

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 152 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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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 concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SUCHITA GAS SERVICE

Versus

SHANKERBHAI BHAGABHAI

Appearance:

1. Special Civil Application No. 152 of 2003
MR GM AMIN for Petitioner No. 1
MS ROOPAL R PATEL for Respondent No. 1,3/1-3/3
NOTICE SERVED for Respondent No. 2
..... for Respondent No. 3
MR KT DAVE, LD. AGP for Respondent No. 4-5
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CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 31/03/2003

ORAL JUDGEMENT

1. Rule. Mr.K.T.Dave, learned Assistant Government Pleader appears for respondents No.4 and 5 and Ms.Roopal R.Patel, learned advocate appearing for respondents No.1 to 3 waives service of Rule. With the consent of the parties, the matter is taken up for final hearing.

2. The short facts of the case are that:

2.1 The petitioner entered into an agreement of lease with the respondents No.1 to 3 for storing gas cylinders. The lease deed was executed on 17.12.1984 of the land ad-measuring 1200 sq.mt. for the period of 10 years. On 16.3.1987 the Mamlatdar and Agriculture Tribunal issued notice under Section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') for initiating action and it was also mentioned in the said notice that why the order should not be passed on account of the breach of the provisions of Sections 63, 64 for declaration of the transfer as illegal and the land should not be given back to the original owner.

2.2 It appears that thereafter the Mamlatdar passed the final order on 16.1.1988 whereby the transfer was declared as illegal, and he mentioned that since no declaration is made for restoration of the land to its original position, the land shall stand forfeited. The petitioner preferred appeal before the Deputy Collector being Appeal No.140/88 and the appellate authority also found that since there is a breach of the provisions of Act while transferring the land, the orders passed by the Mamlatdar does not call for the interference and hence the appeal was dismissed. The matter was carried further by the petitioner by preferring revision application being Revision Application No.351/91 before the Gujarat Revenue Tribunal and the Tribunal observed inter-alia that the opportunity was given but since the petitioner did not avail of the opportunity the order passed by the lower authority does not call for the interference and ultimately the Tribunal dismissed the revision. Under these circumstances the petitioners have approached to this Court.

3. Mr. Amin, learned advocate appearing for the petitioners submitted that the opportunity of restoration of the land is not given and the land is directly ordered to be forfeited and therefore he submitted that the order passed by the authority which is confirmed by the appellate authority as well as by the tribunal call for interference and hence deserves to be quashed and set aside.

4. On behalf of the Deputy Collector and the Mamlatdar, learned AGP submitted inter-alia that, as such the show-cause-notice was given and the opportunity was given, however the opportunity was not availed of and therefore the final order has been passed and therefore it has been submitted that no fault can be found with the order passed by the Mamlatdar and its confirmation thereof by the appellate authority and by the tribunal.

5. Mr. Dave, learned AGP has not been able to support the order on the ground that why the opportunity has not been given by the Mamlatdar to the original owner as well as to the petitioner for restoration of the land even if the transfer is declared as illegal and void.

6. It appears that initially the Mamlatdar himself issued the notice to show-cause as to why the transfer should not be declared illegal and why the land should not be returned back to the transferor. In this regard, if the provisions of Section 84C are considered then the perusal of sub-section (2) of Section 84C reads as under:

"If after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land to be invalid, he shall make an order declaring the transfer or acquisition to be invalid. [unless the parties to such transfer or acquisition give an undertaking in writing that within a period of three months from such date as the Mamlatdar may fix, they shall restore the land along with the rights and interest therein to the position in which it was immediately before the transfer or acquisition, and the land is so restored within that period]:

Provided that where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed the ceiling area, the Mamlatdar shall not declare such transfer to be invalid -

- (i) if the amount received by the landlord as the price of the land is equal to or less than the reasonable price determined under section 63-A and the transferee pays to the State Government a penalty equal to Rs.1 within such period not exceeding three months as

the Mamlatdar may fix;

- (ii) if the amount received by the landlord as the price of the land is in excess of the reasonable price determined under section 63A and the transferor as well as the transferee pays to the State Government each a penalty equal to one-tenth of the reasonable price within such period as may be fixed by the Mamlatdar.]"

7. Therefore upon reading of Section 84C, it appears that the Mamlatdar will have to hold an inquiry for the purpose of declaring the transfer as invalid or illegal. After holding such inquiry, it will be for the affected party to make such declaration for restoration of the land or the Mamlatdar may fix some later period for such purpose and if ultimately the land is not restored to the original position a further declaration shall be made and the land shall be deemed to be vest in the State Government free from encumbrance.

8. In view of the aforesaid aspect, if the facts of the present case are examined after the notice dated 6.3.87 the Mamlatdar has while declaring the transfer as illegal or void has not given any opportunity for restoration of the land by way of retransfer or otherwise. It is true that the Mamlatdar in the order dated 16.1.88 has recorded that since there is no readiness for restoration of the land by the parties, the land shall vest to the Government. The basis of the said observation appears to be that in response to the show-cause-notice the parties particularly the petitioner and the respondents No.1 to 3 have not remained present. In my view, even if the parties have not remained present, it was required for the Mamlatdar to make the declaration for providing time for restoration of the land in question within stipulated time limit and thereafter a further declaration was required under Section 84C(2) if the restoration is not made and then only the land could be ordered to be forfeited for vesting to the State Government. Such an exercise appears to be mandatory and admittedly no such order is passed for that purpose. So similarly when the matter was before the Deputy Collector as well as before the Revenue Tribunal it has not been examined from that angle nor such important aspects of the case which goes to the root of the matter and mandatory requirement of law is not at all taken into consideration either by the appellate authority as well as by the Revenue Tribunal.

In my view the appellate authority as well as the Revenue Tribunal both have mainly concentrated upon the question of not availing of the opportunity given by the Mamlatdar and therefore they came to the conclusion that the order does not call for the interference. As such, even if the parties did not avail of the opportunity, the matter could have been examined independently as per the statutory provisions on the point as to whether the Mamlatdar could pass the order of forfeiting the land directly without providing specific order for giving opportunity for restoration of the land to the parties concerned.

9. At the same time, the petitioner is also at the fault in not availing of the opportunity. The show-cause-notice was given to the petitioner and the petitioner has not availed of the same. Had the petitioner has availed the opportunity, the possibility of such desire or declaration for restoration of the land could have been made before the Mamlatdar and, therefore, it cannot be said that there is no lapse whatsoever on the part of the petitioner. However, considering the fact that the important and mandatory requirement of the case is not considered by all the three authorities, in my view, such lapse on the part of the petitioner can be compensated by awarding cost of the litigation before the lower authority and also before this Court. If the parties who has not availed of the opportunity is allowed to take benefit without payment of the cost, in my view it will encourage the delatary tactics on the part of the litigant which should be discouraged.

10. In view of the aforesaid discussions, the order passed by the Mamlatdar dated 16.1.88 and its confirmation thereof by Deputy Collector as per order dated 10.12.90 and further confirmation by the Gujarat Revenue Tribunal as per judgment dated 30.9.2002, are quashed and set aside. The matter shall stand restored to its original proceedings before the Mamlatdar at the stage of the show-cause-notice on the question of giving opportunity for restoration of land only. The petitioner shall submit the reply to the show-cause-notice on the question of willingness and declaration for restoration of the land within period of four weeks from today, and if such declaration is made by the petitioner and respondents No.1 to 3, the Mamlatdar shall pass the order in accordance with law within period of two months from the receipt of such declaration. The petitioner shall pay the cost of the proceedings upto the stage of this petition of the State Government which is quantified at Rs.5,000/- (Rupees Five Thousand). Such amount of

Rs.5,000/- shall be deposited by the petitioner before the Mamlatdar concerned.

11. The petition is allowed to the aforesaid extent.
Rule is made absolute accordingly.

(Jayant Patel, J.)

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