
(1996) 02 GUJ CK 0009
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Bachubhai Dadubhai

RESPONDENT

Date of Decision : 07-02-1996

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1996) 2 GLR 777

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The decision rendered by the Gujarat Revenue Tribunal at Ahmedabad (the Tribunal for convenience) on 5th March 1982 in Appeal No. TEN.A.A. 126 of 1980 is under challenge in this petition under Article 227 of the Constitution of India.

2. By its impugned decision, the Tribunal upset the order passed by the Mamlatdar of Sanand (the First Authority for convenience) on 31st March 1980 in land Inquiry Case No. 1 of 1979. By his aforesaid order, the First Authority held that the disputed lands did not belong to the respondent herein.

3. It appears that the respondent herein was found unauthorisedly cultivating the disputed lands belonging to the State Government. Thereupon, a proceeding was instituted against him u/s 61 of the Bombay Land Revenue Code, 1879 (the Code for brief). The respondent was subjected to some adverse orders in that proceeding. The aggrieved respondent thereupon carried the matter in appeal before the Tribunal. The Tribunal remanded the matter to the First Authority for an inquiry u/s 37(2) of the Code. It came ultimately to be registered as Land Inquiry Case No. 1 of 1979. After recording evidence and hearing the respondent, by his order passed on 31st March 1980 in the aforesaid Inquiry Case, the First Authority rejected the respondent's claim of title to the disputed lands. Its copy is at Annexure-A to this petition.

4. The aggrieved respondent carried the matter in appeal before the Tribunal. It

came to be registered as Appeal No. TEN.A.A. 126 of 1980. By its decision rendered on 5th March 1982 in the aforesaid appeal, the Tribunal came to the conclusion that the disputed lands belonged to the respondent herein and in the process the order at Annexure-A to this petition came to be set aside. A copy of the aforesaid decision of the Tribunal is at Annexure-B to this petition. That aggrieved the State Government. It has thereupon approached this Court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the impugned order at Annexure-B to this petition.

As rightly submitted by learned Assistant Government Pleader Shri Patel for the petitioner, the Tribunal remained oblivious to the Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act, 1982 ("the Amending Act" for brief). By Section 3 of the Amending Act, Explanation-II came to be added to Section 6 of the Bombay Taluqdari Tenure Abolition Act, 1949 ("the Act" for brief). It may be mentioned that retrospective operation was granted to Explanation-II to Section 6 of the Act by virtue of Section 3 of the Amending Act. By Explanation-II, the expression "Waste Land" contained in Section 6 of the Act has been defined to mean land unfit for cultivation and inter alia includes land on which grass grows naturally. As aforesaid, Explanation-II to Section 6 of the Act is deemed to have been inserted from the date of commencing into force of the Act.

5. It clearly transpires from the impugned decision at Annexure-B to this petition that the disputed lands remained uncultivated for more than three years immediately before commencing into force of the Act. It has been found by the Tribunal in its impugned decision that grass naturally grew on it. By virtue of Explanation-II to Section 6 of the Act, even if grass grew naturally on certain taluqdari tenure lands, it would amount to waste lands for the purposes of Section 6 of the Act. It has provided therein that all waste lands of taluqdari tenure would vest in the State Government. In that view of the matter, there is no escape from the conclusion that the disputed lands, being "Waste Land" for the purposes of Section 6 of the Act, would vest in the State Government by virtue of Section 6 of the Act read with Explanation-II appended to it. The respondent's claim thereto could not have, therefore, been upheld by the Tribunal.

6. The validity of the Amending Act has been upheld by the Supreme Court in its binding ruling in the case of Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., as held by the Division Bench of this Court (of which I was a member) in its ruling in the case of Thakore Shri Chelsinhji Nathusinhji Chauhan Vs. State of Gujarat, . In that view of the matter, the respondent could not have laid his claim of title to the disputed lands.

7. In view of my aforesaid discussion, I am of the opinion that the impugned decision of the Tribunal at Annexure-B to this petition cannot be sustained in law. It has to be quashed and set aside. The order passed by the First Authority at Annexure-A to this petition deserves to be restored.

In the result, this petition is accepted. The decision rendered by the Gujarat Revenue Tribunal at Ahmedabad on 5th March 1982 in Appeal No. TEN.A.A. 126 of 1980 at Annexure-B to this petition is quashed and set aside. The order passed by the Mamlatdar of Sanand on 31st March 1980 at Annexure-A to this petition is restored. Rule is accordingly made absolute with no order as to costs.