

(1999) 11 GUJ CK 0034

In the Gujarat High Court

Case No : Letters Patent Appeal No. 227 of 1999 in Special Civil Application
No"s. 1123 of 1998 and 1710 of 1999

State of Gujarat

APPELLANT

Vs

Pravinbhai Bhailalbhai Gor

RESPONDENT

Date of Decision : 23-11-1999

Acts Referred:

Citation : (2000) 3 GLR 288

Hon'ble Judges : J.N. Bhatt, J;D.C. Srivastava, J

Bench : Division Bench

Advocate : A.J. Desai, AGP, for the Appellant; B.S. Patel, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—The short question which has been raised in this Letters Patent Appeal, challenging the judgment and order recorded by the learned single Judge on 1.9.98 in Special Civil Application No.1123 of 1998, whereby the the said petition filed by the respondent herein came to be allowed, is whether the ultimate conclusion recorded by the learned single Judge is in any way unjust, perverse or questionable or not ?

2. In order to examine the aforesaid question, a few skeleton projection of facts may be narrated, at first. The appellant is State of Gujarat on behalf of whom a show cause notice dated 29th November, 1997 under rule 108(6) of the Gujarat Land Revenue Rules came to be issued, inter alia, contending that there was breach and infraction of the provisions of sections 43 and 63 of the Bombay Tenancy and Agricultural Lands Act, 1948. One Mohanbhai had executed a will in favour of the respondent in this appeal on 15.2.86 and the executant of the Will Mohanbhai expired on 1.10.87 and the respondent herein-original petitioner, therefore, claimed that his name should be mutated in the revenue record. Therefore, on the basis of the said Will, after holding inquiry, the name of the original petitioner came to be recorded in the revenue record on 7.4.88 in respect of an agricultural land situated at village Pavelpur in Vadodara district.

3. The show cause notice dated 29.11.97 came to be issued in respect of the disputed land bearing revenue survey No.242 mutated in the revenue record by entry No.1085 which was also further approved and sanctioned on 28.3.89 and 11.3.92 respectively. It is, therefore, clear that almost after a lapse of more than 8 years, the show cause notice was issued by the Collector, Vadodara exercising his powers under rule 108(6) of the Gujarat Land Revenue Rules, on the ground that there was no prior approval of the competent authority required u/s 43 of the Act and as there was a transfer of the land by an agriculturist to a non-agriculturist violating the provisions of section 63 of the said Act.

4. The original petitioner straightway questioned the show cause notice by filing writ petition under Article 226 of the Constitution of India, inter alia, contending that there was no illegality and that there was inordinate delay in exercise of the powers by the Collector u/s 108(6) of the Gujarat Land Revenue Rules. The learned single Judge allowed the petition and quashed the impugned notice. Hence the original respondent, State of Gujarat has now come up before this Court by way of present Letters Patent Appeal invoking the aids of the clause 15 of the Letters Patent.

5. We have heard the learned advocates appearing for the parties. We have examined the facts and circumstances emerging from the record of the present case. One thing is quite certain and obvious that though the Collector is competent to exercise revisional powers invoking the aids of the provisions of rule 108(6) of the Gujarat Land Revenue Rules, if he finds that the authority below has committed some illegality or any order recorded by the authority below is unjust or perverse. However, it is settled proposition of law that although no period of limitation for exercise of such revisional is prescribed, it has to be exercised within a reasonable period of time for the simple reason that by passage of time or on advancement of the age of the dispute, the rights of the parties get crystallized and transfers also take place in between the period. The expression "reasonable period" as such is not statutorily defined. However, reasonable period would mean within a reasonable time and what will be the reasonable period in a given case would, obviously, depend upon the facts and circumstances of the case and the Court is obliged to consider the relevant facts and circumstances and for determining the expression "reasonable period" in each case. In the present case, the delay has occurred for more than 8 years. Nothing has been successfully shown on behalf of the appellant original respondent, State of Gujarat, as to why the exercise of power under rule 108(6) of the Rules is not done or is not taken in reasonable time or in other words, the reasons for inordinate delay for employing into the service the statutory powers of revision u/s 108(6) of the Rules. In absence of such reasons, one thing is very clear that the period of delay of about 9 years by no stretch of imagination could be said to be reasonable period. This aspect itself goes to the root of the matter. Since we have found that the Collector has failed to exercise the discretionary power of revision against the impugned order of the revenue authority within a reasonable period, the impugned order of directing cancellation of the mutation

entry in the name of the original petitioner could not be sustained. Since this ground itself is sufficient to throw the appeal overboard, it would not be necessary for us to divulge meticulously, at this stage, in this appeal, other aspects which the learned single Judge has gone into while determining the merits of the petition before him.

6. The principles which we have enunciated hereinabove are very much reinforced by a decision of the Hon"ble Apex Court and we cannot resist the temptation of mentioning it as it is one of the landmark judgment which holds the field. It is in the case of Raghav Natha v. State of Gujarat 10 GLR 992.

7. In the circumstances, this appeal deserves the only fate that is, dismissal. Accordingly, it is dismissed.

8. The Civil Application No.1710/99 is also rejected. Ad interim relief granted therein shall stand vacated.