Patel Narshi Thakershi And Ors. vs Shri Pradyumansinghji Arjunsinghji on 2 March, 1970

Equivalent citations: AIR1970SC1273, (1971)3SCC844, AIR 1970 SUPREME COURT 1273

Author: K.S. Hegde

Bench: A.N. Grover, J.C. Shah, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. This case illustrates the consequence of entrusting judicial work to those who had no judicial training and back-ground. A simple question whether the family of the respondent was divided or undivided has been pending decision for about 20 years.

2. One Jethaji was the girasdar holding a giras estate known as Manghani Taluka. That giras is a part of Kotda-sanghani Mahal. Jethaji had three sons (1) Jesangji; (2) Arjunsinghji and (3) Mohan-sinhji. On the death of Jethaji, the giras devolved on his sons. Arjunsinghji died in or about 1945 leaving behind his two sons Pradyumansinghji and Balwantsinhji. The case of the respondent and his brother was that the giras had been divided between their father and their two uncles sometime in 1938 though Rajkam in that respect was executed only on October 20, 1950. On September 1. 1951, all giras estates were abolished under the Saurashtra Land Reforms Act (to be herein-after referred to as the Act). Thereafter the girasdars were only entitled to certain limited area as their gharkhed. If the family is held to be undivided then that family as a unit can get one gharkhed land but if that family is held to be divided on the date the Act came into force each one of the divided branches is entitled to get separate gharkheds. Hence if it is held that the family is a divided family, the members of that family would get more lands as gharkhed than they would be entitled to if they are held to be undivided at the relevant time. The respondent, his brother and their uncle made separate applications to the Special Mamlatdar, Gondal on November 25, 1951 under Section 19 of the Act for allotment of a separate gharkhed to each of them. To those applications tenants on the land including the appellants were joined as respondents. The tenants opposed the applications on the ground that the family of the girasdars was still joint and therefore, the respondent, his brother and his uncles were only entitled to joint gharkhed. The Mamlatdar by his order dated July 4, 1952 held that the family was joint. The girasdars went up in appeal to the Dy. Collector, Gondol. Their appeal was dismissed on May 14, 1953. Then the girasdars took up those matters in revision to the Revenue Tribunal. The Tribunal by its order dated January 28, 1954 remanded the matters to the Special Mamlatdar for further enquiry in accordance with the

directions given by it. The Special Mamlatdar recorded further evidence and by his order dated October 19, 1954 he again held that the family was joint. The girasdars did not appeal against that order within the time prescribed. But on September 4, 1956, they filed applications to the Saurashtra Government under Sub-section (2) of Section 63 of the Act to set aside the orders of the Special Mamlatdar and the Deputy Collector. These applications were accepted by the Government on October 22, 1956. The Government set aside the orders of the Special Mamlatdar and the Deputy Collector and remanded the cases to Mahalkari, Kotdasanghani to rehear and decide the cases on merits. At this stage it may be noted that by the time the Government came to make those orders the office of the Special Mamlatdar had been abolished and his jurisdiction had been transferred to Mahalkari, Kotdasanghani. The Mahalkari by his order dated December 21, 1957 held that the family had separated and that the girasdars were entitled to separate gharkheds. After this order was passed Jesang, the uncle of the respondent appears to have settled his dispute with his tenants and the order made by Mahalkari in his petition became final. But in the applications made by his nephews, the tenants appealed to the District Deputy Collector but their appeal was rejected by him on February 25, 1958. Against that order the matter was taken up in revision by the tenants to the Tribunal. The Tribunal by its order dated April 29, 1958 rejected the revision application taking the view that it had no jurisdiction to entertain them as the matter had earlier been considered by the State Government. Thereafter on May 24, 1958, the tenants filed a revision petition to the State Government of Bombay as the State of Saurashtra bad been merged in the State of Bombay by that time. The Bombay Government sent down that revision petition to the Commissioner, Rajkot Division to hear the parties and to submit a report. The petition was heard by Mr. Shunglu who was the Commissioner of Rajkot Division at that time. On November 10, 1958 he reported to the State Government recommending that the order made by the Mahalkari on December 21, 1957 and by the District Deputy Collector on February 25, 1958 should be set aside as they were wrong on merits. The State Government agreed with the recommendation and directed the Commissioner, Rajkot Division to call upon the girasdars to show cause why the two orders in question should not be cancelled. After the receipt of that order Mr. Monani, the then Commissioner heard the parties and recommended to the Government on September 28, 1958 to set aside the orders in question as in his opinion the order made by the Saurashtra Government on October 22, 1956 was made without the authority of law. But by the time this recommendation came to be considered by the State Government, the State of Gujarat of which the territory of the former State of Saurashtra is a part had come into existence. The Gujarat Government by its notification dated July .19, 1960 delegated its functions under Section 63 of the Act to the Commissioners. Therefore the recommendation of Mr. Monani came back to the Commissioner, Rajkot Division for passing a suitable order. Hence Mr. Mankodi, the then Commissioner of Rajkot, took up the matter for consideration. He by his order dated March 29, 1962, set aside the order passed by the Saurashtra Government on October 22, 1956 taking the view that the Government had no competence to make that order.

3. The order of Mr. Mankodi was challenged before the High Court of Gujarat by means of writ petition under Articles 226 and 227 of the Constitution. The High Court has set aside that order taking the view that Mr. Mankodi was not right in his conclusion that the State Government could not have passed the order which it passed on October 22, 1956, under Section 63(2) of the Act. It also quashed the order made by the Revenue Tribunal on April 29, 1958. Further ft directed the Gujarat Revenue Tribunal to dispose of the matter in accordance with law. As against that order this

appeal has been brought on the strength of the certificate issued by the Gujarat High Court.

4. The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr. Mankodi was Liable to be set aside.

5. The High Court has come to the conclusion that under Section 63(2) of the Act, the State Government had power to entertain the revision application filed by the girasdars. In view of our earlier conclusion we do not think it necessary to go into that question. Hence we refrain from deciding that question.

6. In the result this appeal fails and the same is dismissed but in the circumstances of the case we make no order as to costs. Before leaving this case we would like to impress on the Tribunal which is now required to decide the case the fact that this matter has been pending for about 20 years. Therefore it is imperative that it should be disposed of as early as possible.