

Adityakumar Dhruvkumar Patel vs State Of Gujarat on 20 November, 2019

Equivalent citations: AIR 2020 (NOC) 472 (GUJ.), AIRONLINE 2019 GUJ 486

Author: Vipul M. Pancholi

Bench: Vipul M. Pancholi

C/SCA/19062/2019

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.

19062 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

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- 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 or any order made thereunder ?

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ADITYAKUMAR DHRUVKUMAR PATEL

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance:

MR VIMAL A PUROHIT(5049) for the Petitioner(s) No. 1
for the Respondent(s) No. 2

MR KM ANTANI, AGP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 20/11/2019

ORAL JUDGMENT

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

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2. With consent of the learned advocates

appearing for the parties, petition is taken up for final disposal. Rule. Learned Assistant Government Pleader waives service of Rule for the respondents.

3. Learned advocate for the petitioner submitted that the dispute is with regard to the land bearing survey No.1412□A, admeasuring 14864 sq. mtrs., situated at village Santej, Taluka Kalol, District Gandhinagar. The land in question was originally owned and possessed by one Dhiraji Thakore. The said person died leaving behind Jalaji Dhiraji Thakor as his legal heir and therefore succession entry came to be mutated in the revenue record on 17.11.1954. Copy of the said entry is placed on record at page 43 of the compilation. It is further submitted that after the death of Jalaji Dhiraji, name of Punjaji Jalaji Thakor came to be mutated in the revenue record vide entry No.3060 which was mutated on 28.05.1970. Thereafter, on 16.05.1978, mutation entry No.4512 came to be posted in the revenue record in the name of legal heirs of Punjaji Thakor.

4. It is further pointed out from the record that widow of Punjaji Thakor viz. Maniben sold the land in question by registered sale deed dated 12.04.1982 in favour of Ramjibhai Kalidas Patel and Dahyabhai Nagjibhai Patel. Thereafter C/SCA/19062/2019 JUDGMENT the proceedings under the Bombay Tenancy and Agricultural Lands Act were initiated and vide order dated 29.07.1983, the said transaction was declared as null and void and land in question was vested in the State Government without any encumbrance. The original land owners therefore challenged the said order before the Deputy Collector, Kalol by filing an appeal. The Deputy Collector set aside the order dated 29.07.1983 passed by the Mamlatdar & ALT and matter was remanded back to him. In the meantime, original owners had already returned the consideration to the purchasers and the purchasers have never taken over the possession of the land in question. Therefore, after considering the said aspect, Mamlatdar & ALT, vide order dated 23.04.1992, dropped the proceedings under Section 84(c) of the Bombay Tenancy & Agricultural Lands Act and therefore names of the original land owners were once again mutated in the revenue record on 10.09.1992. Thereafter, the legal heirs of Punjaji Thakor i.e. Jivanji Punjaji and others executed sale deed in favour of Jayeshbhai Jayantilal Shah in the year 1998. Entry No.3720 was posted in the revenue record pursuant to the said registered sale deed. Thereafter, Jayeshbhai Jayantilal Shah executed registered sale deed dated 14.08.2006 in favour of Monaben Ambalal and Ashish Ashokbhai and

therefore mutation entry No.6021 was posted in the revenue record which was certified in the year 2007. The new C/SCA/19062/2019 JUDGMENT purchasers i.e. Monaben Ambalal and Ashish Ashokbhai, thereafter, executed sale deed in favour of Kanaiyalal Jivabhai Patel and others on 20.01.2007. The said purchasers sold the land in question in favour of the present petitioner vide registered sale deed dated 07.05.2011 and therefore entry No.8286 was mutated in the revenue record in the year 2011. The purchaser Aditya Dhruvkumar Patel entered the names of his family members in the revenue record on 27.02.2015 and entry No.9827 came to be posted in the revenue record, copy of which is produced at page 78 of the compilation.

5. Learned advocate for the petitioner, after referring to the relevant documents placed on record, contended that petitioner is fourth purchaser of the land in question and he was desirous of developing the land in question. Therefore, he preferred an application under Section 65 of the Gujarat Land Revenue Code (hereinafter referred to as 'the Code') for grant of N.A. Permission to respondent No.2 - Collector. However, respondent Collector, by way of impugned order dated 02.05.2019, rejected the said application on the ground that sale deed which was executed in the year 1982 has not been cancelled. Petitioner has, therefore, filed the present petition.

6. Learned advocate Mr. Purohit appearing for C/SCA/19062/2019 JUDGMENT the petitioner has placed reliance upon the order dated 25.09.2019 passed by this Court in Special Civil Application No.19455 of 2018 and thereafter contended that the issue involved in the present petition is squarely covered by the said order. It is also pointed out that while passing the said order, this Court has considered the order dated 02.08.2005 rendered by the Division Bench of this Court in the case of Bankim Bipinbhai Desai v. State of Gujarat & Ors. passed in Special Civil Application No.7354 of 2005. It is, therefore, urged that the impugned order passed by the respondent Collector be set aside and the matter be remanded back to the Collector for deciding the issue afresh after taking into consideration the guidelines issued by the Division Bench of this Court in the order dated 02.08.2005.

7. On the other hand, learned Assistant Government Pleader has opposed this petition and contended that respondent Collector has not committed any error while rejecting the application filed by the petitioner under Section 65 of the Code. However, learned Assistant Government Pleader is not in a position to dispute the fact that the issue involved in the present petition is covered by the order dated 25.09.2019 passed by this Court in Special Civil Application No.19455 of 2018.

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8. Having heard the learned advocates appearing for the parties and having gone through the material placed on record, at the outset, it is required to be noted that this Court has considered similar issue in the case of Kheruben Valimahmadbhai v. Special Secretary (Appeals), Revenue Department & Others while passing an order dated 25.09.2019 in which this Court has considered the decision rendered by the Division Bench of this Court in the case of Bankim Bipinbhai Desai (supra). Copy of the said decision of the Division Bench is also placed on record at page 113 of the compilation. After referring to the same, this Court has observed in para 9 to 12 as under:

"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 C/SCA/19062/2019 JUDGMENT 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 C/SCA/19062/2019 JUDGMENT 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 C/SCA/19062/2019 JUDGMENT it is certified by the Mamlatdar after making necessary inquiries. 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 C/SCA/19062/2019 JUDGMENT 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 entries 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 entries 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 C/SCA/19062/2019 JUDGMENT 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 C/SCA/19062/2019 JUDGMENT 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."

9. At this stage, if the impugned order passed by the Collector is carefully examined, it is revealed that the respondent Collector has rejected the application given under Section 65 of the Code only on the ground that the registered sale deed executed in the year 1982 has not been cancelled.

10. Thus, keeping in view the aforesaid decision rendered by this Court, if the facts of the present case are examined, this Court is of the view that the issue involved in the present petition is covered by the aforesaid decision. Accordingly, petition is partly allowed. Impugned order dated 02.05.2019 passed by respondent No.2 is hereby set aside and matter is remanded back to respondent Collector for deciding the issue C/SCA/19062/2019 JUDGMENT afresh. Collector shall decide the application given by the petitioner under Section 65 of the Code within a period of three months from the date of receipt of copy of this order in accordance with law and keeping in view the aforesaid decision rendered by this Court as well as keeping in view the provisions contained under Section 65 of the Code.

11. With the aforesaid observations and directions, petition is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(VIPUL M. PANCHOLI, J) Jani