

(2017) 03 GUJ CK 0165
In the Gujarat High Court
Case No : 8236 of 2010

STATE OF GUJARAT & ORS

APPELLANT

Vs

LAKHUBEN MOHANBHAI PATEL & ANR.

RESPONDENT

Date of Decision : 27-03-2017

Acts Referred:

Citation : (2017) 03 GUJ CK 0165

Hon'ble Judges : K.M.Thaker

Bench : Single Bench

Advocate : MANAN MEHTA, N R DESAI, SP MAJMUDAR

Judgement

1. Heard Mr. Mehta, learned AGP for the petitioner - State, and Mr. Desai, learned advocate for the respondents.

2. In present petition, the petitioner - State has prayed, inter alia, that:- "9(A) To issue writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the order dated 12th March 2008 passed by the learned Tribunal in Review Application No.TEN/CA-17/06 in Revision Application No.TEAN/BA/331/91."

3. It has emerged from rival submissions and the details mentioned in the petition that agricultural land bearing survey No.62/1, 62/2, 62/3, 64/1, 64/2, 64/3 and 64/4 admeasuring about 14 acres and 12 gunthas situate at Palanpur, district Banaskantha, came to be sold to protected tenants namely Mali Manga Hala and Mali Mohan Mula in tenancy case No.13 of 1968 subject to the restrictions of Section 43 of the Act. Similarly, agricultural land of survey No.63/1 and 63/2 admeasuring 6 acres and 25 gunthas situated at Palanpur, district Banaskantha, were also sold to same persons in tenancy case No.211 of 1976 subject to the restrictions of Section 43 of the Act. 3.1 Subsequently, somewhere in 1989, the tenants/ purchasers filed application before the Mamlatdar & ALT which was registered as tenancy case No.70(o)/13/89 for declaration that they are permanent tenants and the restrictions under Section 43 should be removed.

The Mamlatdar allowed the application and declared the applicants permanent tenants vide order dated 30.6.1989. Against the said orders, three tenancy appeals came to be filed by relatives of Mali Manga Hala and Mali Mohan Mula claiming rights of co-tenancy and consequential rights. The Dy. Collector passed order dated 18.2.1991 in tenancy appeal No.71 of 1989 and while dismissing the appeal, the Dy. Collector cancelled the order passed by the Mamlatdar & ALT passed in tenancy case No.70(o)/13/89 dated 30.6.1989 removing the restrictions of Section 43 on the ground that the Mamlatdar & ALT has no authority to convert new tenure land into old tenure land. The Dy. Collector vide separate order dated 31.12.1991 dismissed other two tenancy appeals as well, i.e. tenancy appeal Nos.29 of 1991 and 30 of 1991.

3.2 Feeling aggrieved and dissatisfied by the orders in aforesaid tenancy appeals, revision application No.327 of 1991 came to be filed. Since the declaration of permanent tenant and removal of restrictions under Section 43 was set aside, Mali Manga Hala and Mali Mohan Mula also filed revision application which was registered as revision application No.331 of 1991. The learned Tribunal dismissed the revision application vide order dated 24.3.2006, however the learned Tribunal granted liberty to the applicants in revision application No.321 of 1992 and 330 of 1992 to file application under Section 70(b) of the Act and also passed direction to decide the issue of joint tenancy and other incidental issues after granting opportunity to the parties. Subsequently, review application was filed by Mali Manga Hala and Mali Mohan Mula. The learned Tribunal allowed the review application and directed the petitioner - State to accept the premium of the land which was transferred vide sale deed dated 7.7.1989.

3.3 The relevant and pertinent fact in this context is the direction by learned Tribunal that market price at the time of sale deed dated 7.7.1989 should be taken into account. Feeling aggrieved by the said order in review application, more particularly direction to take into account market value of the land as on the date of the sale deed dated 7.7.1989, the petitioner State filed present petition with above quoted relief.

4. The main ground of the State's grievance and challenge is found in paragraph No.3 of the order which reads thus:- "4. The petitioner submits that the impugned judgment and order passed by the learned Tribunal is contrary to law and patently illegal and null and void as the Tribunal has not taken into consideration that the premium is payable by the seller / transferor to the State Government after considering the market value of the land from the date of passing such order removing the restriction u/s 43 of the Act and not from the date of the transaction as the transaction made in the year 1989 is not legally valid. The said transaction was made in breach of the terms and conditions of the allotment of land in question. Therefore, premium required to be paid considering the market value at the time of passing such order permitting them to remove the restriction."

5. From the above quoted grievance of the petitioner - State, it comes out that

the petitioner mainly aggrieved by the fact that the learned Tribunal directed to take into account market value on the date of transaction and not on the date when the restrictions are removed or on the date of the order.

6. The grievance of the petitioner - State appears to be justified. At this stage, it is relevant to note that during pendency of the petition, the subsequent purchasers of the land in question, i.e. persons to whom Mali Manga Hala and Mali Mohan Mula sold the land preferred Civil Application No.2084 of 2012. The said application came to be filed by Lakhuben and Mafatlal. In the said application, the applicants prayed, inter alia, that:- "8(B) YOUR LORDSHIPS may be pleased to direct the concerned respondent authorities to accept the amount of premium from the present applicants at the rate prevailing on the date of the transaction with 12% interest with respect to the land in question. ALTERNATIVELY (C) YOUR LORDSHIPS may be pleased to direct the concerned respondent authorities to accept the amount of premium from the present applicant at the current market rate and as per the current Government Policy with respect to the land in question."

7. From the above relief prayed for by the applicants, it becomes clear that the applicants of said application expressed their readiness and willingness to pay current market rate according to current government policy.

8. Alongwith said application, said two applicants also filed another application i.e. Civil Application No.8249 of 2012 with a request to vacate ad-interim relief granted in main petition.

9. This Court considered the said two applications and passed order dated 11.4.2016, which reads thus:- "Mr.Taranjitsingh Wadhwa, learned Assistant Government Pleader, has tendered a communication dated 04.04.2016 issued by the Deputy Collector, Palanpur, which is taken on the record of the case. Mr.S.P. Majmudar, learned advocate for the respondents, submits that the respondents may be permitted to approach the Competent Authority for fixation of the amount of premium as per the market rates prevailing as of today.

It is open to the respondents to approach the Competent Authority in this regard. If the petitioners approach the Competent Authority, the said authority shall take a decision, in accordance with law. The Court shall be apprised of the decision, on the next date of hearing.

List on 22.06.2016."

10. In this background, today, at the time of hearing of present petition, learned AGP submitted that in present case, initially the Collector passed order dated 20.6.2016. He tendered a copy of said order (alongwith a compilation of communication dated 29.6.2016 and order dated 20.6.2016) and submitted that said order came to be passed since the respondents declared their willingness in affidavit dated 16.4.2016 and that therefore, having regard to the declaration that they are ready to pay premium at current rate and upon considering the

request by the applicants (respondents in main petition) to determine the amount of premium / market price based on current rate, the competent authority considered the request by the respondents and passed order dated 20.6.2016 which is followed by the order dated 27.2.2017. Learned AGP also submitted that vide order dated 27.2.2017 passed by the Dy. Collector in response to the request by the applicants expressing readiness and willingness to pay premium at current market price, the competent authority determined the amount payable towards premium/market price at Rs.520/- per sq. mt. and accordingly, the total amount was came to be quantified at Rs.23,27,910/-.

11. Learned counsel for the respondents submitted that they have paid the said entire amount i.e. Rs.23,27,910/- on 20.3.2017.

12. Mr. Mehta, learned AGP also submitted that he has received instructions from the concerned authority that original respondents have paid entire amount determined by the competent authority vide order dated 27.2.2017.

13. In this background, Mr. Mehta, learned AGP submitted that the grievance raised by the petitioner in present petition came to be addressed and resolved when the respondent submitted and expressed their willingness to pay price / premium at current market rate and declared, as recorded by the Dy. Collector in his order dated 20.6.2016, that they are ready to pay the premium at current rate and with such declaration they requested the authority to determine the amount so that such amount which may be determined can be paid by the respondents. He further submitted that accordingly the competent authority proceeded in the matter after taking into account the order dated 11.4.2016 passed by the Court and the competent authority passed order dated 27.2.2017. He further submitted that in view of the fact that the amount calculated by Dy. Collector vide order dated 27.2.2017 is paid by the respondents, the cause to prosecute the petition now, does not survive, and upon payment of amount quantified by the authority vide order dated 27.2.2017, cause to file and prosecute the petition has come to an end and the petition is accordingly rendered infructuous. He also submitted that in this view of the matter, the petition may be disposed of on the ground that cause to prosecute the petition does not survive.

14. Therefore, following order is passed:- [a] In view of above mentioned submissions by learned AGP and in view of declaration by the learned counsel for the respondents that entire amount as quantified by the Collector vide order dated 27.2.2017 is paid without any objection, the petition is disposed of on the ground that according to learned AGP's statement the cause to prosecute the petition does not survive. Petition accordingly stands disposed of. Rule is discharged. If any interim relief is in operation, it stands vacated forthwith.