

Gujarat High Court

Balvinbhai vs Rana on 29 September, 2010

Author: Ks Jhaveri,&Nbsp

Gujarat High Court Case Information System

Print

SCA/3321/1994 5/ 5 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL
CIVIL APPLICATION No. 3321 of 1994

For
Approval and Signature:

HONOURABLE
MR.JUSTICE KS JHAVERI

=====

1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To be

referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

=====

BALVINBHAI
SHANABHAI & 1 - Petitioner(s)

Versus

RANA
PUNJABHAI RANCHODBHAI & 1 - Respondent(s)

=====

Appearance :
MR
HARSHIL DHOLAKIYA FOR for
Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5 - 2, 2.2.1,
2.2.2, 2.2.3, 2.2.4, 2.2.5,2.2.6
MR MC SHAH for Respondent(s) :
1,
=====

CORAM

:

HONOURABLE

MR.JUSTICE KS JHAVERI

Date
: 29/09/2010

ORAL
JUDGMENT

In view of the communication dated 24/09/2010 made by petitioner No.1/5 Fulasinh Sanabhai, legal heir of original petitioner No.1, petition qua heirs of petitioner No.1 stands disposed of. A xerox copy of communication is taken on record.

2. By way of this petition the petitioner has challenged the order passed by the Gujarat Revenue Tribunal dated 22/10/1993 and the order passed by the Mamlatdar and ALT in Tenancy No.28.C.9231-79 dated 24/10/1979 and has further sought relief to hold that the certificate which has been issued on 31/12/1968 under Section 80 (C) of the Bombay Tenancy Act is bad and illegal and further to hold that the present petitioners are the tenants of the land in question.

3. The facts giving rise to the present petition are that respondent herein had filed an application under Section 88 (C) of the Bombay Tenancy and Agricultural Lands Act, 1948 for exemption. The said application was opposed by the petitioners herein - tenants on the ground that it was not filed within six months from the date of his attaining majority by Punjabhai. It is submitted by Punjabhai that his date of birth was 01/06/1947 but this was not admitted by the tenants who contended that date of birth of Punjabhai was 29/12/1943. Earlier, the Mamlatdar had found that the birth date of Punjabhai was 01/06/1947 and the application was within the time and has ordered to issue certificate in favour of landlord respondent herein under Section 88 (C) of the Act. Against the said order, petitioner - tenant had preferred Tenancy Appeal which was dismissed by the Special Deputy Collector, Vadodara by his order dated 10/12/1969. The said appeal was challenged by way of Revision Application No.TEN.A.315/70 which came to be allowed by remanding the matter back to the Mamlatdar quashing and setting aside the order of lower Courts directing to conduct fresh inquiry with regard to the date of birth of Punjabhai and to decide the matter in accordance with law. Thereafter, the Mamlatdar again having heard the parties vide order dated 25/10/1975 has held that birth date of Punjabhai as per school certificate was 01/06/1947 and same was correct. Against the said order the petitioner - tenant preferred an appeal before the Deputy Collector, Tenancy Appeal who by order dated 31/07/1978 partly allowed the appeal setting aside the order of the Deputy Collector and directed further inquiry by calling for the record of the school register and to verify as to whether it had been manipulated in any way and then to pass orders according to law. Hence, under the order of the Deputy Collector the matter went back and the Mamlatdar conducted further inquiry as directed and passed an order dated 24/10/1979 to the effect that the birth date of

Punjabhai Ranchhodbhai Ranan was 01/06/1947 and certificate earlier granted under Section 88 (C) was legal and proper which came to be upset by the Deputy Collector in appeal filed by Sanabhai Shankerbhai. Thereafter, Revision Application was preferred which came to be allowed quashing and setting aside the order of the Deputy Collector, which has given rise to the present petition.

4. The main contention of the learned Advocate for the petitioner is that application was time barred as the petitioner was born prior to year 1943. It is submitted by learned Advocate that the Mamlatdar and ALT has reached to the conclusion which is not based on cogent reason and documentary evidence and the Deputy Collector (Appeals) has rightly appreciated this fact and set aside the order passed by the Mamlatdar and ALT. However, again the Tribunal has erred in upholding the order passed by the Mamlatdar. It is further submitted that Punjabhai had already become major on 29/12/1961 and therefore the application was not within six months from that date and hence the application seeking exemption under Section 88 C ought to have been rejected. The evidence on which the Tribunal has relied upon viz., school leaving certificate has been proved contrary to the statement of mother of Punjabhai.

5. Having heard the learned Advocate for the petitioner and having perused the orders passed by the authorities below, this Court is of the opinion that the GRT has after considering the evidence which was discussed by the Mamlatdar and ALT on the basis of the evidence in the form of school leaving certificate come to the conclusion that the application was within the limitation and on the basis of the register of the school the said evidence was relied upon. The GRT has in paragraph No.6 has observed as under:

"6.....

It is apparent that there is some conflict so far as the evidence on record is concerned. It would, however, like to rely upon the school leaving certificate, which is duly proved and which for all legal and practical purposes is acceptable, as true and correct. Here the school leaving certificate shows the date of birth of Punjabhai to be 01/06/1947 and therefore he would be major only on 01/06/1965 and, therefore his application made on 29/11/1965 to the Mamlatdar for exemption certificate under sec. 88 C would be within the prescribed time limit, as per Section 88C read with Rule 53 of the Rules....."

6. In the above view of the matter the authorities have rightly considered the evidence so far as the date of birth of landlord is concerned. This Court is in complete agreement with the findings arrived at by the authorities below. The petition is therefore dismissed. Rule is discharged with no order as to costs. Interim-relief stands vacated.

7. At this stage, learned Advocate for the petitioner requests for extension of the stay since the petitioners are surviving only on the basis of the land in question. Hence, looking to facts and circumstances the stay is extended for a period of one month from today.

(K S JHAVERI, J.) sompura Top