper or not. If these two orders are found to be proper and legal naturally the order of the revisional Authority has to be quashed. If, however, these two orders cannot be sustained then the order of the revisional Authority has to be sustained.

6. The order Annexure : B is nothing but simple entry and in Column No.4 thereof it is mentioned as "owner - the Government observation Home (Juvenile Court)". This entry was confirmed and approved as per entry in Column No.6. As such nothing appears from this entry what was basis on which it was made. The above entry seems to have been made in exercise of powers u/s 131 of the Bombay Land Revenue Code. It provides that if the state Government shall at any time deem it expedient to direct survey of the land other than those used

ordinarily for the purpose of agriculture only within the site of any village, town or city under the provisions of Section 95 or a fresh survey under the provisions of Section 106, such survey shall be conducted and all its operations shall be regulated according to the provisions of Chapter VIII & IX of this Act. Thus, under this provision survey settlement is done in respect of land, etc. which is ordinarily used for the purpose other than agricultural purpose. In the case under consideration the property is building situated over the site of the land. Such survey shall be conducted in accordance with law and in accordance with Chapter : VIII & IX of the Act. For all purposes the instant survey was *exparte* because admittedly no notice was given to the respondents. No Sanad was issued to the petitioners or the State Government as contemplated under Sec. 133 of the Code. Even if it is believed that no Sanad was required to be issued in favour of the state Government still it has to be seen on what basis this entry was made in which the owner of the property was shown as Government Observation Home (Juvenile Court). Part of Annexure : B shows that City Survey Inspector, Rajkot after seeing and examining P.R.B. Register held that the property of CHA No. 16 to be of the ownership of the Government (P.W.D.). It is in the order of the Appellate Authority also that on the basis of P.R.B. Register this entry was made. Except P.R.B. Register no other document was seen by the City Survey Inspector or the officer ordering making of such entry. P.R.B. Register is maintained by the petitioner, namely, P.W.D. Department under the control of the State Government. If notice should have been issued to the respondent the situation would have been different. Thus, the order of the City Survey Officer is not only *exparte* but it is based on P.R.B. Register only and no other material was available before him for directing such entry to be made.

7. The order of the Appellate Authority, Annexure : C, shows that besides entry in the P.R.B. Register it was further confirmed to be of the ownership of the Government through Rehabilitation Department earlier. Thus, two grounds were taken by the Appellate Authority to confirm the order of the Survey officer. The first was entry in the P.R.B. Register and the second was ownership of the Government confirmed through Rehabilitation department earlier. However, Para : 11 of the Judgment of the Revisional Authority shows that the Revisional Authority inquired from the representative of the Collector, Rajkot, who was present before him and he stated that no earlier proceedings took place in which the property was confirmed to be Government property through Rehabilitation Department. This admission of the representative of the Collector will be binding on the petitioners and in view of this statement it can safely be said that the other ground that the property was earlier held to be the Government property through Rehabilitation Department is non-existent. If this is so then remains the only material, namely, entries in the P.R.B. Register.

8. Shri Desai has also argued that not only that the property is entered as Government property in the P.R.B. Register, but it has remained in possession of the Government since 1948 and as such on the basis of adverse possession also the Government has become owner of the property. I have already indicated

above that the question of ownership of the Government is not to be decided in this writ petition nor it can be decided by the Authorities below. The only thing to be seen is whether revenue entry as a result of survey settlement is correct and legal. Obviously there remains no basis except P.R.B. Register on the basis of which disputed entry was made. The revisional Authority on the other hand in Para : 8 of his Judgment has observed that even as per assessment list of the properties liable to tax for the years 1952-56 and 1956 - 60 of the Rajkot Municipality produced in this chapter also Shri Chhaganbhai Jiva Parshottam Maharaj Children Court observation hall and Babi Saheb Khanji have been shown as the occupant of the disputed property and Babi Saheb Khanshri Huseni Yavarkhan Mohmad Khanji is shown to be the owner of the property. It is thus clear that between 1952 to 60 in the municipal records Babi Saheb is shown to be the owner of the property and the Children Court Observation Hall were the occupants of this property. The order of the Record of Right Officer was passed on 13.11.1969 and at that time these municipal entries were very much in force. Consequently notice should have been issued to the persons who were recorded as owners of the property in the municipal record. This was not done. If notices would have been issued certainly the owners or their successors could have clarified the position. It is thus clear that the Record of Right Officer did not act legally and properly. He did not issue any notice to the recorded owner nor he examined the municipal records. The P.R.B. Register which is the only basis of the impugned entry was document kept and maintained by the P.W.D. Department. As such ex-parte order of the Record of Right Officer cannot be sustained and if it was sustained by the Collector in Appeal he also committed manifest error of law.

9. Shri Desai argued that the taxes were not paid by the respondents and that no act of ownership was exhibited by the respondents and that long possession of the Government department in the disputed property is not only indicative of ownership of the Government but also ownership by adverse possession. I have already pointed out earlier that the question of ownership either by forfeiture or vesting of property in the State or by adverse possession is not to be decided in this writ petition. On the other hand in this writ petition mainly the correctness and legality of the entry in question has to be seen. Prima facie from the order Annexure : C it appears that in the Memo of Appeal it was alleged by the respondents herein that the Government has taken forcible possession of the property. If no action for dispossession of the Government Department was taken by the respondent it cannot be said in this petition that the Government has become owner of the property. That is a matter to be decided by the competent Court where such issue is raised.

10. From the order of the Appellate Authority also it appears that besides entry in the P.R.B. Register much reliance was placed upon possession of the Government Department in the disputed property. However, mere possession of the Government Department was not enough to make entry that the property is owned by the Government especially when the entry in the municipal records

before the order of the Record of Rights Officer was passed was to the effect that the recorded owner was not the Government, but Babi Saheb Khanshri Huseni.

11. The Appellate Authority has also mentioned that Shri R.N.Gajera stated that this property was in the ownership of the Government i.e. P.W.D. since beginning, but this statement is very vague and it does not show that there was no other recorded owner anywhere including municipal record. The observation of the Collector, the Appellate Authority, that the property was confirmed to be of the ownership of the Government through Rehabilitation Department earlier also cannot be believed in view of statement to the contrary given by his representative before the Revisional Authority which has been mentioned and discussed earlier in this Judgment.

12. On the contrary Shri A.J.Patel contended that the respondents are owners of the property through registered Sale Deed dated 11.7.1923 and were also in possession till the property was forcibly occupied by the Government, namely, the P.W.D. Department and that this sale deed has not been cancelled by any Court nor it was challenged by the State Government in any Court of law. It was not a collusive document according to Shri Patel. There is nothing on record to show that this sale deed has been cancelled or has been declared to be void and collusive document. On the other hand the order of the Revisional Authority shows that even prior to 11.7.1923 various Sale Deeds were executed in respect of the same property and the property passed different hands. This property was first sold to Shri Narmada Shanker Ladhabhai through registered document dated 19.12.1904. Thereafter Narmada Shanker sold this land to Shri Durlabji Dharamshi Bhatiya through document dated 3.9.1906. Thereafter disputed property was purchased by Shri Ajijhusein Meman from Shri Durlabji Dharamshi by document dated 11.8.1914 and thereafter land in question has been purchased by Khansi Husen Yavarkhanji Ahmadkhanji from Ajijhusen Meman by registered Sale Deed dated 11.7.1923. The order of the Revisional Authority shows that Shri J.M.Rajguru, Mamlatdar and representative of the Collector appeared before him on 17.3.1998 and admitted in his argument that the property was sold in individual capacity, though, the original seller was a Royal. This admission is significant and it shows that the seller was Royal yet he sold the property in his individual capacity. It therefore follows that he was holding the property as his individual property. The erstwhile Ruler may be possessed of two types of property, namely, the property of the State and his personal property. So far as property of the State is concerned it would naturally vest in the state Government after merger, but so far as personal property of the Ex-Ruler is concerned it will continue to be his personal property and will not vest in the State and it will be treated as individual property till the death of the Ruler and it will never be considered to be joint family property of the Ruler. The Ruler was therefore competent to sell his personal property and if it was so done the sale Deed prima facie cannot be said to be illegal or invalid. Similar view was taken by this Court in the case of SHRIMATI SHANTADEVI P. GAEKWAD v/s. SHRI SANGRAMSINH P. GAEKWAD, reported in 1995 (2) G.L.H. 461.

13. The Sale Deed of 1923 was filed before the Appellate Authority by the appellants therein who are respondents in this petition. There was thus enough material on the basis of which the Appellate Authority could have quashed the order of the Record Verification Officer being contrary to law. If this was not done the order of the Appellate Authority also cannot be sustained. Simply on the basis of entry in P.R.B. Register the impugned entry could not be made when material to the contrary was available. As such prima facie the orders of the Record Verification Officer and the Collector are contrary to law and cannot be sustained.

14. In this petition certain documents were filed on behalf of the petitioner and Shri Desai vehemently argued that if these documents would have been examined the revisional Authority he would have taken the same view which was taken by the two Authorities below. However, Shri Desai could not convince me that all these documents were filed before the Revisional Authority or the Appellate Authority. If this was so then the Revisional Authority cannot be blamed for passing the order without considering the entire material on record. Whatever material was available on the file of the Appellate Authority was considered by the Revisional Authority.

15. Even prima facie examination of the documents filed in this writ petition could not furnish any clinching and prima facie evidence of ownership of the Government in the disputed property. Annexure : D can at the most show possession of child rehabilitation centre over the property in question. Annexure : E is the correspondence which hardly furnishes evidence of title of the Government. Annexure : F is no doubt document from Rajkot Municipal Corporation addressed in the name of Office Superintendent, Bal Adalat, but it is regarding taxes and this was issued on 16.7.1998 whereas the order of the Revisional Authority Annexure : A was passed on 22.5.1998, hence revisional Authority cannot be blamed for not considering this document. This document came into existence after the order of the Revisional Authority. More over these documents also do not show title in the Government.

16. Annexure : G is Ordinance of 1948. Shri Desai contended that Para : 1(c) of this Ordinance shows that all the assets and liabilities of the covenanting State shall be the assets and liabilities of the United State of Kathiavad. However, this Ordinance cannot be interpreted to mean that the present property of the Rular also vested or deemingly vested in the United State of Kathiavad. Similar is the position in the proclamation by the Government of Saurashtra contained in Page No.65(A) of the compillation. Here also general vesting of the property and liabilities of the State is disclosed in Para : 2, but it does not specify that private property of the covenanting State shall also be vested in the Government. Para : 2 of Annexure : I also deserves the same comment so also para : 2 of Annexure : J. Annexures : L & M are departmental communications which can hardly be considered to be prima facie evidence of ownership of the Government.

17. Much emphasis was laid on the Ordinance Annexure : O, namely, Ordinance

No.16 of 1950. This Ordinance was relied upon by the Appellate Authority. However, Para : 2 of this Ordinance shows that notwithstanding anything contained in any other law for the time being in force or in any instrument or other document whatsoever the properties described in the schedule which stand in the name of Talukdar of Sardargadh whether in his personal capacity or as legal representative of any deceased person or in any other capacity or of any Karbhari or of any other officer of Sardargadh Talukdar in his officiating capacity or in the name of more than one of them shall be deemed to have vested and always to have been vested in the manager of the said Talukdar from the specified day. Thus from this provision in the Ordinance it is clear that only the properties mentioned in the schedule of this Ordinance owned by Talukdar of Sardargadh whether in his personal capacity or as legal representative, etc. shall vest in the manager of the said Talukdar. No other property owned in the personal capacity of Talukdar of Sardargadh can be said to have been vested under this Ordinance. The schedule to this Ordinance shows that only movable properties, namely, Bank accounts, shares, fixed deposit, etc. were mentioned and not the immovable property. Consequently immovable property owned in the personal capacity of Talukdar of Sardargadh could not be said to have vested in the State under this Ordinance.

18. Other annexures in the writ petition are again in the nature of departmental communication which cannot be pressed in service to show prima facie title of the Government in the properties.

19. Learned Government Pleader further contended that this property was not shown in the form No.1 u/s 6(1) of the Urban Land (Ceiling & Regulation) Act. However, since question of ownership is not being directly adjudicated in this writ petition this omission cannot be a ground for justifying the entry made by the Record Verification Officer in Annexure : B which is based only on the entries in the P.R.B. Register.

20. Thus, for the reasons stated above the order of the Record Verification Officer and the order of the Collector was not in accordance with law and if it was set aside by the Revisional Authority the order of the Revisional Authority hardly requires any interference.

21. There is no merit in the averment in the writ petition that adequate opportunity of hearing was not afforded to the petitioners by the Revisional Authority. The order of the Revisional Authority shows that the arguments were concluded on 17.3.1988 and the Collector vide letter dated 26.3.1988 requested for long adjournment and Stay of the revision proceeding. The judgment was delivered by the Revisional Authority on 22.5.1998. Even in this interval of two months no documents were filed by the Collector, hence adequate opportunity was given to the petitioners.

22. What has been discussed above to find out prima facie documents regarding ownership is not to be considered as observation of this Court regarding

ownership of the property in question. Those documents have been examined only for the purpose of testing the legality and correctness of Annexure : B and since Annexure : B and consequent appellate order is found to be illegal the order of the revisional Authority cannot be set aside. The writ petition has therefore no substance hence it fails.

23. The writ petition is hereby dismissed with no order as to costs.

24. Since this petition has been dismissed the Civil Application No.11013 of 1999 is rendered infructuous and is rejected as infructuous.