
(1962) 03 GUJ CK 0014
In the Gujarat High Court

Vikramsinhji Banehsinhji

APPELLANT

Vs

Duda Devshi and Another

RESPONDENT

Date of Decision : 20-03-1962

Acts Referred:

Mamlatdars Court Act, 1906 — Section 5, 5
Saurashtra Land Reforms Act, 1951 — Section 61, 61

Citation : (1963) 4 GLR 182

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—The applicant, who is a Girasdar and to whom certain lands were allowed for personal cultivation and to whom an occupancy certificate was issued under the Land Reforms Act. obtained possession of those lands, but he was dispossessed. He then filed a suit u/s 5 of the Mamlatdars' Courts Act. complaining of dispossession. His plea of dispossession was accepted by the Mamlatdar, but in revision, the learned Deputy Collector, Jetpur, held that the relief could be given under the Land Reforms Act and not under Mamlatdars Courts Act. He, therefore, set aside the order passed by the Mamlatdar under the Mamlatdars' courts Act.

He therefore set aside the order passed by the Mamlatdar under the Mamlatdars Courts Act. In revision this order of the learned Deputy Collector is challenged. The scheme of the Land Reforms Act is that provided certain other conditions are satisfied a Girasdar is allotted land for personal cultivation and is given an occupancy certificate in respect of such land. Similarly a tenant who satisfies certain requirements is given an occupancy certificate in respect of certain lands. When an occupancy certificate is given to the tenant u/s 30 of the Saurashtra Land Reforms Act he gets the rights and privileges which are mentioned in Section 31 of the Act. As provided by Section 31(a) the tenant has all the rights and obligations of an occupant under the Land Reforms Act and under the Code in respect of the holding. Code is defined in Section 2 of the Sau. Land Reforms Act as the Bombay Land Revenue Code 1879 as adapted and applied to the State

of Saurashtra. Similarly in the case of a Girasdar when he is granted an occupancy certificate u/s 20 of the Sau. Land Reforms Act the Girasdar becomes an occupant.

2. The expression occupants rights are defined in Section 68 of the Saurashtra Land Revenue Code as under:

An occupant is entitled to the use and occupation of his land for the period if any to which his tenure is limited or if the period is unlimited or a survey settlement has been extended to the land in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same according to the provisions of this Act or of any rules made under this Act or of any other law for the time being in force and on the fulfillment of any other terms or conditions lawfully annexed to his tenure.

The right to continue to use and occupy the land allotted under an occupancy certificate is therefore derived u/s 68 of the Land Revenue Code and not under the Land Reforms, Act. Section 61 of the Saurashtra Land Reforms Act reads as follows:

Any person who is in unauthorized occupation or wrongful possession of any land or dwelling house not being entitled to such occupation or possession under the provisions of this Act may be summarily evicted by the Collector.

Sub-section (1) of Section 62 of the Sau. Land Reforms Act provides as under:

No Civil Court shall have jurisdiction to settle decide or deal with any question which is by or under this Act required to be settled decided or dealt with by the Mamlatdar the Collector or Tribunal or by the Government in exercise of their powers of control.

Sub-section (2) of Section 62 of the Saurashtra Land Reforms Act reads as follows:

No order of the Mamlatdar the Collector or the Tribunal made under this Act shall be questioned in any Civil or Criminal Court.

Explanation to Section 62 of the Saurashtra Land Reforms Act provides as follows:

For the purposes of this section a Civil Court shall include a Mamlatdars Court constituted under the Saurashtra Mamlatdars Courts Ordinance 1948.

The Mamlatdars Court cannot therefore settle decide or deal with any question which is by or under the Land Reforms Act required to be settled decided or dealt with by the Mamlatdar the Collector or Tribunal or by the government in exercise of their powers of control. u/s 61 of the Saurashtra Land Reforms Act the Collector can summarily evict a person who is not entitled to the occupation or possession of any land under the provisions of the Saurashtra Land Reforms Act. But if a person is not entitled to possession or occupation of any land under the Saurashtra Land Revenue Code Section 61 of the Saurashtra Land Reforms Act is

not applicable and therefore the bar of jurisdiction of Civil Courts and of the Mamlatdars Courts does not operate after the issue of an occupancy certificate under the Saurashtra Land Reforms Act because after the issue of an occupancy certificate the rights and obligations are governed by the Saurashtra Land Revenue Code and not by the Saurashtra Land Reforms Act. The view taken by the learned Deputy Collector is therefore erroneous. He has not stated that the order of the Mamlatdar was wrong on any other ground.

The revision application is therefore allowed the order of the Deputy Collector is set. aside and that of the Mamlatdar is restored. There will be no order as to costs.