(2020) 08 GUJ CK 0302

In the Gujarat High Court

Case No : R/Special Civil Application No. 5199 Of 2017

Torent Pharmaceuticals Limited — APPELLANT

Vs

State Of Gujarat & 5 Other(s) — RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:

Gujarat Tenancy And Agricultural Lands Act, 1948 — Section 63

Citation : (2020) 08 GUJ CK 0302

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Salil M Thakore

Final Decision : Allowed

Judgement

A.S. Supehia, J

Considering the note for speaking to minutes filed by the learned advocate for petitioner, the discrepancy pointed out deserves to be corrected.

In last sentence of paragraph No. 25 of the judgment, the words "known as" be substituted by the word "non". Rest of the order remains as it is.

Note for speaking to minutes stands disposed of accordingly.

Registry to issue fresh writ accordingly.

(1) RULE. Learned Assistant Government Pleader waives service of notice of rule on behalf of the respondent-State. The respondent Nos.5 & 6 have chosen not to appear before the authority below. Though served, respondent No.4 has chosen not to appear before this court.

(2) With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing.

(3) By way of the present petition, the petitioner challenges the impugned order dated 13.04.2012 passed by the Gujarat Revenue Tribunal (the Tribunal) in

Revision Application No.TEN/BA/ 816 of 1985, whereby the Tribunal has set aside the orders dated 30.08.1983 and 07.05.1984 passed by the Deputy Collector, Mehsana in Tenancy Case No.1303 of 1983 and Tenancy Case No.916 of 1984 respectively granting permission under Section 63 of the Gujarat Tenancy and Agricultural lands Act, 1948 (the Tenancy Act) for sale of land by respondent No.5 to respondent Nos.6 to 7 respectively.

(4) The brief facts leading to filing of the present petition as enumerated in the petition are as under.

(5) Petitioner is a Public Limited Company incorporated under the Companies Act, 1956, which is a Pharmaceutical Company and is

(6) The present petition pertains to land bearing old Block No.135/1, admeasuring 1-4 Acres- Gunthas situated at Moje Bileshwarpura, Taluka Kalol, Dist.Gandhinagar (the land in question).

(7) The respondent No.4 was the original owner of the aforesaid land bearing old Block No.135/1, who sought permission under section 63 of the Tenancy Act to sell Block No.135/1 to respondent No.5-Rajkamal Re-rolling and Engineering Private Limited and by order dated 30.08.1983, passed in Ganot Case No.1303 of 1983, respondent No.3 granted such permission as sought for.

(8) Thereafter, by making an application dated 13.12.1983, private respondent No.4 sought a modification in the aforesaid order dated 30.08.1983 to the effect that he be permitted to sell old Block No.135/1 to respondent No.6- Rajkamal Re-rolling and Engineering Company instead of respondent No.5-Rajkamal Re-rolling and Engineering Private Limited. Such permission was granted by respondent No.3- Assistant Collector vide order dated 07.05.1984 passed in Ganot Case No.916 of 1984. Pursuant to such permission, by a registered sale deed No.809 dated 27.06.1984, the private respondent No.4 sold old Block No.135/1 to respondent No.6-Rajkamal Re- rolling and Engineering Company. Simultaneously, respondent No.6 acquired two other adjoining parcels of land being old Blocks No.128 and 129. Old Block No.129 was acquired by respondent No.6 from its original owners by a registered sale deed No.810 dated 27.06.1984. Three transactions pertaining to old Block Nos.128, 129 and 135/1 were recorded in the revenue record by different mutation entries dated 28.11.1986. Entry No.413 records the transaction pertaining to old block No.128, Entry No.414 records the transaction pertaining to old Block No.129 and Entry No.415 records the transaction pertaining to old Block No.135/1.

(9) On 06.12.1985 i.e. about a year and a half after old Block No.135/1 had been sold to respondent No.6 by the aforesaid registered sale deed dated 27.06.1984, the respondent No.3, representing respondent No.1, filed Revision Application No.816 of 1985 before the Tribunal challenging the aforesaid orders dated 30.08.1983 and 07.05.1984 passed by respondent No.3, granting permission to sell old Block No.135/1 under section 63 of the Tenancy Act.

(10) The Mamlatdar, by an order dated 16.05.1987 consolidated old Blocks No.128, 129 and 135/1 into a new Block No.128, admeasuring 23,108 sq.mtrs. under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (the Fragmentation Act) and Entry No.426 dated 22.05.1987 was mutated recording the said fact. Thereafter, new Block No.128 was sub-divided into sub-plots Nos.1 to 6, in all admeasuring 23,108 sq.mtrs and sub-plot Nos.3, 4, 5 and 6 of new Block No.128 in all admeasuring 14,197 sq.mtrs.

(11) By the order dated 16.10.1987 permission was granted for non-agricultural (N.A.) use of new Block No.128 and Entry No.453 dated 20.02.1988 was mutated recording the said fact, which was certified on 27.04.1988. Thereafter, by way of six registered sale deeds dated 15.06.1988, respondent No.6 sold sub-plots No.1 to 6 to six different entities. The transactions were recorded in six different entries dated 29.07.1988, which were certified on 06.10.1988. Details of which are as under:

Sub-plot No.	sq.mtrs..	Sold to	Entry No.
1	5707.50	M/s. Mark Laboratories	463
2	4203.00	M/s. Semok Pharmaceuticals	464
3	5371.00	PO Pack Private Limited	465
4	2731.00	M/s. Acvila Labs.	466

5

3018.50

M/s. Acme Pharmaceuticals

467

6

3077.00

M/s. Acme Health Care

468

(12) In the year 2007, sub-plots No.3, 4, 5 and 6 in all admeasuring 14,197 sq.mtrs. were sold by the aforesaid firms to Apollo Earth Movers Limited by four different sale deeds and necessary entries were mutated in the revenue record and the same were certified. Apollo Earth Movers Limited thereupon became the owner of sub-plots No.3 to 6 of new Block No.128/p, admeasuring 14,197 sq.mtrs.

(13) By a registered sale deed No.10912 dated 08.11.2011, the petitioner purchased from the aforesaid Apollo Earth Movers Limited a contiguous parcel of land admeasuring 99,385.50 sq.mtrs. and comprising of different blocks situated at Billeshwarpura, Taluka Kalol, Dist. Gandhinagar, more particularly stated in the sale deed. This included sub- plots No.3 to 6 of consolidated new Block No.128/A (formed from old blocks No.128, 129, 135/1), admeasuring 14,197 sq.mtrs. By Entry No.1493 dated 09.11.2011, the transaction was recorded in the revenue record, which was certified on 12.03.2012.

(14) In 2015, re-promulgation of various parcels of land in Village Bileshwarpura, Taluka Kalol, Dist. Gandhinagar took place, which clearly reflects from Entry No.1688 dated 28.01.2006 and new Block No.128/A, admeasuring 14,197 sq.mtrs. Belonging to the petitioner was assigned Survey / Block No.297.

(15) On 20.09.2016 Entry No.1721 recording the order dated 13.04.2012 passed by the Tribunal pertaining to old Block No.135/1 came to be mutated, which was certified on 16.11.2016.

(16) In December, 2016 upon search of the revenue record the petitioner came across the aforesaid entry and it is only then that the petitioner came to know about the above proceedings and the orders passed therein. Thereupon, the petitioner immediately did further search and took steps to procure a copy of the order(s) and other relevant documents for the purposes of filing the present petition and hence, the petitioner has challenged the order dated 13.04.2012 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN/BA/816 of 1985.

(17) At the outset Learned Senior Counsel Mr.Mihir Joshi for Mr.Thakore, learned

advocate appearing for the petitioner has submitted that the impugned order is required to be set aside since the same is passed without hearing the petitioner since the petitioner, being the owner of the block no.128/A which is consolidated from old block no.135/1 and other old blocks and which is promulgated into Survey/Block No.297 ought to have been heard before passing the order.

(18) Learned Senior Counsel Mr.Mihir Joshi for Mr.Thakore for the petitioners has submitted that by six registered sale deeds dated 15.06.1988, respondent No.6 sold sub-plots No.1 to 6 to six different entities and the transactions were recorded in six different entries dated 29.07.1988, which were certified on 06.10.1988. Learned Senior Counsel has further submitted that in the year 2007, sub- plots No.3, 4, 5 and 6 in all admeasuring 14,197 sq.mtrs. were sold by the said entities to Apollo Earth Movers Limited by four different sale deeds and necessary entries were mutated in the revenue record and the same were certified. Apollo Earth Movers Limited thereupon became the owner of sub- plots No.3 to 6 of new Block No.128/p, admeasuring 14,197 sq.mtrs.

(19) Learned Senior Counsel Mr.Mihir Joshi has submitted that the Tribunal, after a period of nearly 28 years of private respondent No.4 having sold old Block No.135/1 to respondent No.6-Rajkamal Re-rolling and Engineering Company by the registered sale deed No.809 dated 27.06.1984, has set aside the prior permission granted for the said sale.

(20) Learned Senior Counsel Mr.Mihir Joshi has submitted that three transactions pertaining to old Block Nos.128, 129 and 135/1 were recorded in the revenue record by different entries dated 28.11.1986. It is submitted that Entry No.413 records the transaction pertaining to old block No.128, Entry No.414 records the transaction pertaining to old Block No.129 and Entry No.415 records the transaction pertaining to old Block No.135/1.

(21) Learned Senior Counsel Mr.Mihir Joshi has submitted that the revision application ought to have been dismissed on the ground of non- joinder of necessary parties being the petitioner and previous owners of the land in question. It is submitted that the Tribunal has erred in allowing a proceeding, which was bad for non-joinder of necessary parties. It is submitted that each transfer has been done by a registered instrument and each transfer has been entered in the revenue record by separate mutation entries. It is submitted that the authorities, despite having knowledge of the same, did not join the subsequent purchasers.

(22) Learned Senior Counsel Mr.Mihir Joshi has further submitted that the impugned order deserves to be set aside considering that it is passed in connection with old Block No.135/1, which having been consolidated into new Block No.128/p. It is submitted that in fact, after the consolidation, new Block No.128/p itself has been divided into sub- plots. It is submitted that the order being in connection with a non-existent block is void and inoperative and ought to be quashed and set aside. It is submitted that the impugned order is without

jurisdiction in an as much as the Tenancy Act does not apply to non- agricultural land and the land has become N.A. land since 29 years.

(23) Per contra learned Assistant Government Pleader Mr.Adityasinh Jadeja has submitted that the impugned order may not be set aside as the same is in accordance with the law. He has submitted that the impugned order may not be quashed and set aside, since it is passed after a judicial scrutiny by the authority below. He has urged that the present petition may be dismissed.

(24) Heard the learned advocates appearing on behalf of the respective parties at length and perused the document on record of the case.

(25) Since the relevant entries and the facts and sale entries after the year 1984 are not in dispute, the same are not referred. The facts suggest that there is delay of approximately

28 years, by which the authority below has questioned Entry No.135/1, which having been consolidated into new Block No.128/p. For the sale of land at old block No.135/1 to private respondent No.4 to respondent No.6, permission was granted and, therefore, by sale deed No.809 dated 27.06.1984, private respondent No.4 sold old Block No.135/1 to respondent No.6-Rajkamal Re-rolling and Engineering Company i.e. after obtaining necessary permission from the respondent authorities. By the impugned order dated 13.04.2012, the SSRD has set aside the order dated 30.08.1983 and the order dated 07.05.1984. As noted hereinabove, after the year 1984 and 1985, there were various transactions recorded in the different entries. Six(6) entries were certified on 06.10.1988 with regard to the sub-plots. Thereafter, in the year 2007, sub- plot Nos. 3, 4, 5 and 6 were sold by the firms to the Apollo Earth Movers Limited by four(4) different sale deeds. All the sale deeds, which pertain to year 2008, have been registered and accordingly revenue entries are certified in the year 2008. The Apollo Earth Movers Limited thereupon, became owner of the sub-plot Nos. 3 to 6 of new Block No. 128/p. By the registered sale deed No. 10912 dated 08.11.2011, the petitioner purchased the parcel of land admeasuring 99,385 sq.mtrs. of different blocks from Apollo Earth Movers Limited, which included sub-plot Nos. 3 to 6 of consolidated new block No.128/A (formed from old blocks No.128, 129, 135/1). Accordingly, revenue entry No. 1493 dated 09.11.2011 was entered into the revenue record. From the aforenoted facts, it is manifest that after 1984, land of aforesaid blocks have been subjected to various sales and accordingly entries have been certified in the revenue record. It is admitted position that none of the subsequent owners of new Block No. 128/p, being the various firms, which purchased the sub-plots from the respondent No.6 in the year 1988 or Apollo Earth Movers Limited, which purchased the sub- plots Nos.3 to 6 in 2007 were ever made as parties to the said proceedings. The petitioner, who purchased the land in 2010, was also not aware of the said proceedings hence, the impugned order of the tribunal is required to set aside since the same is passed in absence of the relevant parties and that too after a period of 28 years of the respondent No.4 having sold the land to the respondent No.6 by the registered sale deed No.

809 dated 27.06.1984. Thus, the impugned order, which is passed in the revision application, which was filed after delay of approximately 1.5 years and much beyond period of limitation of 60 days could not have been entertained, without filing any application for condonation of delay. Thus, the impugned order is required to be quashed and set aside since the same is passed without hearing and without impleading the petitioner. It is also pertinent to note that the land in question has been known as agricultural land since 29 years and the SSRD has invoked the provision of the Tenancy Act, which is contrary to the settled proposition of law.

(26) On the aforenoted facts of the case and the various entries effected from 1986, the writ petition succeeds. The impugned order dated 13.04.2012 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN/BA/816 of 1985 is hereby quashed and set aside. Rule is made absolute accordingly.

