
(2016) 04 GUJ CK 0043

In the Gujarat High Court

Case No : Special Civil Application No. 8494 of 2000

Surajben Shankarbhai Patel and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 65
Constitution of India, 1950 — Article 226, Article 227

Citation : (2016) 04 GUJ CK 0043

Hon'ble Judges : Abhilasha Kumari, J.

Bench : Single Bench

Advocate : Trusha K. Patel, Advocate, for the Appellant; Taranjitsingh Wadhwa, Asst. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—1. The present petition under Articles-226 and 227 of the Constitution of India has been preferred, challenging the order dated 25.06.1995, passed by the Deputy Collector, Viramgam Prant, Ahmedabad, whereby the land of the petitioners, bearing Survey No. 200/1, admeasuring 1821 sq.mtrs., situated at Village Kali, Taluka Daskroi, Ahmedabad, has been confiscated, in exercise of power under Section-65 of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Act", for short).

2. Briefly stated, the facts of the case are that, according to the petitioners, the above-mentioned agricultural land belongs to them and they are the owners and occupants thereof. Village Form No. 7/12 reflects the ownership and occupancy of the petitioners upto the time when revenue entry No. 1544 was posted on 29.08.1998 and certified on 02.01.1999. As per this entry the land stands forfeited to the State Government, by the impugned order of the Deputy Collector, on the ground that it remained uncultivated during the years from 1984-1985 to 1990-1991. The Deputy Collector issued a notice dated 08.06.1994 to the predecessors-in-title of the present petitioners. In the said

notice, it is stated that as the land has remained uncultivated during the years mentioned hereinabove, an explanation be rendered why it should not be confiscated to the State Government in exercise of power under Section-65 of the Act. The petitioners contested the notice and denied the assertion that there had been no agricultural activities over the land, during the relevant periods of time. It was also submitted on behalf of the petitioners that they had not been granted an opportunity to controvert the Inquiry Report prepared on the basis of a Panchnama, that the land had remained fallow. The submissions of the petitioners did not find favour with the Deputy Collector, who passed the impugned order, confiscating the land under Section-65 of the Act.

3. It is relevant to note that Section-65 of the Act now stands deleted from the statute book by an amendment, vide Government Notification dated 08.07.2009. Of equal relevance and significance is the fact that the land in question has been included in the Kali-Chenpur Town Planning Scheme No. 19 and has been given Final Plot No. 59, resulting in a change in the area from 1821 sq.mtrs. to 1275 sq.mtrs. A notice to this effect has been issued by Ahmedabad Urban Development Authority dated 01.02.2000.

4. In the above factual background, Ms. Trusha K. Patel, learned advocate for the petitioners, has made detailed submissions, which are briefly reflected hereinbelow.

4.1 It is submitted that under Section-65 of the Act, the Deputy Collector has no power to confiscate the land but only to assume the management of the land, and that too for a maximum period of ten years. By virtue of the amendment in the Act by a Notification dated 08.07.2009, Section-65 has been deleted. The effect of the deletion is that there is no machinery available with the Deputy Collector to manage the land for ten years, therefore, the land is required to be surrendered back to the petitioners, who are the original owners.

4.2 It is further submitted that the Deputy Collector, while passing the impugned order, has relied upon a Panchnama, which is an ex-parte one. The said Panchnama has been drawn behind the backs of the petitioners, who were not even given a copy of it. Such action violates the principles of natural justice.

4.3 Learned counsel for the petitioners has submitted that the impugned order dated 25.06.1995 is an illegal one, having been passed beyond the jurisdiction vested in the Deputy Collector vide Section-65, therefore, there is no question of delay in challenging an inherently illegal order.

4.4 That the notice issued to the petitioners before the passing of the order is also bad in law as it speaks of confiscation of the land, which cannot be done under Section-65. Besides, the notice has been collectively sent to three persons which cannot be done. The entire proceedings, therefore, are illegal and contrary to law.

4.5 It is urged that the submissions advanced on behalf of the petitioners

regarding the aspect that there can be no confiscation of the land, have not been dealt with by the Deputy Collector. It is submitted that, as the impugned order is contrary to law, it deserves to be quashed and set aside and the land may be returned to the petitioners.

4.6 In support of the above submissions, learned counsel for the petitioners has placed reliance upon several judgments, the relevant of which shall be discussed later.

5. Mr. Taranjitsingh Wadhwa, learned Assistant Government Pleader, has submitted that the petition has been filed after five years of the passing of the impugned order. It is, therefore, delayed. Learned Assistant Government Pleader has contended that the land has rightly been confiscated and there is no flaw in the impugned order of the Deputy Collector.

6. This Court has heard learned counsel for the respective parties at length and considered the factual and legal issues involved in the matter.

7. Section-65 of the Act, as it then stood, reads as below:

"65. (1) If it appears to the (State) Government that for any two consecutive years, any land has remained uncultivated (or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control) the (State) Government may, after making such inquiry as it thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.

[(1A) The assumption of management of land under sub-section (1) on the ground that the full and efficient use of the land has not been made for the purpose of agriculture shall be for such period shall not exceed ten years in the aggregate.)

(2) On the assumption of the management, such land shall vest in the (State) Government during the continuance of the management and the provisions of Chapter IV shall mutatis mutandis apply to the said land:

(Provided that the manager may in suitable cases give such land on lease as rent even equal to the amount of its assessment:

Provided further that, if the management of the land has been assumed under sub-section (1) on account of the default of the tenant, such tenant shall cease to have any right or privilege under Chapter II or III, as the case may be, in respect of such land, with effect from the date on and from which such management has been assumed.)"

8. A perusal of the above provision of law goes to indicate that if, for a consecutive period of two years any agricultural land has remained uncultivated, the State Government may, after making inquiry assume the management of the land. However, such assumption cannot exceed a period of ten years. It is only

during the ten years of assumption that the land would vest in the State, but not thereafter. This provision does not speak of the confiscation of the land permanently to the State.

9. The legal position in this regard is no longer *res integra*. In a judgment dated 09.04.2004, passed in Special Civil Application No. 10819/1994, the judgment dated 31.03.2004, passed in Special Civil Application No. 12120/1993, (Coram: Mr. M.R. Shah, J.) and the judgment dated 06.12.2013, passed in Special Civil Application No. 12437/2000, (Coram: Mr. Rajesh H. Shukla, J.) this Court has held that under Section-65 of the Act, the State Government has no power or jurisdiction to confiscate the land in question, permanently. The section vests only the power to assume the management of the land for a maximum period of ten years and nothing more than that.

10. The same view is taken in the judgment dated 17.10.1985, passed in Special Civil Application No. 448/1982, wherein this Court has further held that a Panchnama prepared behind the backs of the petitioners violates the principle of *audi alteram partem*.

11. Learned counsel for the petitioners has also relied upon a judgment dated 02.07.2012 of the Division Bench in Letters Patent Appeal No. 1380/2003 in Special Civil Application No. 15551/2003 and connected matters, wherein the above position of law has been confirmed.

12. Considering the above position, this Court has no hesitation in arriving at the final conclusion that the impugned order of the Deputy Collector is illegal and beyond the scope of the power vested in him by Section-65 of the Act, as it then stood, as no power has been vested for the permanent confiscation of the land in question. The management of the land can be assumed for a maximum period of ten years only. Beyond that period, the State Government has no power to take over the land. An illegal order is non-est in the eyes of law and can be challenged at any point of time, therefore, it cannot be said that there is a delay of five years in filing the petition, or that the petition ought not to be entertained on this ground. This submission on the part of the learned Assistant Government Pleader has no force. In any case, there is no reply to the legal aspect that Section-65 of the Act does not empower the permanent confiscation of the land.

13. The petitioners were not given a copy of the Panchnama which was prepared behind their backs. The Panchnama has been relied upon by the Deputy Collector while passing the impugned order. This action clearly offends the principles of natural justice.

14. The above discussion makes it clear that the petitioners have a good case on merits, which deserves to succeed. The impugned order is contrary to law and now, after the deletion of Section-65, there is no machinery available with the State Government to assume the management of the land in question. The land, therefore, is required to be surrendered back to the petitioners.

15. The petition succeeds and is allowed. The impugned order is hereby quashed and set aside. The State Government shall surrender the land in question to the petitioners, forthwith. Rule is made absolute, as above.