

(2000) 12 GUJ CK 0116
In the Gujarat High Court

Case No : Special Civil Application No. 8284 of 1991

Trilokchand Somnath Shah

APPELLANT

Vs

Principal Secretary

RESPONDENT

Date of Decision : 08-12-2000

Acts Referred:

Citation : (2000) 12 GUJ CK 0116

Hon'ble Judges : D.P. Buch, J

Bench : Single Bench

Advocate : Megha Jani, for M.J. Thakore, for the Appellant; R.V. Desao. AGP for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

D.P. Buch, J.—The petitioner above named, being an Ex-service man of Village Mandal, Tal. Viramgam, District Ahmedabad, has filed this petition under Articles 226 and 227 of the Constitution of India against the respondent above named, for appropriate writ, order or direction for quashing and setting aside the judgment and order of the Principal Secretary, Department of Revenue (Disputes), Gujarat, Ahmedabad dated 7.9.1971 and for restoring the order of the Dy.Secretary dated 17.10.1989.

2. The facts of the present case may be briefly stated as follows. The petitioner above named is an Ex-service man, who joined the Military service on 9.3.1956 as Sepoy Grade C-3P. That on account of the fact that he suffered from Tuberculosis, he was required to retire from service on 23.6.1964. He was granted pension of Rs.25/- per month. The petitioner submitted an application to the respondents for allotment of land for his livelihood in accordance with the scheme of the respondents for allotment of land to Ex-service man. The petitioner claims that the Prant Officer, Viramgam considered the said application of the petitioner and by order dated 15.4.1981, allotted to the petitioner a piece of 16 acres of land bearing Block No.932. The petitioner paid the value thereof on 6.5.1981 and the necessary mutation entries were posted at sr.no.9426 on

3.6.1981. The petitioner was, therefore, shown as occupant in respect of the said land admeasuring at 16 acres on the strength of the said orders and mutation entries. The petitioner claims that thereafter, the said land was prepared for cultivation between 1981 and 1986. That the petitioner spent more than Rs.21,000/- for converting the said land for agricultural use. That thereafter the Collector, Ahmedabad issued notice dated 12.8.1988 being No.2 of 1988 to the petitioner to show cause as to why the aforesaid order dated 15.4.1981 should not be reviewed. The petitioner submitted his reply to the said show cause notice and submitted necessary documentary evidence along with the said reply. That the Collector, on hearing the petitioner, passed an order dated 1.11.1988 setting aside the earlier decision of the Prant Officer after a span of seven years. That thereafter, the petitioner preferred Revision Application u/s 211 of the Bombay Land Revenue Code before the Principal Secretary (Disputes), Revenue Department, State of Gujarat, Ahmedabad. That the concerned Dy.Secretary, department of Revenue (Disputes) heard the matter on 17.10.1989. That by the said order, the aforesaid order of the Collector dated 15.4.1981 was quashed and set aside and the order of the Dy.Collector was maintained . That the said matter was carried in Revision suo motu, and in the said suo motu Revision, the previous order was quashed and set aside and the order of the Collector referred to above was restored. Therefore, the last position is that the land was held to be wrongly allotted to the petitioner and consequently there is a direction that the land in question be resumed and possession thereof should be taken over from the petitioner.

3. Feeling aggrieved by the aforesaid orders, the petitioner has preferred this petition before this Court. It has been mainly contended here that once the Government had finally disposed of the Revision Application of the petitioner, the said Government should not have taken the matter in suo motu revision. It is further contended that the proceedings could not be reopened suo motu while in exercising revisional powers u/s 211 of the Bombay Land Revenue Code (for short "the Code") after a lapse of 8 years. That in the above view of the matter, the orders of the respondent for resumption of the land are illegal and, therefore, they are required to be quashed and set aside.

4. The petitioner has, therefore, preferred this petition for quashing and setting aside the aforesaid orders of the respondents. On receipt of the petition, notice was issued at the first instance and thereafter, rule was issued. At the same time, the order was passed at the first instance to maintain status-quo, as prevailing on the date of application of the petitioner. Mr R V Desai, learned AGP has appeared on behalf of the respondents in response to the service of rule. I have heard Mrs. Megha Jani for Mr M J Thakore. I have also heard Mr R V Desai, learned AGP for the State. Both of them have taken me through the Records and Proceedings including the affidavits and documents.

5. Mrs Jani, learned Advocate appearing for the petitioner has argued at length that the petitioner is an Ex-service man, who joined the service in the year 1956

and he was required to retire in the year 1964 since he was suffering from Tuberculosis. It is also submitted by her that the petitioner has been getting pension of Rs.25/- per month. It is undisputed that the petitioner applied for allotment and the land was allotted to him. There is no dispute that an attempt was made on behalf of the State to plead that the petitioner had not put in service of 15 years or more at the relevant point of time and, therefore, he was not entitled to get land as Ex-service man. This aspect has been properly dealt with, by the Government exercising the revisional power on 17.10.1989. There the Government has observed that the aforesaid condition that the person concerned should have completed 15 years of service had come on paper for the first time on 24.4.1981. That the land was allotted to the petitioner on 15.4.1981. The Government has, therefore, considered that at the time when the aforesaid requirement was brought on the books, the petitioner was already allotted the aforesaid land. In other words, it was a case of the Government that when the land was allotted to the petitioner on 15.4.1981, it was not the requirement or rule that an Ex-service man should have completed 15 years of service. Therefore, on this consideration, the land was properly allotted as per the request and rule, and there was no illegality committed by the Dy.Collector at the time of allotment of land to the petitioner.

6. It is to be seen that the respondents have quashed and set aside the aforesaid order mainly on the ground that the land was Goucher land and, therefore, it should not have been allotted to the petitioner. This was a new ground taken up for the first time in 1991. Moreover, the previous decision was taken on 17.10.1989 by the Government itself in exercise of the powers u/s 211 of the Code. This means that the Government had once exercised the powers of suo motu revision u/s 211 of the Code while passing orders on 17.10.1989 in terms of order at Annexure "E" at page 45. Thereafter the Government again sought to exercise powers of suo motu revision in 1991 and the order was passed on 7.9.1991, which has been placed at Annexure "H" at page 57.

7. This means that the Government has exercised powers of revision u/s 211 of the Code once in 1989 and again the revisional powers under the same provision have been exercised for the second time on 7.9.1991. It is very clear that the Government can exercise revisional powers even suo motu against the orders of subordinate Revenue Officers, but that the Government cannot suo motu exercise powers of revision against its own order. In support of the aforesaid contention, Mrs. Jani, learned Advocate for the petitioner has relied upon a decision in the case of *Bhagwanji Bawanji Patel v. State of Gujarat*, 1971 GLR 156.) In this decision it has been clearly laid down that the Government cannot review its own orders in exercise of revisional powers u/s 211 of the Code. It has also been laid down in the aforesaid decision that there is no provision in the Code whereby the State Government can review its own order already passed in exercise of its powers u/s 211 of the Code. It is further observed in the said decision that it may, if, permissible in law, have recourse to a remedy by filing a suit in a Civil Court. In view of the aforesaid decision, it is very clear that the

respondents had no authority or jurisdiction or power to take the matter in suo motu revision u/s 211 of the Code against its own orders passed in revisional jurisdiction. It is true that the earlier order of 1989 has been signed by the Dy. Secretary, but nevertheless, the said order has been passed in Revision application u/s 211 of the Code. Therefore, it is clear that the respondents have sought to exercise its revisional powers u/s 211 of the Code against its own order of 1989, meaning thereby, the orders in revision passed in 1989 have been revised and by revising the said orders, the order of 1989 has been quashed and set aside by subsequent orders also passed in exercise of powers u/s 211 of the Code. In the above view of the matter and considering the above decision, it is very clear that the State Government has revised its own order passed in exercise of the powers u/s 211 of the Code. Therefore, on the said consideration, the orders passed by the respondents have to be treated to be illegal since it had no authority of law to pass such orders in exercise of powers u/s 211 of the Code.

8. It is a fact that allotment was in 1981 and it was sought to be cancelled in 1989. In other words, the allotment was sought to be canceled, quashed and set aside or withdrawn after a span of 8 years. It has been very clearly laid down in the aforesaid decision of Bhagwanji Bawanji (supra), that such powers are required to be exercised within reasonable time. It has also been laid down that the exercise of powers after 7 years cannot be treated to be the order passed within reasonable time. In the present case, the period is shown to be 8 years, since the allotment was in 1981 and the suo motu powers have been exercised in 1989.

9. It has also to be considered that no explanation has been set out regarding the question of inordinate delay of 8 years caused in taking the suo motu revision. If there is any reasonable explanation, the Court would certainly consider the same. But at the same time, the delay is inordinate and when the same has not been explained, then in that event, it is really fatal on the case of the respondents. In other words, the exercise of powers for review of the earlier order after a span of 8 years without any explanation, will have to be treated to be illegal, in view of the aforesaid decision.

10. Even otherwise, the decision in the case of Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, is also an authority on the subject showing that the revisional powers are required to be exercised within reasonable time. In the present case, it cannot be said that such powers were exercised within reasonable time. In that view of the matter, the exercise of powers after a long lapse of 8 years, cannot be said to be legal and valid. It is more so when the petitioner has made substantial changes in the land in question by putting personal labour and by spending good amount for the said purpose during the spell of about eight years.

11. The net result is that the respondents have failed to show that the aforesaid orders are legal and valid. On the one hand, it is evidently clear that the respondents have no power or authority to review their own orders and

therefore, the orders passed in 1991 which have been impugned in this petition have to be treated to be illegal, on the other hand, the powers were exercised after a long span of 8 years. On that ground also, the orders of 1991 have to be treated to be illegal. Hence on both the grounds, the orders are found to be illegal.

In the result, this petition is allowed. The order dated 7.9.1991 placed at Annexure "H" at page 57 and impugned in this petition is ordered to be quashed and set aside. Rule is accordingly made absolute. No order as to costs.