

(1999) 06 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 9271 of 1998 with S.C.A. No's. 5707, 5709, 5852, 5954, 6188, 6190, 6790 and etc. of 1998

State of Gujarat

APPELLANT

Vs

Shamraji Chelaji Mari and Others

RESPONDENT

Date of Decision : 22-06-1999

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 84C

Citation : AIR 2000 Guj 30 : (1999) 3 GLR 2092

Hon'ble Judges : Y.B. Bhatt, J

Bench : Single Bench

Advocate : C.C. Bhalja, AGP in SCA 5707 and 5709/1998, D.N. Patel, AGP in SCA 6732 and 6911/1998 and S.J. Dave, AGP in SCA 9271, 5852, 5954, 6188, 6190, 6721, 6733, 6758, 6798, 6805 and 6808 of 1998, for the Appellant;

Final Decision : Dismissed

Judgement

Y.B. Bhatt, J.—This group of petitions can be disposed of by a common judgment and order inasmuch as there is a common question of law involved. The facts so far as they are relevant and pertinent to the application of the law on the subject are of almost no significance.

2. These are petitions filed by the State of Gujarat under Article 227 of the Constitution of India challenging the orders passed by the Gujarat Revenue Tribunal in different revision applications. However, all matters have a common root. It appears that the respondents in these group of petitions (the petitioners in revisions before the Gujarat Revenue Tribunal) are holders of agricultural land who have acquired such lands by appropriate transfers in their favour, and the mutation entries in their favour have been certified by the competent authority under the Bombay Tenancy and Agricultural Lands Act.

3. After a, long period of time, after the mutation entries in favour of the holders were certified, it appeared to the authority that such transfers were in violation of Sections 2(2), 2(6) and Section 63 of the Bombay Tenancy and Agricultural

Lands Act, and consequently suo motu revisions were initiated against the holders u/s 84-C of the said Act for declaring the transactions in question to be void and illegal. These proceedings (suo motu revisions) resulted in an order against the holders and the lands were directed to be vested in the Government. Against the said order the land holders preferred appeals before the Deputy Collector-Mamlatdar, which appeals came to be dismissed. It was against the dismissal of these appeals that the holders of the land filed revision applications before the Gujarat Revenue Tribunal, which were heard and allowed under the impugned judgment and order. The Tribunal allowed the revision applications purely on a question of law and it is this question which is now being agitated before this Court.

4. The short question of law involved is as to whether the suo motu revisional powers u/s 84-C can be exercised by the authority at any point of time, irrespective of the lapse of a number of years after the certification of the mutation entry in question, or whether there is any restriction as to the period after such mutation within which such powers can be exercised.

5. The earliest decision on this point is the decision of the Supreme Court in the case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, . It is pertinent to note that in the said decision the Supreme Court was dealing with a similar suo motu power of revision conferred on the authority u/s 211 of the Bombay Land Revenue Code. However, the fact that this was a different statute which was before consideration of the Supreme Court in that case would not affect the principle laid down. In this decision the Supreme Court held that although it is true that no period of limitation has been prescribed u/s 211 of the Bombay Land Reforms Code, it is plain that this power must be exercised within a reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order. In the context of this decision and in the context of Section 211 of the Bombay Land Revenue Code, the Supreme Court found as under (at p. 1301 of AIR) :

"Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few month of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operating at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on Oct. 12, 1961, i.e. more than a year after the order, and it seems to us that this order was passed too late."

5.1 This decision has been followed in two other decisions of this Court viz. in the case of *Bhanabhai Morarbai Solanki Vs. State of Gujarat*, and in the case of *Mavjibhai Dharsibhai and Others Vs. State of Gujarat and Others*, . It is pertinent to note that both these decisions specifically dealt with Section 84-C of the Bombay Tenancy and Agricultural Lands Act, and nevertheless this Court adopted the principle laid down by the Supreme Court in the case of *The State of Gujarat*

Vs. Patil Raghav Natha and Others, in the context of suo motu revisional powers u/s 211 of the Bombay Land Revenue Code. In the case of Mavjibhai Dharsibhai (supra), this Court also explained the concept of "reasonable time" within which the suo motu revisional powers can be exercised. It was also pointed out that although a period of one year can be said to be a reasonable time, such a reasonable period cannot be applied blindly as if it is a period of limitation prescribed by a statute, and it cannot be said that if such a period of one year has elapsed, the exercise of such revisional power cannot be justified under any or all circumstances. The said decision also points out that if such power is sought to be exercised beyond the aforesaid concept of reasonable time, after the entry pertaining to the so called invalid transaction in the revenue records is certified, the authority exercising such powers will have to justify the belated action. It could be that a fraud might have been committed with the authority, and such fraud might have come to light after the expiry of a long period of time (after the certification of the entry). In such a case the exercise of powers u/s 84-C of the Act might be found to be justifiable, but in such a case it would be for the authority initiating the proceedings u/s 84-C of the Act to justify the exercise of such powers after the lapse of such a long period.

5.2 On the facts of the case (in the present group of matters) learned counsel for the petitioner was put a specific query, in response to which learned counsel had to concede that there is nothing on record to indicate whatsoever that the authority seeking to exercise the revisional powers u/s 84-C has indicated in the slightest or most indirect manner that there was delay in exercising the revisional powers on account of any fraud and/or suppression of fact and/or misrepresentation indulged into by the land holders. On the facts of the case in the entire group of matters it is conceded that the delay (in this group of matters) ranges from 4 years to 11 years, which clearly exceeds the parameters of reasonableness as laid down by the decisions referred to hereinabove.

6. Learned counsel for the appellant has sought to rely upon all decision of the Supreme Court in the case of State of Orissa v. Brindaban Sharma , with a view to overcome the decisions referred to hereinabove. On a total consideration of the aforesaid decision, I am of the opinion that this attempt must fail.

6.1 The Supreme Court decision in the case of State of Orissa (supra) firstly deals with the specific provisions of the Orissa Estate Abolition Act, 1951 and more specifically Sections 5(1), 8(1), and 2(d) of the said Act in conjunction with Section 38B (as added in 1973). In the aforesaid context the Supreme Court held that Section 38B is not retrospective and that therefore the Board of Revenue can exercise revisional powers in respect of orders, decisions, etc. made prior to the coming into force of Section 38B, but the initiation of revisional power must be from and after coming into force of the said section. It is, therefore, obvious that the controversy before the Supreme Court in the said case was entirely on a different level and the interpretation of Section 38B was at the root of the controversy before the Supreme Court.

6.2 Even otherwise, in the case of *State of Orissa v. Brindaban Sharma* the Supreme Court ultimately held in paragraph 12 of the said decision, "when and under what circumstances the suo motu inquiry would be initiated and orders passed is left to the discretion of the Board of Revenue depending on the facts and circumstances of each case." Thus, in the ultimate analysis even if this decision is found to propound a principle which is analogous to the principle in question herein, the net effect thereof is no different than as laid down by this Court in the case of *Mavjibhai Dharsibhai and Others Vs. State of Gujarat and Others*, .

7. Learned counsel for the petitioners also sought to rely upon a decision of this Court in the case of *Jiviben Kalaji Bapuji v. State of Gujarat*, reported at (1998) 2 GLH 556.

7.1 Firstly it must be observed that this decision deals with certain provisions of the Bombay Prevention and Fragmentation and Consolidation of Holding Act, 1947, viz. Sections 6(2), 7 and 9 thereof. In this context the Court found that the suo motu proceedings in the instant case were initiated after unreasonable delay, and therefore the finding recorded to that effect by the Tribunal does not call for any interference by this Court.

7.2 Furthermore, in the said decision this Court while dealing with Section 84-C of the Bombay Tenancy and Agricultural Lands Act, also confirmed the principle that such powers should be exercised within a reasonable time. It may, however, be kept in mind that this decision does not refer to the earlier two decisions of this Court discussed hereinabove, and perhaps for this reason, does not elaborate any further on what could be said to be reasonable time in the context of Section 84-C of the said Act. This decision, therefore, does not assist the learned coun-sel for the petitioners at all.

8. Learned counsel for the petitioner further sought to rely upon another decision of this Court in the case of *Gangaben and Others Vs. Collector and Others*, . In this decision the Court was concerned with the exercise of revisional powers u/s 211 of the Bombay Land Revenue Code, and took note of the decision of the Supreme Court in the case of *Raghav Natha (supra)*. After having observed that the Supreme Court decision in the case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, is unexceptionable, and that therefore the action has to be taken within a reasonable time, the Court proceeded to examine the specific facts of the case, and it was on the specific facts of the case that it concluded that the suo motu action initiated u/s 211 could not be said to have been initiated after an reasonable and long time. Thus, even in the decision of *Gangaben D/o Hargovindbhai Vallabhbbhai (supra)* this Court has not deviated from the principle that suo motu revisional powers must be exercised within a reasonable time. As aforesaid, the said principle is subject only to the qualification that what is reasonable time can only be determined on the facts and circumstances of each case, and it is for the authority exercising such powers to establish that such powers are being sought to be exercised within a

reasonable time for justifiable reasons.

9. As aforesaid, so far as the facts of the present group of matters are concerned, there is not the slightest indication and or hint or suggestion that the authority seeking to exercise its suo motu revisional power u/s 84-C was justified in taking such action after a lapse of 4 to 11 years on account of any fraud, suppression of fact and/or misrepresentation indulged into by any of the land holders concerned.

10. Thus, in view of the well settled case law on the subject, I find that the impugned judgment and order of the Gujarat Revenue Tribunal in each of the matters in the group is unexceptionable and is required to be confirmed.

11. These petitions are, therefore, summarily rejected.