

(2010) 11 GUJ CK 0023
In the Gujarat High Court

Case No : Letters Patent Appeal No. 363 of 2000 in Spl. C.A. No. 3250 of 1988

Vitthalbhai M. Patel and Others

APPELLANT

Vs

Deputy Collector and Another

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 34, 9(1), 9(3)
Limitation Act, 1963 — Article 113, 14

Citation : (2011) 52 GLR 610

Hon'ble Judges : S .R. Brahmbhatt, J; Jayant Patel, J

Bench : Division Bench

Advocate : A.J. Patel and Shital Patel, Nos. 1 to 3, for the Appellant; Pranav Trivedi, A.G.P., for the Respondent

Judgement

Jayant Patel, J.—The present appeal arises against the order passed in Spl.C.A. No. 3250 of 1988 by the learned Single Judge of this Court on 23-3-2000, whereby the petition has been dismissed and the order of the State Government in revisional jurisdiction under Prevention of Fragmentation Act (hereinafter referred to as "the Act" for short) has been confirmed.

2. The relevant facts are that the Petitioner purchased the land bearing Plot No. 902 admeasuring 5 acre 2 gunthas at Village Vena, Taluka Nadiad, by registered sale-deed dated 1-4-1972. The revenue entry was mutated based on the said sale-deed and it appears that the said revenue record continued for about 12 years. On 14-9-1984, a show-cause notice came to be issued under the Act as to why the sale should not be declared as void and illegal by the Deputy Collector, Land Reform, Kheda. In the said proceedings, ultimately vide order dated 29-9-1984 the sale was declared as void and the penalty was also imposed to the original owner of Rs. 50/-. The Petitioner carried the matter in revision before the Secretary of the State Government. The Secretary of the State Government ultimately vide order dated 29-4-1988 dismissed the revision. The Petitioner preferred Special Civil Application No. 3250 of 1988 before this Court for

challenging the legality and validity of the order passed by the Secretary of the State Government in revisional jurisdiction. In the said petition, the learned Single Judge found that there is delay of 12 years for initiating the proceedings, however, the learned Single Judge took the view that if the transaction is void and if the action is not taken for a long time, and thereafter, when the action is taken, the proceedings are said to be barred on the ground of delay, it would frustrate the purpose of the Act and it would encourage the illegal activity and, therefore, the learned Single Judge ultimately dismissed the petition. It is under these circumstances, the present appeal before us.

3. We have heard Mr. Shital Patel for Mr. A.J. Patel, learned Counsel for the Petitioner and Mr. Trivedi, learned Addl. Government Pleader for the State Authorities.

4. As such on the aspect of delay the law is well settled. We may record that, as there were two different views of learned Single Judges of this Court, one, in case of Koli Nagjibhai Varjan Vs. State of Gujarat and Others, (Coram: Abichandani, J.); and another in case of Ranchhodbhai Lallubhai Patel v. State of Gujarat, reported in 1984 (2) GLR 1225 (Coram: S.B. Majumdar, J.), the matter was referred to the Division Bench of this Court. The matter was ultimately considered by the Division Bench of this Court in case of Valjibhai Jagjivanbhai v. State of Gujarat, reported in 2005 (2) GLH 34. The view taken and conclusion recorded by the Division Bench at Para 23 is as under:

23. Looking to the aforesaid different situations, there is no doubt in our mind that even the void transaction u/s 9(1) if allowed to remain effective for considerably long period, the authority named therein will be precluded from initiating proceedings to annul it. The ratio laid down by the Apex Court in the decisions cited by Mr. Patel clearly states that even the void transaction cannot be said to be non-existent in all cases and in all situations. It can remain effective and in existence till it is invalidated and set aside. If its existence is allowed to remain for a considerable period and with the passage of time it brings about several changes, creating valuable rights in favour of considerable section of people, it is difficult to accept the proposition that despite the change the Collector would be entitled to exercise power under Sub-section (3) of Section 9 of the Act. Similar observations can also be made with regard to the land wherein no change is brought about, but number of years have passed after the transfer against the provisions of the Act has taken place. In our opinion, when the things have been allowed to remain as such for years together, the purchaser cannot be deprived of his possession so as to render indirect benefit to the seller who was equally responsible for entering not such illegal transaction. Thus, in our view, when the authority had considerable opportunities to know about the transaction and despite that, has not taken any action thereon for years together, such authority cannot be allowed to exercise powers conferred upon it at a belated stage. The concept of reasonableness of time will equally apply in such cases.

5. We may also refer to the decision of the Apex Court in case of Pune Municipal Corporation Vs. State of Maharashtra and Others, on the aspect of concept of null and void order and applicability of Article 113 of the Limitation Act. The Apex Court in the said decision at Paras 36 and 41 have observed thus:

36. It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. As Prof. Wade states (See Administrative Law by H.W.R. Wade, 6th Edn. Page 352):

The principle must be equally true even where the "brand of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the Court.

He further states Ibid., pages 352-53:

The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the Plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case, the "void" order remains effective, and is in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person, but valid against another.

41. In the present case, no period of limitation is prescribed for preferring revision u/s 34 of the Act. The principle laid down in The State of Gujarat Vs. Patil Raghav Natha and Others, hence, applies. If, therefore, the revisional authority was inclined to exercise jurisdiction, it ought to have been satisfied that such power was invoked by the Petitioner within reasonable time. Merely on the ground that the order passed in 1977 was unlawful was not sufficient to ignore length of delay and other attenuating circumstances.

6. If the fact of the present case is examined in light of the aforesaid, it is an admitted position that after a period of 12 years from the entry mutated in the revenue record based on the alleged transaction, the action is initiated. Under these circumstances, as such the action could be said as after an unreasonable period and the delay would operate against as a bar to the authority in initiating action for annulment or setting aside the alleged sale on the alleged ground of breach of provisions of the Act.

7. It appears that, learned Single Judge in the impugned order has been guided by the broad principles, instead of considering or concentrating on the aspects as to whether the equitable consideration as well as the delay should be considered as a bar in initiation of action when the transaction of sale was made known to the authority for more than a decade before.

8. It is true that the delay in taking action ipso facto may not be sufficient, but the aspect of delay can be considered with the prejudice to be caused and the limitation of the rights of the parties and irreversible situation. The fact that the

person has continued to enjoy the property by cultivation thereof for a long period of 12 years is one of the relevant aspects, and the another aspect is that, it was not a case where the factum of sale having entered into between the parties was not made known to the revenue authority. It was an admitted position that, based on said sale, revenue entry was mutated in the revenue record and it was made known to the revenue authority and that entry in the revenue record also remained for a period of about 12 years. The provisions of Bombay Land Revenue Code provides that revenue record is required to be inspected periodically by the Mamlatdar as well as Prant Officer as per the Gujarat Land Revenue Rules. At no point of time, the action was initiated. Further, if the order of the lower authorities are considered, no material is brought on record showing the reason as to why the action could not be initiated well in time. Under these circumstances, we find that the action was barred, but the learned Single Judge did not consider said aspects, and therefore, the impugned order for invalidating the sale deserves to be set aside.

9. Learned A.G.P. Mr. Trivedi did contend that there is no evidence produced on record about any investment made by the Petitioner during the period of 12 years, and therefore, the delay should not operate as a bar to the authority for initiation of action. He also relied upon another unreported decision of this Court in case of Abdulbhai Daoodbhai Muman v. Dy. Collector, in Letters Patent Appeal No. 2155 of 2007 decided on 2-2-2009, taking the view that the sale could be said to be illegal even after expiry of reasonable period. He further contended that the aforesaid both the decisions of the Division Bench of the Court in case of Valjibhai Jagjivanbhai (supra) as well as of the Apex Court in case of Pune Municipal Corporation (supra) were considered and in spite of the same, the order by which transaction was declared as illegal was allowed to operate. Therefore, he submits that the matter may be considered accordingly.

10. It is true that aforesaid both the decisions were considered by this Court in case of Abdulbhai Daoodbhai Muman (supra), but the Division Bench has not laid down law otherwise than as was declared in case of Valjibhai Jagjivanbhai (supra), but only distinguished on facts and same position remained while considering the decision of the Apex Court in case of Pune Municipal Corporation (supra). Therefore, considering facts of that case, this Court in case of Abdulbhai Daoodbhai Muman (supra) has taken the view, but it cannot be said that position of law and the settled legal position is different, nor such decision would be of any assistance to the learned A.G.P. The pertinent aspect is that, even if the delay exists, the ground of delay is to be considered and while considering said aspects the question of investment or development is also to be considered. In the present case, no explanation has come on record as to why action was not initiated for a period of 12 years, i.e. more than a decade by the authority. The action on the part of the authority to wake up from slumber at one fine morning and initiate action without there being any sufficient material placed on record for not taking any action prior thereto, could hardly be countenanced by this Court, even if the action is to be tested on the ground of reasonableness, so as

to meet with the test of Article 14 of the Constitution of India.

11. In view of the aforesaid, the impugned orders passed by the authority declaring the sale as illegal and its confirmation thereof by learned Single Judge in the impugned judgment dated 23-3-2000 deserve to be quashed and set aside. Hence, they are quashed and set aside. Consequently, the appeal shall stand allowed. No order as to costs.