

(2014) 09 GUJ CK 0105

In the Gujarat High Court

Case No : Letters Patent Appeal No. 408 of 2014 in Special Civil Application No. 10553 of 2012 and Civil Application No. 3165 of 2014 in Letters Patent Appeal No. 408 of 2014

State of Gujarat

APPELLANT

Vs

Mavjibhai Premjibhai Savani

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43, 70, 70(o), 70(o), 74

Citation : (2015) 2 GLR 1560

Hon'ble Judges : V.M. Sahai, J;R.P. Dholaria, J

Bench : Division Bench

Advocate : Kashyap Pujara, AGP, Advocate for the Appellant; Amit V. Thakkar, Advocate for the Respondent

Judgement

R.P. Dholaria, J.—This appeal under Clause 15 of the Letters Patent is directed against the judgment dated 17.07.2013 passed by the learned Single Judge in Special Civil Application No. 10553 of 2012, whereby the learned Single Judge allowed the petition filed by the respondent Nos. 1 to 6 herein - original petitioners. The appellants herein are the original respondents and respondents herein are the original petitioners and therefore, for the sake of convenience, in the facts, both the parties shall be addressed as per their original status.

2. As short question of law is involved, with the consent of the learned advocates for both the parties, the present appeal is taken up for final hearing today.

3. The short facts of the case are as under:

"3.1. That land bearing revenue Survey No. 406, Block No. 371, admeasuring 10218 square metres included in Town Planning Scheme No. 14 (Pal), bearing Final Plot No. 114, admeasuring 7153 square metres of Village: Pal, Taluka: Surat City, District: Surat (hereinafter referred to as the subject land) was originally owned by Ambaram Bhavanbhai (hereinafter referred to as the original

owner). In the revenue record, the said land was shown to be of new tenure, namely, the same was subject to the restrictions under section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Tenancy Act). The original owner, therefore, made an application under section 70(o) of the Tenancy Act before the Mamlatdar & A.L.T (Tenancy), Choryasi, Surat which was registered as Tenancy Case No. 136 of 2002 contending that he was holding the subject land as a permanent tenant and, therefore, the provisions of section 43 of the Tenancy Act would not be applicable and that the land should be treated as an old tenure land. By an order dated 25.2.2003, the Mamlatdar & A.L.T rejected the said application. The original owner challenged the said order before the Deputy Collector, Choryasi Prant, Surat in Tenancy Appeal No. 36 of 2003. However, the appeal came to be dismissed on the ground that the same was not maintainable under section 74 of the Tenancy Act. The original owner, thereafter, presented a writ petition before this court being Special Civil Application No. 24219 of 2005, which came to be partly allowed by an order dated 21.02.2007, whereby the order passed by the Mamlatdar & ALT was set aside and the matter was remanded for deciding the same afresh, after giving an opportunity of hearing to all the affected parties in the light of the directions made and conclusions recorded in the judgment in Special Civil Application No. 9609 of 2006 and other allied matters decided on 17-18-23/1/2007.

3.2. Pursuant thereto, the Mamlatdar & A.L.T, by an order dated 20.02.2008, removed the restrictions of new tenure under section 43 of the Tenancy Act by observing that the said order shall be subject to the order passed in Special Civil Application No. 9609 of 2006 and the letters patent appeal preferred by the Government against the said order and an entry giving effect to the said order of the Mamlatdar & ALT came to be posted vide Mutation Entry No. 6481, Pursuant to the above order of the Mamlatdar & ALT removing the restrictions under section 43 of the Tenancy Act, the petitioners herein purchased the subject land under two different registered sale-deeds bearing No. 3373 and 3395, both dated 14.03.2008 and corresponding entry, being Mutation Entry No. 6520 came to be posted on 16.04.2008, whereby the names of the petitioners came to be entered in the revenue record. By a communication dated 05.05.2008, the petitioners requested the concerned authorities to certify the said mutation entries. Since the mutation entries were not being certified, the petitioners approached this court by way of a writ petition being Special Civil Application No. 7336 of 2008, seeking a direction to the concerned authority to certify both the above entries, viz., Mutation Entry No. 6481 dated 25.02.2008 as well as Mutation Entry No. 6520 dated 16.04.2008. By way of an amendment to the petition, the petitioners also challenged the order whereby the mutation entry was cancelled. By an order dated 22.10.2008, the petition came to be disposed of with a direction that the Collector concerned shall take appropriate decision whether the order of the Mamlatdar & A.L.T needs to be taken in revision within four weeks from the date of the said order and that if the Collector decides to take the order of the Mamlatdar in revision, the revision shall be decided after hearing the concerned

persons within three months. Pursuant thereto, the Deputy Collector, City Prant, Surat took the order dated 20.02.2008 made by the Mamlatdar in revision, which is still pending.

3.3. During the pendency of the proceedings before the Deputy Collector in respect of removal of restrictions under section 43 of the Tenancy Act, the petitioners thought it fit to put an end to the litigations by making payment of premium in respect of the subject land. The petitioners, therefore, made an application dated 19.02.2011 for conversion of the land from new tenure to old tenure for non-agricultural use purpose. By a communication dated 23.02.2011, the application was returned stating that the names of the applicants were not reflected in the 7/12 abstract and, therefore, the application cannot be processed. By a communication dated 9/10.10.2011, the petitioners pointed out that, in fact, the petitioners have purchased the subject land by virtue of registered sale-deeds dated 14.03.2008 pursuant to the order of the Mamlatdar directing removal of restrictions under section 43 of the Tenancy Act. Therefore, the original owner ceased to be the owner of the subject land and that the petitioners, as owners of the land, had made the application for conversion of the land to old tenure by payment of premium. The petitioners also pointed out that the consent on affidavit of the original owner was also submitted along with the said application and requested the Collector, Surat to restore the application and decide the same on merits and to give an opportunity of hearing before taking any decision in this regard. By a communication dated 25.10.2011, the petitioners were informed that in future, in the proceedings pending before the High Court, if the decision is given in favour of the applicants, then also the applicants will not take benefit of such order and will not demand back the premium", such representation be made before the Deputy Collector and after the decision is taken in the revision pending before the Deputy Collector, the procedure will be carried out. The petitioners, therefore, preferred an application before the Deputy Collector in Revision Application No. 20 of 2008 for being joined as parties. The petitioners specifically stated that the petitioners are ready and willing to pay the premium for conversion of the land, and even if proceedings under section 70(o) of the Tenancy Act are decided in favour of the petitioners, the petitioners will not claim the benefit of such order and are not willing to claim back the premium. Upon inquiry, the petitioners have learnt that the matters under section 70(o) of the Tenancy Act are kept pending by the Deputy Collector and hearing is not given on the ground of pendency of the letters patent appeal proceedings before the High Court. The petitioners, therefore, made a further representation to the Collector, Surat, pointing out that the petitioners' application for seeking conversion on payment of premium is not dependent on the revision proceedings under section 70 (o) of the Tenancy Act as they do not wish to take the benefit thereof and wish to pay premium irrespective of the outcome of the proceedings under section 70(o) before the High Court and/or the Apex Court, and would not seek the repayment thereof and, therefore, the Government would not suffer any loss on accepting the

premium. It was also pointed out that there is no legal bar in considering the application for conversion on payment of premium. The petitioners, thereafter, also submitted an affidavit dated 19.12.2011 stating that the petitioners are ready and willing to pay the premium and that they do not intend to take the benefit of proceedings under section 70(o) of the Tenancy Act. Despite the aforesaid position, the respondent authorities are not considering the application of the petitioners, which has given rise to filing of the petition being Special Civil Application No. 10553 of 2012."

4. By way of the impugned judgment dated 17.07.2013 passed in Special Civil Application No. 10553 of 2012, the learned Single Judge has allowed the petition directing the original respondent No. 2 -Collector, Surat to decide the original petitioners' application dated 19.02.2011, seeking conversion of land from new tenure to old tenure for non-agricultural use purpose on payment of premium as per the current policy of the Government within a period of four months from the date of receipt of a copy of the judgment. Hence, present appeal.

5. We have heard Mr. Kashyap Pujara, learned Assistant Government Pleader for the appellant and Mr. Amit V. Thakkar, learned advocate for respondent Nos. 1 to 6.

6. Relying upon the aforesaid peculiar facts and circumstances, Mr. Kashyap Pujara, learned Assistant Government Pleader for the appellants herein has argued that whenever the land in question was in a nature of restrictive tenure/ New Tenure land, the sale transaction could not have been executed by the tenant and even if the New Tenure came to be removed by the Mamlatdar then also the Mamlatdar was not competent to remove such restriction under the provisions of the Act. In that view of the matter, the learned Single Judge could not have directed the appellants to decide the petitioners' application dated 19.02.2011, seeking conversion of land from new tenure to old tenure for non-agricultural use purpose on payment of premium as per the current policy of the Government within

7. Against the aforesaid arguments, Mr. Thakkar, learned advocate for respondent Nos. 1 to 6 herein has argued that the proceeding initiated by the Mamlatdar under Section 70(o) of the Act is in accordance with the law and Mamlatdar was competent to decide the aforesaid issue. It is also submitted that from bare perusal of the order passed by the Mamlatdar, it appears that the same is in accordance with the provisions of the Act as the competent authority converted the aforesaid land from New Tenure to Old Tenure and there was no restriction of transfer of the land and therefore the aforesaid transaction entered into between the respondents herein with the original owner is in accordance with the provisions of the Act. Mr. Thakkar has further argued that even if there may be some dispute amongst the Government Officials as to whether the learned Mamlatdar was vested with the aforesaid power under Section 70(o) of the Act or not, that question also does not survive in view of insertion of Section 70A by way of the Gujarat Tenancy and Agricultural Lands (Amendment) Act,

2014. Mr. Thakkar has also submitted that pursuant to the impugned judgment, the State Authority has already fixed the premium for the land in question. However, the State Authority fixed double premium and therefore fresh premium in respect of the land in question is required to be fixed as per the prevailing policy of the State Government.

8. In view of the aforesaid factual scenario as well as rival submissions made by the learned advocates for both the parties, now the only question which arises for our consideration is as to whether the direction issued by the learned Single Judge is in accordance with the provisions of the Act or not?

9. We have perused the entire material made available to us as well as the proceedings initiated before the various revenue authorities and the various orders passed by the competent authority as well as the impugned judgment rendered by the learned Single Judge and the provisions of Section 70A, which came to be inserted by way of the Gujarat Tenancy and Agricultural Lands (Amendment) Act, 2014.

10. On examination of the record of the present appeal, it clearly reveals that the original owner was declared as the permanent tenant as the ancestors of the original tenant i.e. Bhavanbhai Naranbhai as well as Lallubhai Naranbhai were tenant since 1934-1935 i.e. prior to tillers" day i.e. 1st April 1957. Indisputably, it also reveals from the record that the name of original owner also came to be mutated in the revenue record and thereafter he moved an application for removal of the restrictive tenure of the aforesaid land and the aforesaid land was converted into Old Tenure Land and the restriction so far as the transfer of the land was removed by the learned Mamlatdar vide his order 20.02.2008 and thereafter the original owners executed a sale deed on 14.03.2008 and transferred the aforesaid land in favour of respondent Nos. 1 to 6 herein. Indisputably, on the date of transfer of the land, i.e. on 14.03.2008, the land in question was not of restrictive tenure i.e. new tenure land having no restriction for transfer. It also appears that thereafter questioning the competence of learned Mamlatdar to grant such permission, one chapter came to be initiated. In the meantime, as noted above and as vehemently argued by learned advocate Mr. Thakkar for the respondent Nos. 1 to 6, the Government has inserted Section 70A of the Act by way of the Gujarat Tenancy and Agricultural Lands (Amendment) Act, 2014. The said Section 70A reads thus:

"70A. In case where a person is or was declared as a permanent tenant under section 70 by the Mamlatdar and Agricultural Lands Tribunal and subsequently on the basis of such order sale or more than one sale in respect of the land in question has taken place and if thereafter the order declaring a person as the permanent tenant is found not in accordance with law, then, the Collector, on an application made by the present occupant in this regard, shall, subject to other provisions of this Act or any other law for the time being in force, proceed to impose the restrictions of section 43 of this Act in respect of such land and shall, after levying rupee one as the penalty and in consideration of payment of such

amount as may be determined by the State Government by general or special order from time to time, pass an order regularising such sale, subject to such conditions as may be specified by him."

11. In view of the aforesaid clear cut provisions of Section 70A, it clearly indicates that now the question as to whether the Mamlatdar has any power to remove the restriction or not has become irrelevant and even if the Mamlatdar has exercised the power of conversion of land from New Tenure to Old Tenure and thereafter if the transaction of sale has been taken place, the power to regularize such sale by levying rupee one as the penalty and in consideration of payment of such amount as may be determined by the State Government, is vested with the Collector in view of provisions of Section 70A.

12. In view of the above, in our opinion, the learned Single Judge has not committed any error while directing the appellants herein to decide the original petitioners' application dated 19.02.2011, seeking conversion of land from new tenure to old tenure for non-agricultural use purpose on payment of premium as per the current policy of the Government within a time frame. It appears that the State Government by way of amendment, inserted Section 70A in the Act, which makes it abundantly clear that the direction issued by the learned Single Judge is in accordance with law and in accordance with the provisions of Section 70A of the Act. Furthermore, Mr. Thakkar, learned advocate for the respondents has also submitted that the State Authority has already fixed the premium but as the State Authority has fixed double premium, it should be re-fixed by the State Authority in accordance with the law and as per the prevailing policy of the Government.

13. In view of the aforesaid factual as well as legal provisions, the order passed by the learned Single Judge is in accordance with law, which does not call for any interference by this Court. Therefore, the present appeal lacks merit and deserves to be dismissed. However, the interest of justice demands that the order of learned Single Judge shall be complied with by the State Government and the State Government shall re-fix the premium in accordance with the prevailing policy of the Government and the necessary challan be issued by the appellants to the respondents so that they may deposit the amount of premium within the statutory period of 21 days from issuance of challan. Demand note along with necessary challan shall be issued by the State Government within a period of six weeks from today.

With the aforesaid direction, the appeal stands finally disposed of.

14. In view of the order passed in main appeal today, the civil application does not survive and the same is accordingly disposed of.