

(2008) 01 GUJ CK 0064

In the Gujarat High Court

Case No : Special Civil Application No. 27049 of 2007 and Civil Application No. 15514 of 2007

The Collector

APPELLANT

Vs

Sardar Samudaik Khet Sahakari Mandli Limited and Others

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226(3)
Gujarat Agricultural Lands Ceiling Act, 1960 — Section 29 , 30

Citation : (2008) 01 GUJ CK 0064

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : J.K. Shah, AGP, for the Appellant; S.N. Shelat and Mihir Thakore and Mitul K. Shelat, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Leave to amend the cause title of the petition is granted.

2. The petitioner herein is the State of Gujarat, and has filed this petition through the Collector, Gandhinagar, challenging the legality of the order

dated 17.7.2006, passed by the Joint Secretary (Appeals), Revenue Department (respondent No. 2), in Revision Application No. 23 of 2006. By

the impugned order, though the respondent No. 2 has dismissed the revision application of the Sardar Samudaik Khet Sahakari Mandali Limited

(respondent No. 1) on the ground of delay, certain directions have been issued regarding fixation of premium, pursuant to the application filed by

the respondent No. 1, before the Collector.

3. Briefly stated, the facts emerging from a perusal of the petition are, that the respondent No. 1, which is a society registered under the provisions

of the Gujarat Cooperative Societies Act, was allotted land bearing Block Nos. 1079 and 679 admeasuring 0 Hectare, 57 Are and 08 sq.mtrs.

and 3 Hectare, 63 Are and 88 sq.mtrs., situated at village Santej, Taluka: Kalol, District: Gandhinagar, vide order dated 25.8.1980, on new tenure

basis, under the provisions of Section 29 of the Gujarat Agricultural Lands Ceiling Act, 1961 ("the Act" for short). In the year 2001, the

respondent No. 1 made an application to the Mamlatdar, Kalol, for converting the said land from new tenure land to old tenure land. By an order

dated 02.6.2001, the Mamlatdar allowed the application and passed an order converting the land from new tenure to old tenure, with certain

conditions, only for agricultural purposes. According to the conditions stipulated in the order dated 2.6.2001 of the Mamlatdar, the permission for

non-agricultural use of the land could be obtained from the competent authority, i.e. the Collector, upon payment of the amount of premium. This

order of the Mamlatdar was confirmed by the Prant Officer, vide order dated 11.2.2003.

4. It is averred in the petition that the respondent No. 1 made an application dated 23.8.2002 to the Collector, Gandhinagar, for fixing the amount

of premium for conversion of land from agricultural to non-agricultural use. The Collector rejected the said application by an order dated

14.7.2003 on the ground that the initial order of conversion of tenure dated 2.6.2001, passed by the Mamlatdar was without jurisdiction, inasmuch

as the Mamlatdar could not have decided any application for conversion of tenure of land granted u/s 29 of the Act since, by Government

Resolution dated 10.5.2001, the authority to decide such applications for conversion of tenure was conferred only upon the Prant Officer. It is the

case of the petitioner, that only the Prant Officer who could have exercised the power of conversion of tenure, and that, too, independently, but not

while reviewing the order of the Mamlatdar. The respondent No. 1, being aggrieved by the order dated 11.2.2003 passed by the Prant Officer,

imposing certain conditions, preferred Revision Application No. 23 of 2006 before the Joint Secretary (Appeals), Revenue Department, and also

prayed that the Collector be directed to decide the application regarding determination of premium, which authority, vide impugned order dated

17.7.2006, dismissed the said revision application on the ground of delay. It is the case of the petitioner that after having dismissed the revision

application on the ground of delay, the respondent No. 2 has proceeded to issue certain directions to the Collector, regarding fixation of the

amount of premium to be paid by the respondent No. 1 which could not have been done. It is mainly this part of the order of the respondent No. 2

that the petitioner is aggrieved by.

5. This Court (Coram: Ravi R.Tripathi, J.) had issued Rule on 19.10.2007 and had granted interim relief in terms of paragraph 9(C) of the petition.

During the pendency of the Special Civil Application, the respondent No. 1 has preferred Civil Application No. 15514 of 2007, under Article

226(3) of the Constitution of India, praying for the vacation of the exparte ad-interim relief granted by this Court vide order dated 19.10.2007

passed in the Special Civil Application. A Reply has been filed to the Civil Application by the original petitioner, to which a rejoinder has also been

filed by the applicant.

6. Today, during the course of hearing of the Civil Application filed by the respondent No. 1, both the sides have addressed arguments at length

and have agreed that it would be in the fitness of things if the Court proceeds to decide the writ petition, finally. In view of the consent of the parties

and in the facts and circumstances of the case, the writ petition and the Civil Application are being heard and finally decided today.

7. Mr.Jaswant K.Shah, learned Assistant Government Pleader for the petitioner in the Special Civil Application, has made the following

submissions in support of the prayers made in the petition:

(i) It is submitted by Mr.Shah that the respondent No. 1 as well as another society by the name of Vivekanand Samudaik Sahakari Kheti Mandali

Limited, were granted land vide order dated 25.8.1980. At that point of time, the name of the respondent No. 1 was Rakanpur Santej

Ranchodpura Group Harijan Shramjivi Kheti Sahakari Mandali Limited, Rakanpur. The respondent No. 1 changed its name to Sardar Samudaik

Khet Sahakari Mandali Limited on 15.9.2002. It is submitted by Mr.Shah that in the year 2001, the respondent No. 1 made an application to the

Mamlatdar for conversion of the land from new tenure to old tenure. The Mamlatdar passed an order dated 2.6.2001, accepting the application of

the respondent No. 1 for conversion of land to old tenure, for agricultural purposes only, subject to certain conditions which are stipulated in the

said order. This order was approved by the Prant Officer, vide order dated 11.2.2003. According to the learned Assistant Government Pleader, the Mamlatdar had no power to decide an application for conversion of land from new tenure to old tenure since, by Government Resolution dated 10.5.2001, that power had been conferred upon the Prant Officer. It is contended by Mr.Shah that, even assuming that the Mamlatdar had the power to decide such an application by virtue of the earlier Government Resolution dated 19.10.2000, the same had come to an end by the coming into force of the Government Resolution dated 10.5.2001. It is further contended that the Prant Officer is empowered to exercise the power of conversion independently, at the initial stage, after the coming into force of the Government Resolution dated 10.5.2001, but he could not have exercised the same while reviewing and confirming the order of the Mamlatdar, as has been done by order dated 11.2.2003 and, therefore, the order of the Mamlatdar dated 2.6.2001, as confirmed by the Prant Officer vide order dated 11.2.2003, is not in conformity with the Government Resolution dated 10.5.2001 and, therefore, is not sustainable in law.

(ii) The second contention raised by Mr.Jaswant K. Shah is that the respondent No. 1 made an application dated 23.8.2002 to the Collector requesting for the conversion of the land in question for non-agricultural use and for fixation of the amount of premium for this purpose, which application was rejected vide order dated 14.7.2003. According to the learned Assistant Government Pleader, this fact was not disclosed by the respondent No. 1 before the revisional authority. It is submitted that the order of the Collector dated 14.7.2003 was not challenged in the revision application, and it was the order dated 11.2.2003 of the Prant Officer that was the subject matter of revision, and, therefore, by order dated 17.7.2006, the revisional authority has wrongly proceeded to issue directions to the Collector to decide the fixation of premium regarding the land of the respondent No. 1, which could not have been done, especially because the revision application had been dismissed on the ground of delay.

It is further emphasized by Mr.Shah that the respondent No. 1 was aware of the rejection of the application dated 23.8.2002, which is clear from the letter dated 19.4.2006 annexed as Annexure-R6 to the reply of respondent No. 1 to the petition, wherein a prayer has been made to reopen

the said application. In the light of this fact, the respondent No. 2 could not have issued directions for fixation of the amount of premium after

having dismissed the revision application on the ground of delay.

(iii) The third contention advanced by the learned Assistant Government Pleader is that the grant of land to the respondent No. 1 was made under

the provisions of Section 29 of the Act, and therefore, the same is subject to the restrictions imposed under the provisions of Section 30 of the

Act, which deals with registration on transfer or sub-division of land allotted u/s 29 thereof. According to Mr.Shah, the impugned order dated

17.7.2006 is in violation of the provisions of Section 30 of the Act, inasmuch as it has directed the Collector to fix the amount of premium, without

taking into consideration the restrictions imposed by the provisions of Section 30, and also since the application of the respondent No. 1 had been

rejected by the Collector.

(iv) Lastly, it is emphasized by Mr.Shah that the respondent No. 2, after having dismissed the revision application filed by the respondent No. 1 on

the ground of delay, could not have issued any further direction to the Collector for fixation of the amount of premium. It is submitted that even

assuming that directions could have been issued, the only direction which could have been issued to the Collector was to consider the application

of the respondent No. 1, and nothing further. It is emphasized by Mr.Jaswant K.Shah that by the communication dated 19.4.2006 (at page 61 of

the paper-book) addressed to the Collector, the Respondent No. 1 has made a prayer for re-opening the application and even on the basis of this

prayer, the respondent No. 2 could not have issued any further directions to the Collector, other than a direction to consider the application of the

respondent No. 1.

8. Mr.S.N.Shelat, learned Senior Advocate with Mr.Mitul K.Shelat, appears on behalf of the respondent No. 1 in the Special Civil Application

and for the applicant in the Civil Application. He has submitted that the order of the Mamlatdar dated 2.6.2001 has been passed bona fide and

does not suffer from any infirmity as he was exercising power under the Government Resolution dated 19.10.2000. It is pointed out by the learned

Senior Advocate that on the date of passing of the order dated 2.6.2001, the Mamlatdar was not aware of the Government Resolution dated

10.5.2001. It is submitted that at the relevant point of time when the application was made for the conversion of land to old tenure, the Mamlatdar

was empowered to decide the said application. The Government Resolution dated 10.5.2001 had not been received in the office of the Mamlatdar

on the date of passing of the order. It is contended that there is no infirmity in the order of the Mamlatdar, since it has been passed in the absence

of any knowledge of the Government Resolution dated 10.5.2001, which was only received in his office on 10.6.2001. In support of this

submission, reliance has been placed on a judgment of the Supreme Court in Garware Nylons Ltd. Vs. Collector of Customs and Central Excise,

Pune, in which it has been held that the effective date for publication of the notification can be said to be the date on which it is made known to the

public. In that case, the notification in question was published in the official Gazette on 30.9.1985 but the copy of the Gazette became available for

public sale only on 1.11.1985. The Supreme Court, therefore, held that the effective date of publication of the notification dated 30.9.1985 was

1.11.1985. It is further submitted by Mr.Shelat that, in any case, the Government Resolution dated 10.5.2001, whereby the Mamlatdar has been

divested of the power to decide the application for conversion of land into old tenure, has conferred this power upon the Prant Officer. In the

present case, the Prant Officer, by an order dated 11.2.2003, has confirmed the order of the Mamlatdar and, therefore, the order of the

Mamlatdar has now merged into the order of the Prant Officer, who is the competent authority as per the Government Resolution dated

10.5.2001. Mr.Shelat has emphasized that at best, even if it is assumed that the Mamlatdar had exercised power not available to him, such action

has been taken bona fide and under a genuine belief that he had the power to decide the subject matter of the application. At the most, it can be

said to be an irregularity but not an illegality, which has now been cured by confirmation of the order of the Prant Officer.

9. It is further contended by Mr.Shelat that the Collector has not rejected the application of the respondent No. 1 on merits, but has rejected it on

the ground that the Mamlatdar did not have the power to decide the application regarding conversion of land. He has drawn the attention of the

Court to the relevant part of the order of the Collector dated 14.7.2003 wherein it is stated that because the Mamlatdar did not have the power to

decide the application of the respondent No. 1, the Collector was desirous of preferring a revision application against the said order, as confirmed

by the Prant Officer. Mr.Shelat has submitted that not only has the order of the Mamlatdar dated 2.6.2001 remained unchallenged by the

petitioner, but there is also no challenge to the order dated 11.2.2003 of the Prant Officer, whereby the order of the Mamlatdar has been

confirmed. The Collector has not filed any revision application against the order of the Mamlatdar or the Prant Officer which was the sole ground

for rejection of the application of the respondent No. 1. It is submitted by the learned Senior Advocate that the petitioner has remained silent from

2001 till the filing of the present petition and, for the first time, challenge has been made to the order of the Mamlatdar, as confirmed by the Prant

Officer, in the present petition.

10. The learned Senior Advocate has brought to the notice of the Court, the order dated 1.5.2007 passed in Special Civil Application No. 11489

of 2007 which had been filed by a similarly situated cooperative society, i.e. Vivekanand Samudaik Khet Sahakari Mandali Limited, wherein the

Assistant Government Pleader had submitted that the Collector will finally decide the amount of premium expeditiously, in accordance with law,

and on this statement, the Court had issued directions to the Collector to fix the amount of premium for the land in question. It is submitted that the

petitioner cannot now take a different stand in the present petition, since the respondent No. 1 is similarly situated as the petitioner in Special Civil

application No. 11489 of 2007.

11. Regarding the contention of the learned Assistant Government Pleader that no directions could have been given to the Collector by the

respondent No. 2 to fix the amount of premium after having dismissed the revision application on the ground of delay, Mr.Shelat has submitted that

the order under challenge in the revision application was dated 11.2.2003 of the Prant Officer and not the order of the Collector. As a superior

officer, the respondent No. 2 can direct the Collector to decide the application for fixation of premium and the said authority has not exceeded its

jurisdiction in issuing this direction. It is pointed out that the order of the Mamlatdar, as confirmed by the order of the Prant Officer, has attained

finality since the revision against the same has now been dismissed and,

therefore, the respondent No. 2 was within his rights in issuing directions to the Collector for fixation of premium.

12. The learned Senior Advocate has further submitted that the provisions of Section 30 of the Act pertain to transfer of land which has no relevant to the application of the petitioner, which is for the conversion of the land for non agricultural use, therefore, it cannot be said that the impugned order is violative of the provisions of Section 30 of the Act.

13. Mr.S.N.Shelat has further submitted that the letters dated 12.1.2007 and 11.6.2007, annexed as Annexure-R3 to the reply filed by the original petitioner to Civil Application on which reliance has been placed by the learned Assistant Government Pleader, will not be applicable to the case of the respondent No. 1 since, they are neither in the nature of executive instructions nor in the nature of subordinate legislation and therefore, cannot be given retrospective effect. He has submitted that at the time of the decision of the application of the respondent No. 1 by the Mamlatdar, these letters were not in existence and, therefore, cannot be pressed into service by the petitioner at this point of time.

14. Another submission made by the learned Senior Advocate is that this Court may pass an order, similar to order dated 1.5.2007 passed in Special Civil Application No. 11489 of 2007. However, that order was passed on the basis of the statement made by the learned Assistant Government Pleader in that case, whereas, the same is not the situation in the present case, therefore, this Court is of the view that it would be proper to pass an order on merits, after hearing the parties.

15. After having heard the learned Counsel for the parties at length and in great detail and after having gone through the material on record, the first issue which falls for the adjudication of the Court is whether, or not, the order of the Mamlatdar dated 2.6.2001 is sustainable in law, in view of the fact that, on the date of the passing of the order, the power to decide an application for conversion of land had been vested in the Prant Officer by Government Resolution dated 10.5.2001. The contentions raised by the petitioner are inextricably linked with this issue and the decision of the Court on this point will have a bearing on the other contentions as well.

16. It is not in dispute that vide Government Resolution dated 19.10.2000, the Mamlatdar or the Prant Officer had been conferred with power to

decide an application for conversion of land from new tenure to old tenure. This fact is evident from a reading of the Government Resolution dated 19.10.2000 which is annexed as Annexure-R3 to the affidavit-in-reply filed on behalf of the respondent No. 1. It is also not in dispute that the Government Resolution dated 10.5.2001, whereby the Mamlatdar has been divested of the power to decide an application for conversion of land, was received in the office of the Mamlatdar only on 10.6.2001, as is evident from a copy of the Inward Register annexed as Annexure-R10 to the reply-affidavit filed by the respondent No. 1. This aspect has not been denied by the learned assistant Government Pleader. It is, therefore, clear that the Mamlatdar decided the application of the respondent No. 1 for conversion of land, exercising powers conferred upon him by Resolution dated 19.10.2000, since on the date of decision, i.e. 2.6.2001, the Mamlatdar was not aware of the issuance of the Government Resolution dated 10.5.2001. It is not as though, the Mamlatdar was exercising power which he had reason to believe, was not available to him. In fact, the material on record substantiates the view that the Mamlatdar was exercising power conferred by the previous Resolution in the absence of any knowledge of the subsequent one. It is not the case of the petitioner that the Mamlatdar was aware of the contents of the Government Resolution dated 10.5.2001 whereby only the Prant Officer has been conferred the power to decide an application for conversion of land. Had that been the case, then the matter would have assumed a different dimension. However, from the facts of the case, it is evident that the Mamlatdar, while passing the order dated 2.6.2001, was unaware of the fact that by subsequent Government Resolution dated 10.5.2001, he had been divested of the power to decide an application for conversion of land and only the Prant Officer has been conferred that power. It is, therefore, evident that the Mamlatdar has passed order dated 2.6.2001 under a genuine and bona fide belief that he was empowered to do so and in the absence of any knowledge to the contrary. The Government Resolution dated 10.5.2001 was received in his office on 10.6.2001, i.e. after the passing of the order in question. At best, this can be considered to be an irregularity and not an illegality so as to vitiate the order. Even otherwise, the irregularity, if any, does not survive since the Prant Officer, who is the empowered authority under the Resolution dated 10.5.2001, has confirmed the order of

the Mamlatdar and now the said order has merged into the order dated 11.2.2003 of the superior authority, i.e. the Prant Officer. The contention of the learned Assistant Government Pleader that the Prant Officer should have exercised the power independently and not while confirming the order of the Mamlatdar cannot be accepted since, the Prant Officer has independently applied his mind while passing the order dated 11.2.2003, while confirming the order of the Mamlatdar. By confirming the order of the Mamlatdar, the Prant Officer has put his seal of approval upon the said order. It is also relevant that the order of the Mamlatdar dated 2.6.2001 and the order of the Prant Officer dated 11.2.2003 were not challenged by the petitioner at any point of time. The order of the Prant Officer has now attained finality as the revision application filed against it by the respondent No. 1 has been dismissed by the impugned order. In view of the fact that the Mamlatdar had passed the order in question under the provisions of the earlier Government Resolution dated 19.10.2000 vide which he was fully empowered to do so and in the absence of knowledge of the subsequent Government Resolution dated 10.5.2001, which order has been confirmed by the Prant Officer who has been vested with the power by virtue of the Government Resolution dated 10.5.2001, this Court is of the considered opinion that the order of the Mamlatdar dated 2.6.2001, as confirmed by the Prant Officer by order dated 11.2.2003 which has attained finality, does not suffer from any legal infirmity.

This view is supported by the principle of law laid down by the Supreme Court in *Garware Nylons Ltd. v. The Collector of Customs and Central Excise, Pune* (supra). In this decision, the Supreme Court has relied upon an earlier decision in the case of *Collector of Central Excise v. New Tobacco Co.* 1998 AIR SCW 319, wherein the Court has held as under:

...We hold that a Central excise Notification can be said to have been published, except when it is provided otherwise, when it is so issued as to make it known to the public. It would be proper publication if it is published in such a manner that persons can if they are so interested, acquaint themselves with its contents. If publication is through a Gazette then mere printing of it in the Gazette would not be enough. Unless the Gazette containing the notification is made available to the public, the notification cannot be said to have been duly published.

17. The principle laid down by the Supreme Court is squarely applicable to the facts of the present case. The mere printing of the Government

Resolution dated 10.5.2001 cannot be considered to be a publication of the same. Knowledge of the contents of this Resolution can only be

attributed to the Mamlatdar on the day on which it was received in his office, i.e. 10.6.2001. The order dated 2.6.2001 passed by the Mamlatdar

under the power conferred by the earlier Government Resolution dated 19.10.2000, and in the absence of knowledge of the subsequent

Government Resolution dated 10.5.2001 cannot, therefore, be said to be invalid or illegal on this ground.

18. Once the Court has come to the conclusion that the order of the Mamlatdar, as confirmed by the order of the Prant Officer, is legal and valid,

the necessary consequences will follow. The rejection of the application of the petitioner for conversion of land for non-agricultural purposes by the

Collector vide order dated 14.7.2003 on the sole ground that the Mamlatdar did not have the power to pass the order dated 2.6.2001 will no

longer hold good.

19. Regarding the contention of the learned Assistant Government Pleader to the effect that the respondent No. 2 could not have issued directions

to the Collector to fix the amount of premium upon the application made by the respondent No. 1 after having dismissed the revision application on

the ground of delay, this Court finds substance in this contention. However, in the light of the conclusion that the order of the Mamlatdar, as

confirmed by the Prant Officer, does not suffer from any legal infirmity, the only clarification that is required to be made is that the direction to the

Collector, contained in order dated 17.7.2006, be construed only as a direction to consider the application dated 23.8.2002 of the respondent

No. 1 for conversion of the land for non-agricultural use, in accordance with law.

20. Regarding the submission of Mr.S.N.Shelat to the effect that the letters dated 12.1.2007 and 11.6.2007 annexed as Annexure-R3 to the reply

to the Civil Application filed by the petitioner, are not applicable to the case of the petitioner, it can only be said that since this Court has upheld the

order of the Mamlatdar, as confirmed by the Prant Officer, and since the Collector can now consider the application of the respondent No. 1 in

accordance with law, the respondent No. 1 can raise this contention at the

relevant time, if necessary, since expressing any opinion on an issue which has not directly and expressly arisen for the adjudication of this Court in the present petition, would not be proper. Moreover, this ground has not been raised in the writ petition and has been taken subsequently by the learned Assistant Government Pleader, while filing an affidavit-in-reply to the Civil Application filed by the respondent No. 1, for vacation of the interim order.

21. In the ultimate analysis and in the light of the reasons given hereinabove, the writ petition fails and is dismissed. The order dated 17.7.2006 passed by the Joint Secretary (Appeals), Revenue Department, Government of Gujarat, is upheld, subject to the clarification that the direction to the Collector contained therein will be read as a direction to consider the application of the respondent No. 1 dated 23.8.2002 for conversion of the land in question for non-agricultural purposes, in accordance with law. The Interim relief stands vacated. In view of the order passed in the writ petition, the Civil Application for vacating the exparte ad-interim relief does not survive, and is disposed of accordingly. Rule is discharged in the writ petition as well as Civil Application. There shall be no orders as to costs.