# Kherunben Valimahmadbhai vs Special Secretary (Appeals), Revenue ... on 25 September, 2019

## Equivalent citations: AIRONLINE 2019 GUJ 716

## Author: Vipul M. Pancholi

## Bench: Vipul M. Pancholi

C/SCA/19455/2018 ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19455 of 2018

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KHERUNBEN VALIMAHMADBHAI

Versus

SPECIAL SECRETARY (APPEALS), REVENUE DEPARTMENT & 3 other(s)

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Appearance:
MR VIMAL A PUROHIT(5049) for the Petitioner(s) No. 1
MR KM ANTANI, AGP for the Respondent(s) No. 1
NOTICE SERVED BY DS(5) for the Respondent(s) No. 2,3,4

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CORAM: HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 25/09/2019

ORAL ORDER

1. Heard learned advocate Mr. Vimal Purohit for the petitioner and learned Assistant Government Pleader Mr. K.M.Antani for the respondents.

2. This petition is filed under Article 226 of the Constitution of India, in which the petitioner has prayed that the order dated 26.02.2018 passed by the District Collector as well as order dated 24.09.2018 passed by the Special Secretary, Revenue Department (SSRD) in Revision Application No.MVV/BKP/GIR/4/2018, be quashed and set aside.

3. The factual matrix of the present case is as under:

3.1. The petitioner is an agriculturist. She was holding agricultural land. The petitioner relinquished her right from the concerned parcels of land on 06.02.1990 by Relinquishment Deed No.457 and therefore entry No.2020 was mutated in the revenue record on 20.02.1990. Thereafter, petitioner purchased another agricultural land on 11.12.1990 by a registered sale deed and therefore entry No.965 was mutated in revenue record on 04.06.1991. Said entry was subsequently certified.

3.2. Petitioner, thereafter, submitted an application on 12.03.2015 to the Collector for grant of NA permission under Section 65 of the Gujarat Land Revenue Code (hereinafter referred to as 'the Code' for short). The said application is rejected by the respondent Collector mainly on the ground that petitioner was not an agriculturist for a period of 10 months as she has relinquished her right from the agriculture land on 06.02.1990 and thereafter she had purchased another parcel of agriculture land on 11.12.1990. Petitioner, therefore, challenged the said order by preferring revision application before the respondent - SSRD. The SSRD rejected the said revision application by impugned order dated 24.09.2018 and thereby confirmed the order passed by the Collector. Petitioner has, therefore, filed the present petition.

4. Learned advocate for the petitioner mainly contended that while deciding the application given under Section 65 of the Code, the respondent Collector ought not to have considered the fact that whether the petitioner was an agriculturist at the relevant point of time, i.e. in the year 1990, or not. In the facts of the present case, the petitioner was an agriculturist up to 1990 and thereafter also after relinquishment of her right for a particular parcel of land, petitioner purchased another parcel of agriculture land within a period of 10 months only and when status of the petitioner as an agriculturist was not under question and no proceedings were initiated against the petitioner under the provision of the Bombay Tenancy and Agricultural Lands Act, it was not open for the respondent Collector to reject the application submitted by the petitioner under Section 65 of the Code. It is, therefore, urged that the impugned orders be set aside.

5. Learned advocate for the petitioner has placed reliance upon the decision rendered by the Hon'ble Division Bench of this Court in the case of Bankim Bipinbhai Desai v. State of Gujarat & Ors., vide judgment dated 02.08.2005 passed in Special Civil Application No.7354 of 2005. Copy of the said decision is produced at page 105 of the compilation.

6. Learned advocate for the petitioner has also placed reliance upon the decisions rendered by this Court in the case of Shaileshbhai Dahyabhai Patel v. State of Gujarat & Anr., reported in 2016 (4) GLR 3084 and in the case of Laxmi Associates v. Collector, Vadodara & Ors., reported in 2006 (3) GLR 1982. After referring to the aforesaid decisions, it is contended that the respondent authorities have committed an error while rejecting the application given by the petitioner and therefore the impugned orders be set aside and matter be remitted back to the respondent Collector for deciding the issue afresh keeping in view the aforesaid decisions rendered by this Court.

7. On the other hand, learned Assistant Government Pleader Mr. Antani has referred the reasoning given by the respondent authorities while rejecting the request of the petitioner and contended that

no error is committed by the respondent authorities while rejecting the request of the petitioner and therefore this Court may not entertain this petition.

8. Having heard the learned advocates appearing for the parties and having gone through the material placed on record, it has emerged that the name of the petitioner was mutated in the revenue record on the basis of the heirship entry. The petitioner is, therefore, an agriculturist. However, she had relinquished her right by Relinquishment Deed No.457 dated 06.02.1990 and therefore entry No.2020 was mutated in the revenue record on 20.02.1990. Thereafter, she had purchased another parcel of agriculture land by a registered Sale Deed dated 11.12.1990 and entry No.965 was posted in the revenue record on 04.06.1991. The said aspect is not disputed by the respondent authorities. Thereafter, when the petitioner has submitted an application under Section 65 of the Code for grant of NA permission, the respondent Collector observed that petitioner was not an agriculturist for a period of 10 months and therefore relying upon the Resolutions passed by the State Government and more particularly Resolution dated 01.07.2009, request of the petitioner was not entertained. The said order is confirmed by the SSRD.

9. At this stage, the observations made by the Division Bench of this Court in the case of Bankim Bipinbhai Desai (supra) are required to be referred to. In the said decision, the Hon'ble Division Bench of this Court has observed as under:

> "It appears to us that in accordance with the circular that has been issued by the Revenue Department, Government of Gujarat dated 15th November, 2001 the Collector can refuse NA Permission only on the grounds stated in the said circular. The said circular states that the permission can be refused if there is breach of Ribbon Development Rules committed by the concerned applicant or on the ground that the said land is under acquisition or under proposed acquisition or if the land is a new tenure land under the Tenancy Act or grant of such permission is prohibited in any such law unless the requisite premium is paid. The impugned order does not indicate that the NA Permission has been refused on any of these grounds. It, therefore, clearly appears to us that the permission has been denied on irrelevant ground and hence the impugned order is required to be quashed and set aside and it is hereby ordered to be quashed and set aside. We now remit the matter back to the Collector to consider the application of the petitioner afresh and decide the same on its merits in light of the observations made in this order."

10. Thus, the Hon'ble Division Bench of this Court, after considering the provisions contained in Section 65 of the Code, has specifically observed that while deciding the application submitted for grant of NA permission, the Collector has to consider the relevant aspects stated in the said order.

11. In the case of Shaileshbhai Dahyabhai Patel (supra), this Court has once again considered the provisions contained in Section 65 of the Code and observed in para 9 as under:

> "[9] It is required to note that nobody including trust and the Panchayat has objected to grant of N.A. Permission to the petitioner on the ground that their right survive on

> the land for which N. A. permission is asked for. In such circumstances and in absence of prohibitory order from any competent Court against grant of N.A. Permission or development of land by the petitioner, the Collector was required to decide the application under section 65 of the Code. It is now settled that the Collector is not to go into question of title of the land and is expected to decide the application within reasonable time period available to him under the provisions of section 65 and it is not open to him to pass unreasonable long time on the grounds not available in law. To keep application pending for long time just to ascertain from Mamlatdar whether any appeal or revision is filed against decree passed by the Civil Court where State was not party is certainly no ground available in law for not deciding the application.

12. In the case of Laxmi Associates (supra), this Court has observed in para 7(iv) and (v) as under:

> "(iv) It has been held by this Court in the case of Evergreen Apartment Co□Operative Housing Society Ltd. V/s.

Special Secretary (Appeals), Revenue Department reported in 1991(1) GLH 155 especially in para□12 thereof, as under:□"12. There is much substance in the second submission of Mr.Hawa also. Ordinarily when a transfer of property takes place by a registered account, an entry is effected in the revenue record and it is certified by the Mamalatdar after making necessary injuries. If there is any dispute regarding mutation, the dispute has to be entered in the register of the disputed cases and then such disputes are to be disposed of by the Mamlatdar. Under sub□rule (5) of Rule 108 of the Rules, the aggrieved party can prefer an appeal within 60 days from the date of the service of the order. The State Government has power to call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer and to review the same under subrule (6) of the rules. It is to be noted in the present case that no appeal had been presented within 60 days from the date of Mamlatdar's order certifying the initial entry. The Assistant Collector, Surat took the said entry in suo motu revision, even though he had no such power under the provisions of Rule 108. It, therefore, appears that the Additional Chief Secretary, Revenue Department remanded the proceeding to the Collector for treating the same as an appeal. This was done after a period of 4 years after the certification of the entry. It was only the State Government which had the power to call for a record of inquiry or proceeding under sub□rule (6) of Rule 108. Even the State Government was empowered to satisfy itself "as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings." So the entire inquiry and revisional power has to proceed under the Bombay Land Revenue Rules and not under any enactments like the Bombay Tenancy and Agricultural Lands Act, Urban Land (Ceiling and Regulations) Act or Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It is quite possible that an officer of the Revenue Department may be occupying different capacities under different enactments. That, however, would not empower him to exercise any powers under one enactment while proceeding under another enactment. So far as the proceedings under Rule 108 of the Rules, popularly known as RTS proceedings, are concerned, it is well settled that the entires made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by competent

authorities under special enactments. Independently the Revenue Authorities, as mentioned in Rule 108 of the Rules, cannot pass orders of cancelling the entires on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. Thus on this second ground also the orders of the Collector and the Additional Chief Secretary appear to be beyond their jurisdiction. The Additional Chief Secretary has held that the sale by auction was not consistent with the provisions of Section 27 of the Urban Land (Ceiling and Regulation) Act. Section 27 relates to prohibition of transfer of any urban land with a building thereon. Apart from legal position that Section 27 has been struck down as ultra vires, it is quite obvious that no such question of transferring urban land with a building thereon has ever arisen in the present case. Thus, the order of the revisional authority has proceeded on a misconception of relevant legal provisions also."

In view of the aforesaid decision, powers exercised by the collector, Vadodara in the communication dated 21st November,2005 read with the order dated 7th March,2006 passed by Collector, Vadodara deserves to be quashed and set aside.

(v) It is an admitted fact that the Collector has not issued notice till today under the provisions of Act,1947 and, therefore, the impugned orders deserves to be quashed and set aside, mainly and chiefly for the reason that while passing the order under B.L.R. Code, 1879, the Collector has interwoven the breach of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Before throwing the petitioner at the speculation of breach of the Act, 1947, the rule of law requires, notice for alleged breach under another Act (be it ULC Act or the Act, 1947 or the Bombay Tenancy and Agricultural Lands Act,1948 or the like) and hearing under that Act. In the facts of the present case, there is no notice, no hearing for the alleged breach of section 9 of the Act, 1947 therefore, it cannot be a reason, as given by the Collector, for refusal of N.A. Use permission under section 65 of the Code, 1879."

13. Keeping in view the aforesaid decisions rendered by this Court, if the facts as discussed hereinabove are carefully examined, it is revealed that the respondent Collector, while considering the application submitted under Section 65 of the Code has wrongly considered the status of the petitioner by observing that the petitioner was not an agriculturist for a period of 10 months and on that ground application submitted by the petitioner is rejected. Learned AGP has failed to point out from the record that there was any policy in the year 1990 which is now prevailing as per Resolution dated 01.07.2009 upon which the reliance is placed by the Collector.

14. Even otherwise, while considering the application under the Code, it was not open for the respondent Collector to consider as to whether the petitioner was an agriculturist or not and more particularly when the competent authority under the Bombay Tenancy and Agricultural Lands Act has till date not passed any adverse order against the petitioner by holding that the petitioner is not an agriculturist.

15. In view of the aforesaid discussion, the impugned order dated 26.02.2018 passed by the District Collector as well as order dated 24.09.2018 passed by the Special Secretary, Revenue Department are quashed and set aside and the matter is remanded back to the respondent Collector for deciding the issue afresh. The Collector shall decide the application within a period of three months from the date of receipt of this order, keeping in view the aforesaid decisions rendered by this Court as well as the provisions contained in Section 65 of the Code.

16. With the aforesaid observations and directions, petition is partly allowed. Direct service is permitted.

(VIPUL M. PANCHOLI, J) Jani