

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10565 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
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

JALIYABHAI PUNJABHAI BHABHOR BHIL

Versus

BAI MANGALIBEN D/O. KHATARBHAI

Appearance:

1. Special Civil Application No. 10565 of 1993
MR JS YADAV for Petitioner.
MR MUKUND M DESAI for Respondent No. 1-2
Mr. L.R. Poojari, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 31/03/2004

ORAL JUDGEMENT

In the present Special Civil Application under Article 226/227 of the Constitution of India, the petitioner has challenged the validity of the order passed by the Deputy Collector dated 11.6.1990 passed in Appeal No. 20/1990 confirmed by the judgment and order

passed by the District Collector, Panchmahals, vide his judgment and order dated 29.7.1991 passed in Appeal No. 169/1990 and further confirmed by the learned Special Secretary (Revenue), State of Gujarat, by his judgment and order dated 24.6.1993 passed in Revision Application No. 17 of 1991 by which mutation entry in favour of the petitioner beign Entry No. 693 dated 22.8.1976 has been set aside.

2. The petitioner purchased the land bearing Survey No. 30 admeasuring 3 acres and 40 gunthas situated in the Sim of Village Karamba, Taluka Jhalod, District-Panchmahals by registered sale deed dated 20th October 1967 and on the basis of the same the name of the petitioner was entered into Record of Rights by Entry No. 544 dated 8.4.1968. However, subsequently, the said Entry was cancelled. That thereafter the name of the petitioner was entered into in the Record of Rights by Entry No. 693 dated 22.8.76 which came to be certified on 21.12.76.

3. That after a period of almost 14 years, the Deputy Collector, Dahod had taken the aforesaid Entry no. 693 dated 22.8.1976 under suo motu review on the ground that there is a breach of provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act ("the Act" for short) and before entering into the aforesaid transaction between the original-land owner and the petitioner, prior permission of the competent authority is not taken. That the Deputy Collector, by his judgment and order dated 11th June 1990 set aside the Entry No. 693 dated 22.8.1976 by holding that there is a breach of Section 43 of the Act and before purchasing the land by the petitioner prior permission of the competent authority is not taken.

4. That being aggrieved and dissatisfied with the judgment and order dated 11th June 1990 passed by the Deputy Collector, Dahod in Review Application No. 20 of 1990 in cancelling the Entry No. 693, the petitioner preferred appeal before the Collector, Panchmahals at Godhra which was numbered as RTS Appeal No. 169 of 1990. The Collector, Panchmahals by his judgment and order dated 29th July 1991 also dismissed the appeal confirming the judgment and order passed by the Deputy Collector by which the Entry No. 693 came to be cancelled.

5. That being aggrieved and dissatisfied with the judgment and order dated 29th July 1991 passed by the Collector, Panchmahals, the petitioner preferred Revision Application before the learned Special Secretary

(Appeals), Revenue Department, State of Gujarat, which was numbered as 'S.R.D. No. 17 of 1991' and the learned Special Secretary also dismissed the said Revision Application confirming the order passed by both the authorities below, which has given rise to the present Special Civil Application under Art. 227 of the Constitution of India.

6. Mr. JS Jadav, ld. advocate appearing for the petitioner has submitted that all the authorities below have not properly appreciated and/or considered the fact that the Entry No. 693 dated 22.8.1976 could not have been quashed and set aside on the ground that the suo motu powers were not exercised by the Deputy Collector within a reasonable time. For that, he has relied upon a judgement of this Court, reported in 12 G.L.R. Page 156 in the case of Raghavnatha; and judgements reported in 2000 (1) G.L.H. Page 580; 1997 (4) G.C.D. Page 234; 1997 (6) S.C.C. Page 71; and 1994 (1) G.L.R. Page 822. In all the abovesaid authorities, considering the question with regard to exercise of power within a reasonable time by and large, this Court as well as the Hon'ble Supreme Court have held that normally the period of one year should be considered as a reasonable time for exercise of suo motu power. It is, therefore, contended on behalf of the petitioner that when by the Entry No. 693 was certified by the competent authority on 21.12.1976, the Deputy Collector could not have exercised the suo motu jurisdiction in the year 1990 after a period of almost 14 years. Therefore, the petitioner requested that the judgment and order passed by the Deputy Collector and confirmed by the Collector as well as Special Secretary cancelling the Entry No. 693 dated 22.8.1976 requires to be quashed and set aside.

7. It is also further contended on behalf of the petitioner that while cancelling the Entry No. 693 dated 21.12.1976, the Deputy Collector has held that as there is breach of provisions of Section 43 of the Act and as prior permission was not obtained before entering into the transaction and before purchasing the land in question by the petitioner, on that ground the Entry was quashed and set aside. For that, the ld. advocate appearing for the petitioner has relied upon a judgment of this Court in the case of Evergreen Apartment Cooperative Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 1991 (1) G.L.R. Page 113, in which it is specifically held in Para 12 that the revenue authorities, as mentioned in Rule 108 of the Rules cannot pass orders of cancelling the entries on an assumption that the transactions

recorded in the Entry are against the provisions of a particular enactment. It is also held in the said judgment that the question 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 opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. The ld. advocate appearing for the petitioner has also relied upon a judgment of this Court in the case of Siddharth B. Shah and others vs. State of Gujarat, reported in 1999 (3) GLR Page 2527 with regard to proposition that entries made in the revenue records have primarily a fiscal value and they do not create title and revenue authorities cannot pass orders on an assumption under Rule 108 that a transaction recorded in the entries are against provisions. For that, the ld. advocate appearing for the petitioner has relied upon a judgment of this Court in the case of Evergreen Apartment Cooperative Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 1991 (1) G.L.R. Page 113, in which it is specifically held in Para 12 that the revenue authorities, as mentioned in Rule 108 of the Rules cannot pass orders of cancelling the entries on an assumption that the transactions recorded in the Entry are against the provisions of a particular enactment. It is also held in the said judgment that the question 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 opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. The ld. advocate appearing for the petitioner has also relied upon a judgment of this Court in the case of Siddharth B. Shah and others vs. State of Gujarat, reported in 1999 (3) GLR Page 2527 with regard to proposition that entries made in the revenue records have primarily a fiscal value and they do not create title and revenue authorities cannot pass orders on an assumption under Rule 108 that a transaction recorded in the entries are against provisions.

8. On the other hand, the learned AGP, Mr. Poojari appearing on behalf of the State Government has relied upon a judgment of this Court, reported in 37(2) G.L.R. Page 688 to the effect that if sale transaction is void and is a nullity then the revisional powers can be exercised at any time.

9. I have heard the learned counsel on behalf of the

parties. The Deputy Collector, while exercising the suo motu power after a period of 14 years has quashed and set aside the Entry No. 693 on the ground that there is a breach of the provisions of Section 43 of the Act, as before entering into the transaction prior permission of the competent authority is not taken. According to me, the powers exercised by the Deputy Collector, after a period of 14 years of certifying the Entry, cannot be said to have been exercised within a reasonable time. Apart from that, as stated hereinabove, the Entry came to be set aside by the Deputy Collector only on the ground that there is breach of Section 43 of the Act, and as held by this Court in the aforesaid two Judgments, reported in 1991 (1) GLR Page 113 (Para 12) and judgment reported in 1999 (3) GLR Page 2527 (Para 3), the Revenue authorities were not justified in cancelling the Entry while exercising the powers under Rule 108 of the Rules on an assumption that the transaction recorded in the Entry are against the provisions of a particular enactment. I am in entire agreement with the aforesaid two judgments. 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 the competent authorities under special enactment. Independently, the revenue authorities as mentioned in Rule 108 of the Rules cannot pass the orders of cancelling the entries on an assumption that the transactions recorded in the entry are against the provisions of a particular enactment. In the present case, as stated hereinabove, the Deputy Collector, while exercising the suo motu powers after a period of 14 years, has cancelled the said Entry No. 693 only on the ground that there is a breach of provisions of Section 43 of the Act and in view of the aforesaid two judgements, the Deputy Collector has fallen in error in cancelling the Entry on the ground that there is a breach of provisions of Sec. 43 of the Act. Under the circumstances, the judgment and order passed by the Deputy Collector dated 11th June 1990 and confirmed by the Collector, Panchmahals, vide his judgment and order dated 24th July 1991 passed in RTS Appeal No. 169 of 1990 and further confirmed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, by his judgment and order dated 22.6.1993 passed in Revision Application No. SRD No. 70 of 1991 quashing and setting aside the entry No. 693 dated 21.12.1996 are required to be quashed and set aside and are hereby quashed and set aside accordingly. The petition is allowed. Rule is made absolute accordingly with no order as to costs.

10. It is made clear, that this Court, while allowing the Special Civil Application, has not considered the validity of the transaction in question and the authorities are not precluded from taking appropriate act

Section 43 of the Bombay Tenancy and Agricultural Lands Act, and it will be open for them to take appropriate action in accordance with law.

rmr. [M.R. Shah, J.]