(2017) 01 GUJ CK 0173

In the Gujarat High Court

Case No : 200 of 2011; 11861 of 2009

VAGHRI GHELA JALU APPELLANT

Vs

STATE OF GUJARAT & ORS RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948, Section 84(C)(4) - Summary eviction

Gujarat Land Revenue Code, 1879, Section 211, Section 43

Citation : (2017) 01 GUJ CK 0173

Hon'ble Judges : Anant S Dave, A Y Kogje

Bench : Division Bench

Advocate : Hardik C Rawal, M H Rawal, L B Dabhi, Dhaval N Vakil, Rakesh R Patel, Udayan P Vyas

Final Decision : Allowed

Judgement

1. The Letters Patent Appeal challenges the oral judgment in SCA No.11861 of 2009 whereby, the learned Judge declined to entertain the challenge made by the petitioner to the order dated 18th July, 2008 passed by the GRT which in turn had dismissed the application filed by the petitioner against the order dated 27th April, 2007 passed by the Deputy Collector.

2. The issue pertains to the tenancy rights and subsequent resuming of the land and giving away under an auction of such tenancy land to an adjoining farmer.

3. The issue pertains to tenancy land bearing Survey No.886 admeasuring 4.10 acres situated in village Gungdi Pati Taluka, District Patan.

4. The original challenge by the petitioner to the decision of the Deputy Collector in giving away the aforementioned land by way of an auction by order dated 29.05.1980. The said order indicates that the father of the petitioner was the original tenant of the land had received Tagavi Loan and which had remained

unpaid, as a result of which, to recover the loan amount, the said land was put to auction and in the auction respondent no.3 being the highest bidder, his bid was sanctioned. This order was first challenged by way of revision before the GRT on the ground that whether the restrictions under Section 43 of the Land Revenue Code are applied to the transactions of land which are put to auction as a step towards the recovery of the loan amount. This revision application on the ground of jurisdiction as a same time referring to the lapse of 30 years in challenge to such action.

5. It appears that the petitioner thereafter invoked Section 211 of the Land Revenue Code to challenge the very same order dated 21.01.1980 before the Special Secretary, Revenue Department and the same also came to be dismissed on the ground of delay of 27 years in bringing the revision.

6. In the present petition, the bone of contention is that though the petitioner had an arguable case and the point of law to be canvassed yet at all levels before the Single Judge merely on the ground of delay, the merits of the case are not gone into. It is his contention that the action of resuming the land on account of the nonpayment of so called loan amount requires same procedure to be followed at the hands of the authority before taking over the land in question and putting it to auction. He refers to Section 84 (C) (4) of the Gujarat Tenancy and Agricultural Land Act and also Section 32 (P) (C) (2) according to the petitioner have not been followed. If, therefore, such mandatory procedure is not followed, then the action based and then the action, thus, taken would stand vitiated and therefore, the allotment of the land through an auction deserves to be set aside. It is further the case of the petitioner that if the case of nonpayment of the Tagavi Loan is to be believed, then also the auction in the year 1980 would not be possible, as the State Government had issued ordinances from time to time to afford more opportunities to the tenants like the petitioner to make good the payment of the loan. This period was extended from time to time and at least till December 1982. He refers to the ordinances issued under the Bombay Tenancy and Agricultural Land Act in the year 19801981 to substantiate his claim that on the one hand when the Government gives an opportunity to the tenants to make good the payment of the price of the land so purchased under the provisions while on the other hand even before waiting for the expiry of such period provided for under the ordinances, the State Government has put the land to auction. This aspect was never considered by any authority at any level.

7. As against this, learned Senior Advocate Mr.D.C.Dve appearing on behalf of respondent no.3 contends that the decision of the Revenue Authority and that of the Single Judge which perfectly justify and not calling for any interference simply on the ground of lapse of 27 years before which the auction of the Government was called in question. He submits that it was the duty of the petitioner to produce on record convincing material which precluded him from questioning such action for these many years. He also submitted that it was the duty of the petitioner to establish by way of producing necessary material that

the steps which were necessary to be taken before the land in question was put to auction were followed by the concerned authorities. In absence of such material, ordinarily, presumption would be that the action taken on the part of the Government authorities were in consonance with the procedure prescribed.

8. Shri Dave also attributed the knowledge of auction way back in the year 1980 to the petitioner as his predecessor by referring to the pleadings in the suit filed by the petitioner in the Court of Principal Senior Civil Judge at Patan in connection with the same land. He also pointed out the sale deed which was executed by the father of the petitioner in the year 1984 pertaining to another piece of land in favour of respondent no.3. With such contentions, he submits that the present proceedings questioning the auction sale of the land in question in the year 1980 is nothing but an attempt to resurrect a litigation with obvious reason to get something more out of such litigation. He, therefore, submits that no case for interference is made out by the appellants.

9. Having regard to the facts and circumstances, submissions made by learned counsel for the parties and perusal of the record in the context of challenge to the order passed by the learned Single Judge undisputed scenario emerges on record is about non dealing with and considerations of specific contentions on law viz. Section 32 (M), 32 (P), 32 (PP) of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Ordinance, 1981 of the Act, 1948 and powers exercised by the concerned Mamlatdar in holding auction of the land by predecessor of the petitioner, though by Gujarat Ordinance No. 14 / 1981 benefits which were earlier extended for one year or other reasons was considered necessary to extend such period further upto end of December, 1982 and in the facts of this case, auction was held in the year 1980. That predecessor of the appellant had purchased the land, according to the authority with restriction of Section 43 of the Act and Tagavi loan was granted to the opponent - purchaser for payment of purchase price and on failure to repay the Government Tagavi loan, the disputed land was put to auction for recovery of such loan. As there was no stand taken by the learned Assistant Government Pleader nor any affidavit was filed on above nonavailability or destruction of revenue record of the subject land and various proceedings undertaken by the litigants, learned Single Judge found that after a period of 30 years, under the Gujarat Rules, destruction of the old record is permissible and in that context, the Writ Petition came to be rejected treating that at the relevant point of time no objection was raised with regard to the auction. However, the fact remains that various contentions on law, to which, reference is made hereinabove were neither considered nor dealt with and accordingly we find that this Appeal deserves to be allowed on this ground alone remitting it to the learned Single Judge for taking decision afresh in accordance with law as expeditiously as possible.

10. Letters Patent Appeal is allowed to the extent aforesaid.

