

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8429 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

VARVABHAI C RABARI

Versus

ASSTT. COLLECTOR

Appearance:

Mr.Mitul K. Shelat for Mr.SN SHELAT for
Petitioner

Ms.Nandini Joshi, ASSTT GOVERNMENT PLEADER for
Respondent No. 1

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 29/09/2000

ORAL JUDGEMENT :

Mr.Shelat, learned advocate for the petitioner submitted that the petitioner was cultivating the land bearing Survey No.470 admeasuring 4 acres, 17 gunthas

situated at village Dhini, Taluka Chanasma. It is the case of the petitioner that the said land stood in the name of one Jijiben, widow of Magha Mashru. Out of the said land, 1 acre and 18 gunthas was sold to one Ajitkumar Thobhandas, who is respondent no.3 herein. Said Ajitkumar, though served has not chosen to appear either personally or through an advocate. The petitioner having come to know about the sale transaction, applied on 12.8.1990 to respondent no.2, Mamlatdar & A.L.T. for taking appropriate actions.

2. It is further submitted that by an order dated 16.11.1981 passed by respondent no.2, the Mamlatdar & A.L.T., the petitioner was declared to be a tenant of the land admeasuring 2 acres, 39 gunthas (Paiki) from the aforesaid survey no.470, that respondent no.2, withdrew the proceedings with respect to the land admeasuring 1 acre, 18 gunthas, which was sold to respondent no.3, Ajitkumar. Being aggrieved of the said order the petitioner preferred appeal to that limited extent, before respondent no.1, Assistant Collector, Patan contending that he was the tenant in respect of the said parcel of the land admeasuring 1 acre, 18 gunthas also. The respondent no.1 by his order dated 28.2.1983 upheld the order of the Mamlatdar declaring the petitioner to be the tenant in respect of the land admeasuring 2 acres, 39 gunthas and remanded the matter to respondent no.2 to hold fresh inquiry with regard to the land admeasuring 1 acre and 18 gunthas.

3. It is further submitted that on remand, respondent no.2, Mamlatdar held inquiry, afresh and passed an order dated 6.7.1983 whereby the sale transaction regarding the land admeasuring 1 acre and 18 gunthas from survey no.470 was set aside and the order of forfeiture also came to be passed. A copy of the said order dated 6.7.1983 is produced at Annexure 'B' to this petition. It is further given out that subsequently by an order dated 20.7.1986, the land in question admeasuring 1 acre and 18 gunthas from survey no.470 came to be granted to the present petitioner.

4. Being aggrieved by these two orders, respondent no.3 preferred two appeals bearing nos.41 of 1989 and 39 of 1989. The appeals came to be dismissed on 17.7.1990. Against the said order dated 17.7.1990 respondent no.3 preferred a revision application before the Gujarat Revenue Tribunal being Revision Application No.TNBA/ 736/ 89, which came to be allowed on 23.11.1990. The Tribunal held that both the courts below have not taken into consideration the provisions of Tenancy Act and that the

Mamlatdar & ALT has not followed the required procedure and has passed orders dated 6.7.1983 and 20.7.1986, the same were declared illegal and the order dated 17.7.1990 passed by the Deputy Collector confirming those orders was also quashed and set aside. After the aforesaid revision application was decided, a review application no.62 of 1990 was filed by the present petitioner. The same also came to be dismissed by an order dated 20.8.1991.

5. Being aggrieved of these two orders passed by the Revenue Tribunal, the present petition is filed. Shri Shelat pointed out that the order passed by the Revenue Tribunal is not in accordance with law and that the same is based on incorrect statements, more particularly in para 7 of the judgement and order, wherein it is stated that on the point of limitation, learned advocate Shri Patel and learned advocate Shri Sagar have no objection and that the Revision Application is treated to be within limitation and the revision application is heard on merits. Mr.Shelat, learned advocate also pointed out that this is one of the main questions on which review application was filed. Besides this, other points were also urged before the Honourable Revenue Tribunal. However, none of the contentions was taken into consideration and the impugned orders were passed. Mr.Shelat also contended that the Revenue Tribunal has thus, committed an error, which goes to the root of the matters and therefore, the judgement and order of the Revenue Tribunal is required to be quashed and set aside.

The learned Assistant Government Pleader, Ms. Nandini Joshi submitted that the Tribunal has rightly held that the courts below, i.e. Mamlatdar & ALT and also the deputy Collector have not taken into consideration the provisions of the Tenancy Act and have not followed the required procedure. Having found no substance in the submissions made by the learned AGP, the application is required to be allowed.

6. In the result, the petition is allowed. The judgements and orders of the Gujarat Revenue Tribunal, Ahmedabad passed in Revision Application No. TEN/ BA/ 736/ 1989 and Review Application No.TECA 62/ 1990 are hereby quashed and set aside. Rule is made absolute with no order as to cost.

29th September 2000 (Ravi R. Tripathi, J.)

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