(2003) 04 GUJ CK 0051

In the Gujarat High Court

Case No : Special Civil Application No 3415 of 2003

Subhashbhai Premaji APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Citation : (2003) 4 GLR 689

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : P.M. Bhatt, for the Appellant; K.T. Dave, Ld. AGP for Respondent Nos. 1-3, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr.K.T.Dave, learned AGP waives service of notice of rule on behalf of the respondents No.1, 2 and 3.

2. The present petition is preferred by the petitioner for appropriate relief to quash and set aside the order dated 31-3-2003 passed by the Secretary, Revenue Department and the order dated 29-6-2002 passed by the Collector for declaring that the land was restricted new tenure land and subsequently for setting aside of the entry No.4054.

3. Heard Mr.A.J.Patel, learned Counsel for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No.1, 2, and 3.

4. The contention raised on behalf of the petitioner is that the petitioner purchased the property on 21-6-1997 and thereafter there was a consent decree. He submitted that the predecessor in title of the petitioner, respondent No.3 herein, had paid the premium and the land was mutated as unrestricted tenure and, therefore, the transaction of the sale cannot be said to be illegal. He further submitted that the allotment of the land to the predecessor in title of the petitioner was available and, therefore, it cannot be said that so far as the petitioner is concerned the property is purchased without permission. Because as

such as per the revenue record no permission was required at the relevant point of time and for the first time as per the order dated 29-6-2002 passed by the Collector the land is declared as restricted tenure and, therefore, the entry effected in sale is cancelled. He submitted that the petitioner had carried the matter before the Special Secretary. However, even the Special Secretary considered only one aspect that whether it is old tenure or new tenure and dismissed the revision application. Mr.Patel submitted that keeping all the disputes aside, even if the land is treated as new tenure, the petitioner has purchased the land on 21-6-1997 and he is agreeable to pay the premium as may be fixed by the competent authority together with the interest at the bank rate so that the cloud over the possession of the property can be removed for all time to come and, therefore, he submitted that if such direction is given, the petitioner would be satisfied for the present.

5. On behalf of the respondents No.1 to 3, learned AGP has supported the order. However, he submitted that since no such request was made, the matter is not considered accordingly so far as the willingness on the part of the petitioner to offer the premium is concerned. He submitted that as such till then the entry cannot be allowed to remain on record, but the entry may be suspended for some time.

6. Considering the above, it appears that the land earlier in the revenue record, may be by mistake, was not shown as unrestricted tenure and, therefore, the petitioner who has purchased the property on 21-6-1997 can be said to be bonafide in purchasing the land at that time. The petitioner has purchased the property and when the entry came to be mutated for such purpose for effecting the sale the dispute arose and the matter was examined. It may be that the land may genuinely be restricted tenure, but at the same time, the petitioner cannot be said to be party to such action, because in the revenue record it was not accordingly stated at the relevant point of time. The noting of the revenue record is for the first time declared on 1-6-2002 by the Collector as restricted tenure and prior that to relying upon the earlier noting of the revenue record, the petitioner had already purchased the property. Even otherwise also even if the person is holding the restricted tenure land there is no 100% bar on disposal of the property but the requirement is that prior permission is required to be obtained. Mr.Dave, learned AGP has also submitted that if the premium is paid normally the permissions are being granted for disposal of the property and the purpose is that the Government interest by recovering the premium which may be fixed by the authority is protected.

7. In view of the aforesaid, in my view, considering the peculiar circumstances that after the sale of the property in question the revenue authorities themselves detected the illegality in their own record and when there is a policy of the Government to grant permission for sale on condition to pay premium, no serious prejudice will be caused if the matter is considered by the Collector for regularizing the sale by converting the said area as unrestricted tenure, but at

the same time it would be open to the Collector to fix the premium in accordance with law for granting such permission and for regularization of the transaction in question. Since the petitioner cannot be said to be at fault for the purpose of any illegality in the restricted tenure of the land or unrestricted tenure of the land and even otherwise also since the transaction has taken place on 21-6-1997, in my view, the Collector should consider the matter for fixing the premium of the land in question as it was prevailing on the date when the transaction took place i.e. 21-6-1997 and the Collector can also recover interest at the rate of 12% from 21-6-1997 till the actual payment of premium.

8. Considering the above and in view of the aforesaid discussion, I find that the following directions shall meet with the ends of justice:

8.1 The petitioner shall submit the application for grant of permission and/or regularization to the Collector, Ahmedabad by showing his willingness to pay the requisite premium of the land in question as may be fixed on 21-6-1997 i.e. the date on which the sale transaction took place and the interest as aforesaid within one month from today.

8.2 If such application is made to the Collector, Ahmedabad, the Collector, Ahmedabad shall decide the same in accordance with law, keeping in view the observations made by this Court hereinabove and the policy prevailing of the government premium. He shall render the decision within a period of three months from the date of receipt of such application.

8.3 The other portions of the order passed by the Collector dated 29-6-2002 and the order of Special Secretary dated 21-3-2003 are not further required to be examined at this stage and the entry No.4054 dated 11-6-1998 and further the change in the revenue record pursuant that to shall remain suspended until the decision is rendered by the Collector and shall be given effect thereafter in accordance with the decision of the Collector or in other process known to law.

9. The petition is allowed only to the aforesaid extent. Rule made absolute accordingly. No costs.

