(2004) 12 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application No''s. 14377, 15066, 15069, 15343 and 17421 of 2003

Vallubhai Kukabhai Boliya APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 203, 211, 79
Constitution of India, 1950 — Article 226
Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance Act, 1949 — Section 19, 2, 54, 67, 75
Saurashtra Land Reforms Act, 1957 — Section 65

Citation : (2005) 2 GLR 1225

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : B.M. Mangukiya, A.J. Patel and Avani Mehta, for the Appellant; Desai, Asst. Government Pleader for Respondent No. 1-2, for the Respondent

Judgement

Jayant Patel, J.—All the matters are finally heard on the question of alternative remedy available to the petitioners for challenging the orders passed by the authority under The Saurashtra Gharkhed, Tenancy Settlement And Agricultural Lands Ordinance, 1949 (hereinafter referred to as "the Ordinance") read with Saurashtra Land Reforms Act, 1957 (hereinafter referred to as "the Act"). As the common question is involved, all the matters are being dealt with by the common judgment.

2. Special Civil Application Nos. 14377/03, 15069/03 and 15066/03 are preferred by the petitioners challenging the orders dated August 29, 2003 passed by the respondent No. 2-Dist.Collector, Bhavnagar under the Ordinance and Special Civil Application No. 17421/03 is preferred by the petitioner challenging the order, dated 14.3.2002 passed by the respondent No. 2-Dist.Collector, Bhavnagar under the Ordinance and the Special Civil Application No. 15343/03 is preferred by the petitioner challenging the order, dated 14.8.02 passed by the Dist.Collector,

Rajkot under the Ordinance. By all the impugned orders referred to hereinabove the transactions for purchase of land are held to be invalid and consequently the orders are passed for summary eviction, and also in some cases for forfeiture of the land.

3. Heard Mr. Mangukia, Mr. A.J. Patel with Ms. Avani Mehta, Ld. advocates for petitioners and Mr. Desai, Ld. AGP for the authorities.

4. It is an admitted position that the impugned orders have been passed by the District Collector under the Ordinance except in Special Civil Application No. 15343/03 initially order was passed by the Dy. Collector and the State carried the matter before the Dist. Collector u/s 211 of the Bombay Land Revenue Code (hereinafter referred to as "the Code") and the Dist. Collector has set aside the order of the Dy. Collector and has found the sale is invalid and passed order for summary eviction and also for forfeiture of the land in question. The learned counsel appearing for the petitioners mainly contended that as the forum provided under the Ordinance or under the Act for challenging the order under the Ordinance is not available, the petitioners have no option but to approach this court by preferring the petitions invoking the jurisdiction of this court under Article 226 of the Constitution of India. Mr. Desai, Ld. AGP appearing for the State authorities has contended that as per the decision of the Gujarat Revenue Tribunal in the case of Shri Abbasali Kadarbhai v. The Collector, Junagadh and another reported in 91 GRTLR 144 the revision before the Gujarat Revenue Tribunal is competent and the petitioner has alternative efficacious remedy. The learned counsel for the petitioners also alternatively contended that the view taken by the tribunal in the aforesaid decision of Shri Abbasali Kadarbhai (supra) is not in consonance with the decision of the Full Bench of the Revenue Tribunal in case of Soni Devchand Ranchhod & Co. v. Sandhi Punja Natha reported in 19 GRTLR 130 wherein the view taken is that the tribunal will have no jurisdiction and the revision can be preferred before the State Govt. u/s 211 of the Code.

5. In view of the aforesaid controversy on the question of forum and alternative remedy in all the matters the question requires to be considered as to whether there is any alternative remedy available to the petitioners, if yes, before whom?

6. If the transaction is with non-agriculturist for sale of land, such transaction is barred by the provisions u/s 54 of the Ordinance. As per the provisions of Section 75 of the Ordinance, in the event such transaction is found to be invalid or barred as per the Ordinance by the competent authority, there are enabling powers with the authority to summarily evict the persons who have continued to be in possession of such land. Section 75 of the Ordinance, reads as under:

"75. Summary eviction:- Any person unauthorisedly occupying or wrongfully in possession of any land,--

(a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Ordinance,

(b) the management of which has been assumed under the said provisions, or

(c) to the use and occupation of which is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons,

may be summarily evicted by the Collector."

Clause (a) of Section 75, interalia, provides that the transfer of which is invalid under the said provisions of the Ordinance. For ascertaining as to whether such transfer is invalid under the provisions of the Ordinance Section 54 of the Ordinance would be relevant which reads as under:

"54. Transfer to nonagriculturists barred--(1) save as provided in this Ordinance,--

(a) no sale (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land (where lease is by law allowed) or interest therein, or

(b) no mortgage of any land or interest in which possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of a person who is not an agriculturist; or

(c) No agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein;

[provided that the Collector or an officer authorised by the Government may grant permission for such sale, gift, exchange, lease, where lease is by law allowed or mortgage or for such agreement, on such conditions as may be prescribed]

[provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousand rupees.]

(2) Nothing in this section shall be deemed to prohibit the sale, gift, exchange or lease of a dwelling house or the site thereof or any land appurtenant to it in favour of an agricultural labourer or an artisan.

[Explanation: For the purpose of this section in so far as it relates to sale or lease of land, the term "agriculturist" shall include a (Maldhari and Landless Labourers employed in agricultural operations.)

7. The impugned orders have been passed by the competent authority u/s 75 of the Ordinance. It may be recorded that earlier against the decision of the authority under the Ordinance for declaration that the transaction is invalid the revision was competent before the Saurashtra Land Revenue Tribunal as per the provisions of Section 67 of the Ordinance and after formation of the Gujarat State before the Gujarat Land Revenue Tribunal. However, Section 67 of the Ordinance is repealed by the Saurashtra Land Reforms Act (hereinafter referred

to as "the Act") as per the provisions of Section 65 of the Act. In view of Section 65 of the Act which is subsequent to Ordinance of 1949 Section 67 of the Ordinance since repealed, the tribunal will have no jurisdiction to entertain the revision against the order passed by the competent authority under the Ordinance unless the action is taken during the period when Section 67 of the Ordinance was on the statute book and unless such proceedings are saved by the provisions of General Clauses Act. In none of the petitions, the action has been taken by the authorities under the Ordinance during the period when the Section 67 of the Ordinance was on the Statute book. Such actions are taken after repealing of Section 67 of the Ordinance and therefore it appears that the Gujarat Land Revenue Tribunal which is substituted in place of Saurashtra Land Revenue Tribunal after formation of Gujarat State will not continue to have jurisdiction for entertaining the revision in a matter where the action is taken under the Ordinance after repealing of Section 67 of the Ordinance as per the provisions of Section 65 of the Act.

8. The view taken by the Gujarat Revenue Tribunal in the case of Shri Abbasali Kadarbhai (supra) does not appear to be a correct view because in the said decision it has not been considered as to what will be the effect after repealing of Section 67 of the Ordinance on the source of power of the Gujarat Revenue Tribunal. As such, said view taken by the Revenue Tribunal in case of Abbasali Kadarbhai (supra) even otherwise also can not be said to be as a correct view in view of the decision of the Full Bench of the tribunal in case of Soni Devchand Ranchhod and Co. (supra). Even in the decision of the Full Bench of the tribunal in the matter of Soni Devchand Ranchood (supra) the tribunal has considered that Section 67 of the Ordinance is repealed and therefore the action and the orders passed by the Collector u/s 54 of the Ordinance were not revisable by the tribunal. The Revenue Tribunal in the said decision at para 5 has proceeded on the basis that the powers of the Collector for summary eviction are alike the powers u/s 79 of the Code and as the orders passed under the ordinance are made as final by the express provision of the statute such orders are revisable, but the view taken is that the orders would be appealable under general law, i.e. Section 203 of the Code and revisable u/s 211 of the Code. It appears that even the Full Bench of the tribunal in the aforesaid decision has not considered the distinction between the exercise of powers by the competent authority under the Ordinance and the exercise of power by the authority under the Code. The exercise of power under the Ordinance as such can not be made as appealable or revisable under the other enactment which in the present case would be the Code. By virtue of Section 19 of the Ordinance the provisions of the Code are made applicable to non gharkhed lands only. The other provisions of Chapter III of Non-Gharkhed Lands are repealed. The word "Gharkhed" is defined u/s 2(h) which provides ''the land reserved by the landlord for cultivating personally'' provided that the land shall continue to be Gharkhed land even if the landlord allows the same to be cultivated by the tenant. There is no express definition for the lands classified as "non-gharkhed lands''. Section 2(y) of the Ordinance

provides for the meaning of the words and expressions used in the Ordinance if not available specifically as in Bombay Land Revenue Code applicable to Saurashtra area of State of Gujarat and the Transfer of Property Act. There is no express provision available in the ordinance providing that the Code can be made applicable in connection with the order passed by the competent authority under the Ordinance. Right of appeal/revision under the old enactment can be read only if it is expressly provided or saved by making reference under the parent Act or enactment and in the absence thereof it can not be said that by General Law which is referred by the tribunal as Bombay Land Revenue Code can be made applicable and appeal or revision can be preferred under the Bombay Land Revenue Code for challenging the order passed by the authority under the Ordinance. Therefore, the view expressed by the Full Bench of the tribunal to the extent that the appeal or revision would be competent under the Code can not be said as a correct view in the opinion of this court.

9. As such, even after repealing of Section 67 of the Ordinance, the provisions of Section 77 of the Ordinance have continued to be on the Statute book and there is no repeal of that provision. Section 77 of the Ordinance reads as under:

"77. Control:-- In all matters connected with ordinance the Govt. shall have the same authority and control over the Mamlatdars and the Collectors acting under this Ordinance as they have and exercise over them in the general and revenue administration."

As per the said Ordinance the State Govt. is having the same authority and control over Mamalatdars and Collectors acting under the Ordinance as they have and exercise over them in the general and revenue administration. As such, the expression used u/s 77 of the Ordinance can be said as a conferring power upon the State Govt. to examine the legality and validity of the powers exercised by the Mamalatdar and the Collector under the Ordinance and to exercise the same power as that of Mamaltdar or the Collector under the Ordinance. Such power if not construed at par with the appellate power, it can be said at par with the power of revisional authority. In the absence of any express provision available for appeal or revision the orders passed by the competent authority under the Ordinance can be examined by the State Govt. It appears that only the controlling power of the State Govt. can be read as power akin to the revisional jurisdiction with a view to control and supervise any action taken or the order passed by the authority under the Ordinance.

10. Mr. Patel, Ld. counsel appearing in one of the petitions made an attempt to submit that the language used is "general and revenue administration" and therefore it may not be interpreted as having power to modify or annul the order which would rather be available with the revisional authority. In my view, merely because the language used is ''general and revenue administration'', the powers of the State Govt. which are otherwise equated to control over the powers exercised and exercisable by the Mamalatdars and Collectors should not be restricted. The liberal interpretation would give wider power to the Govt. which

would include examining the legality and validity of the actions taken or orders passed by the Mamaltdars or Collectors under the Ordinance. There is no reason to restrict such powers of the State Govt. which are essentially for controlling the actions taken or the orders passed by the Mamalatdars or Collectors under the Ordinance.

11. In view of the aforesaid, in all the petitions the impugned orders which are passed by the Collector can be challenged before the State Govt. as per Section 77 of the Ordinance and as the petitioners are having alternative efficacious remedy, as per the settled legal position, by way of self-imposed restriction, the present petitions deserve to be not entertained at this stage since the petitioners have not exhausted the alternative efficacious remedy available to them.

12. In view of the above, rule shall stand discharged in SCA No. 15343/03 and in other petitions notice shall stand discharged. Ad interim relief granted earlier shall stand vacated. In the facts and circumstances, there shall be no costs.

13. Ld. Counsel for the petitioners prayed that since the petitioners are desirous to approach the alternative forum as per the view taken by this court, the ad interim relief granted earlier be continued till the application is decided in the revision which may be preferred by the petitioners. Considering the facts and circumstances, in case the petitioners prefer revision before the State Govt. within a period of 4 weeks from today and submit stay application, until such stay application is decided by the State Govt., the ad interim relief granted in all the petitons shall continue.