(2011) 09 GUJ CK 0076

In the Gujarat High Court

Case No : Special Civil Application No. 4895 of 1999

Urmilaben and Others APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 108(6), 135D(6)
Bombay Land Revenue Rules, 1921 — Rule 106(6)
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 2(6), 63, 84(C)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 21

Citation : (2011) 09 GUJ CK 0076

Hon'ble Judges : KS Jhaveri, J

Bench : Single Bench

Advocate : Ketty A Mehta for Petitioners 1 - 2, 2.2.2 and 2.2.3, None for Petitioner Nos. for Petitioners 2, for the Appellant; JK Shah, Asst Government Pleader for Resp(s) 1 - 3, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice KS Jhaveri

1. The present petition is filed challenging the order dated 22.12.1993 passed by Collector, Surat in Revision Case No. 44 of 1993 and the order dated 20.05.1999 passed by the Special Secretary (Appeals) Revenue Department, State of Gujarat in Revision No. 29 of 1994 whereby the order dated 22.12.1993 was confirmed.

2. It is the case of the Petitioner that the land of survey No. 549 block No. 618 admeasuring 0 hectare 24 Are 97 sq. mt of village Vankal, Mangrol Taluka, Surat was entered in the revenue records in the name of Shri Chamadiya Namlabhai. The husband of the present Petitioner gave an application to show his name along with the said Namlabhai as the joint occupant and after verification of the facts his name was entered as joint owner by Nondh No. 832 dated 25.09.1965 in the village form No. 6. The Petitioner''s husband was in fact cultivating land along with Shri Namlabhai as both of them had purchased the said land from one

Manchhubhai Durlabhai.

2.1 It is the case of the Petitioner that after the death of her husband, her sons and herself were cultivating the said land and the entry in the records continued from 25.09.1965 for more than 25 years. It the say of the Petitioner that the Assistant Collector, Olpad Prant issued a show cause notice dated 22.11.1990 to Shri Namlabhai as well as the present Petitioners to show cause as to why suo motu power of revision should not be exercised to cancel the entry No. 832 dated 25.09.1965.

2.2 Thereafter the Petitioners also received notice dated 14.05.1993 from the Collector, Surat issued u/s 108(6) of the Bombay Land Revenue Code stating therein that as there is a breach of provisions of Section 2(6) read with Section 63 of ht Bombay Tenancy & Agricultural Lands Act and as the land belongs to Adiwasi necessary proof should be produced before the Collector, Surat.

2.3 The Petitioners replied to the suo motu revision initiated by the Assistant Collector being Revision/RG.N. 182/87 Mangrol vide reply dated 31.12.1990 and also filed similar reply to notice by the Collector, Surat dated 14.05.1993 in Revision Case No. 44 of 1993. The Collector, Surat in RTS/REvision Case No. 44/93 vide order dated 22.12.1993 held that the entry in question was made contrary to the provisions of Section 63 of the Tenancy Act.

2.4 Being aggrieved by the said order, the Petitioners preferred Revision Application being Revision No. 29/94 before the Special Secretary (Appeals), Revenue Department, Gujarat. The said appeal was rejected vide order dated 20.05.1999 and therefore being aggrieved by the same the present petition is preferred.

3. Mrs. Ketty Mehta, learned advocate appearing for the Petitioners submitted that the Collector, Surat had no power or authority to decide the question regarding breach of the provisions of the Tenancy Act as only the Mamlatdar & ALT has power, authority and jurisdiction to take proceedings u/s 84(C) of the Tenancy Act for breach of the provisions of Section 2(6) read with Section 63 of the Tenancy Act.

3.1 She submitted that the authority below failed to appreciate that no notice under the provisions of the Tenancy Act was ever given to the present Petitioner regarding breach of Section 2(6) read with Section 63 for a long period of more than 25 years and therefore the Collector in exercise of powers under the Bombay Land Revenue Code had no jurisdiction to go into that question.

3.2 In support of the aforesaid contention Mrs. Mehta has placed reliance on a decision of this Court in the case of Evergreen Apartment Co-operative Housing Society Ltd. Vs. Special Secretary (Appeals), Revenue Department, Gujarat State, wherein it is held that if a power is conferred under one enactment, it cannot be exercised while dealing with a question under any other enactment especially so when the revenue officers are empowered to act under various enactments.

3.3 Mrs. Mehta further contended that the lower authority failed to appreciate that as per the settled legal position the suo motu power of revision cannot be exercised after a reasonable period of one year and if any exercise of power is made after unreasonable delay, it is arbitrary, unreasonable and bad in law. In support of her submission, Mrs. Mehta has relied upon a decision of this Court in the case of Mavjibhai Dharsibhai and Others Vs. State of Gujarat and Others, wherein it is held that power u/s 84C has to be exercised within reasonable time and action can be taken even after long lapse of time but the authority initiating such action will have to justify such belated action.

4. Mr. J.K Shah, learned AGP appearing for the Respondent State submitted that the proceedings can be initiated even after the stipulated time on the facts of each case and the aspect of delay should not be a hindrance in the same. Mr. Shah, however, was not in a position to controvert the contention regarding jurisdiction of the lower authority in initiating the proceedings and issuing notice to the petitioners.

5. This Court has heard learned advocates for the respective parties and perused the papers on record. At the outset the decision of this court in the case of Evergreen Apartment (supra), more particularly paras 9, 10 & 11 are required to be perused and the same read as under:

9. In yet another judgment in the case of Ranchhodbhai v. State, reported in (1984) 25 (2) Guj LR 1225: AIR 1985 NOC 250 (Guj) a learned single Judge of this Court held that any proceedings initiated against a purchaser of agricultural land allegedly in contravention of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, after a period of 7 years would be without jurisdiction. In that case the Deputy Collector had taken the view that the transaction was violative of Section 9 and the Petitioner was liable to be summarily evicted. The Court observed:

But the said statutory powers like any other statutory powers have to be exercised within reasonable time. If that concept is kept out, any statutory powers would be exercised after a number of years or decades. In the meantime, the affected parties would have materially altered their position and irreparable injury would be caused to them and it would be impossible to put back, if such powers can be exercised after unduly long delay.

10. Similar views have been expressed in the case of Rajul Co-op. Housing Society Ltd. v. State reported in 1985 (2) 26 Guj LR 1187: (AIR 1985 NOC 250 (Guj). In that case the Government had issued a notice to the Housing Society calling upon it to show cause why the price of the land granted to the society should not be revised to Rs. 275/ -per sq. yd. The Court took Into consideration the fact that the Petitioner Society had already constructed flats over the land and it was not in a position to return the land to the Government if it was desirous of paying price at taken by the Government in initiating proceedings

under Section

211 of the Bombay Land Revenue Code was unreasonable.

11. In the present case the Petitioner Society purchased the land in a public auction held at the instance of Special Recovery Officer, Surat on 25-5-1971. 77 members of the Petitioner society contributed towards the cost of the land and paid an amount of Rs. 2,45,000/-. An entry was accordingly made in the Revenue record and later on certified by the competent authority. Exemption was granted by the competent authority u/s 21 of the Gujarat (sic) Urban Land Ceiling and Regulation Act and the Petitioner society got the construction plans approved by Surat Municipal Corporation which is the "local authority" and "appropriate authority" under the provisions of the Gujarat Town Planning and Urban Development Act, 1976. The Petitioner society constructed about 60 tenements which are now occupied by its members. It was, therefore, too late in the day for the Revenue Authorities to cancel the entry made in favour of the Petitioner so as to create a cloud on the society''s title. Thus, the impugned orders passed by the Collector and the Additional Chief Secretary, Revenue. Department are bad having been passed after unreasonable delay.

5.1 In the present case, from the records it is borne out that the village form No. 7/12 produced before the authorities clearly shows that the names of the present Petitioner and her children have been entered and that they are cultivating the said land. It appears that Shri Natvarlal Iccharam was cultivating the said land for more than 17 years and thereafter the present Petitioner and her family were cultivating the said land. The aforesaid decision of this Court is squarely applicable to the facts of the present case.

6. Moreover, in the case of Mavjibhai Dharsibhai (supra) paras 15, 16 & 17 read as under:

15. In view of my aforesaid discussion, I am of the opinion that powers u/s 84-C of the Act will have to be exercised within reasonable time. The question then would arise what would be the reasonable time for exercise of such powers and what would be its starting point. As held by the Supreme Court in its ruling in the case of Patel Raghav Natha (supra), what would be the reasonable time would depend upon the facts in each case and the nature of the impugned order in each case.

16. It cannot be gainsaid that the power u/s 84-C of the Act is exercisable only when a transaction is found to be invalid under the Act. A transaction under the Act would naturally involve acquisition or transfer of a piece of agricultural land. Any such acquisition or transfer will have to be mutated in the revenue records pertaining to the property involved therein in view of the relevant provisions contained in Chapter XA of the Code. Such mutation entry will have to be certified by the competent revenue officer as provided in Section 135D (6) thereof. It cannot be gainsaid that the date of certification entry will bring the transaction in question in the knowledge of the concerned revenue officer. If the

transaction is found to be invalid, the revenue officer concerned can himself initiate the proceedings u/s 84-C of the Act if he is competent to do so. Else, he would report the matter to the competent authority for initiating an appropriate action for annulment or invalidation of such transaction. Ordinarily, such action should be initiated within one year from the date such entry in the revenue records is certified by the revenue officer in accordance with Section 135D (6) of the Code. I think the period of one year can be said to be a reasonable time by any stretch of imagination for the purpose of initiation of the proceedings for its annulment or invalidation if the transaction in question is found to be invalid.

17. The aforesaid discussion would not mean that no powers u/s 84-C of the Act can be exercised beyond a period of one year from the date the mutation entry in the revenue records with respect to the said transaction is certified in accordance with Section 135D(6) of the Code. If the power u/s 84-C of the Act is exercised beyond the period of one year, the affected party will be justified in showing to the authority that the initiation of the proceedings for the purpose would materially prejudice his case. The affected party, for instance, might have made huge investment after expiry of one year from the date the entry in the revenue records in his favour is certified. If the proceedings for annulment of such transaction is initiated after one year from its certification in the revenue records, the affected party might suffer huge loss on account of his having changed his position vis-a-vis his holding. In that case, if the authority initiating the proceedings u/s 84-C of the Act is satisfied that the action thereunder would prejudicially and materially effect the recipient of the notice, he need not exercise his powers thereunder. If powers u/s 84-C of the Act are sought to be exercised beyond highly unreasonable time, say about 5 years after the entry pertaining to the so-called invalid transaction in the revenue records is certified, the authority exercising such powers will have to justify his belated action. It could be that a fraud might have been committed with the authority and such fraud might have come to light after expiry of more than 5 years from the date the entry in the revenue records was certified with respect to the sale transaction. In such a case, the exercise of powers u/s 84-C of the Act might be found justifiable. But in that case it would be for the authority initiating the proceedings u/s 84-C of the Act to justify exercise of such powers after lapse of such a long period.

7. In the present case the notice for suo motu revisional jurisdiction was given after a long period of 25 years. It was the specific contention of the Petitioners in the reply to the notice dated 31.12.1990 that the Petitioner''s husband long with Namlabhai Chamadiya had purchsed the saidl land and thereafter the name of Shri Namlabhai was entered by entry No. 432 dated 06.03.1963. In fact the husband of the Petitioner and the said Shri Namlabhai were cultivating the land having half share and therefore the husband of the Petitioner made an application for entering his name as co-owner. An inquiry was held and on the basis of the statements recorded the name of the husband of the Petitioner was entered by entry No. 832 dated 25.09.1965. It was also pointed out in the reply

that the husband of the Petitioner had other agricultural land and he was an agriculturist even before he purchased the said land along with Shri Namlabhai.

8. In the aforesaid view of the matter, considering the law laid down by this Court from the decisions cited above which are squarely applicable to the facts ofh the present case, this Court is of the view that the exercise of suo motu revision by the lower authorities after a period of almost 25 years is bad in law. Moreover, Mr. Shah is also not in a position to satisfy this Court regarding the powers or jurisdiction of the lower authorities in deciding the question of breach of Section 2(6) read with Section 63 of the Tenancy Act and to exercise power of revision under the provisions of the Bombay Land Revenue Code read with Rule 106(6) of the BombayLand Revenue Rules. Mr. Shah, learned AGP is not in a position to produce any material on record so as to enable this Court to take a view supporting the orders passed by the lower authorities. In such an event the orders passed by the lower authorities are bad in law and the same deserve to be quashed and set aside.

9. In the premises aforesaid, the petition is allowed. The impugned order dated 22.12.1993 passed by Collector, Surat in Revision Case No. 44 of 1993 and the order dated 20.05.1999 passed by the Special Secretary (Appeals) Revenue Department, State of Gujarat in Revision No. 29 of 1994 whereby the order dated 22.12.1993 was confirmed are hereby quashed and set aside. The notices issued by the authorities below and the consequential orders are quashed accordingly. Rule is made absolute accordingly. No costs.

