

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9478 of 2004

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? : 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

ARUNABEN KANTILAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9478 of 2004
MS TRUSHA K PATEL for Petitioner No. 1-7
MR DIPEN DESAI, Ld. AGP for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 30/12/2004

ORAL JUDGEMENT

1. Rule. Mr.Desai, learned AGP waives service of Rule on behalf of the respondent Authorities. As the matter was fixed for final hearing today, with the consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

2. Mr.Bhatt, learned Counsel appearing for the petitioners, at the outset, states that the petitioners are not pressing the petition qua Entries No.6563, 6564 and 6565, all dated 24.9.1992, since the matter is pending before Gujarat Revenue Tribunal against the order passed by the Dy. Collector in Original Tenancy Cases No.188/1995, No.189/1995 and No.190/1995 as well as in Appeal No.238/1995.

3. In view of the above, the petition is required to consider only for Entry No.6532 dated 15.3.1992, which was on the basis of "will". It appears that as per the case of the petitioners, Shivabhai Mahipatbhai executed a "will" dated 1.12.1991 for bequeathing his agricultural land of Block No.91 of Village Sheelaj, Taluka Daskroi, District Ahmedabad to Arunaben Kantilal, Dharmendra Kantilal, Mahesh Kantilal and Nimesh Bhaskarbhai. The entry No.6532 dated 15.3.1992 was mutated in the Revenue Record based on the "will". It appears that thereafter the Entry No.6532 was challenged before the Prant Officer, Virangam in RTS Appeal No.27/1995-96 and ultimately as per the order dated 28.11.1995 Prant Officer cancelled entry and directed the Mamlatdar and ALT to initiate proceedings under Section 84C of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as the "Tenancy Act"). The Prant Officer mainly considered the matter on the ground that the entry is pertaining to the "will" for transferring of the land to non-agriculturist. The matter was carried further before the Collector by the petitioner and as per the order dated 10.12.1997, the Collector upheld the decision of the Prant Officer. It also appears that the matter was further carried before the State Government by the petitioners by preferring Revision Application No.64/1997 and the said revision is dismissed by the Secretary, State of Gujarat, as per the order dated 31.5.2004 and under these circumstances the petitioners have approached this Court by preferring this petition.

4. Upon hearing Mr.Bhatt, learned Counsel appearing with Ms.Patel for the petitioners and Mr.Desai, learned AGP, it appears that there is no dispute on the point that the RTS proceedings before the Collector as well as before the State Government are pertaining to entries No.6532, 6563, 6564, 6565 and 6580. However, as observed earlier, since the matter is pending before the Revenue Tribunal, the petitioners have only pressed the petition for entry No.6532, pertaining to "will". It also appears that there is no dispute on the point that, pending aforesaid proceedings before the Collector and the Prant Officer, the Mamlatdar and ALT initiated proceedings

under Section 84C of the Tenancy Act in respect to the "will" and as per the order dated 8.2.2002 passed by the Mamlatdar and ALT qua the "will", the proceedings under Section 84C are dropped on the ground that the persons who were bequeathed the property were agriculturists. It is not brought to the notice of this Court that any challenge is made to the order dated 8.2.2002 passed by the Mamlatdar and ALT in Tenancy Case No.355/2001 pertaining to the "will". Under these circumstances, the only question which is required to be considered in this petition at this stage is whether Entry No.6532 pertaining to the "will" should be allowed to be restored in the revenue record or not.

5. It appears that the identical question was considered by this Court on 2.12.2004 in SCA No.10516/2004 and at para 5 it was observed as under:

"5. So far as the order passed by the Collector and confirmation thereof 5. So far as the order passed by the Collector and confirmation thereof by the State Government is concerned, in my view, the issue is covered by the decision of this Court in the case of Jayantilal Jethalal Soni Vs. State of Gujarat, in Special Civil Application No.12547 of 2004 as per decision dtd.28/9/2004, wherein the view taken is that in a matter when the transaction has taken place by registered sale deed, consequently mutation entry should be entered into the revenue record with the clarification and qualification that the transaction is in breach of other enactment and the entry is subject to the final order which may be passed in the proceedings under the other enactment. Therefore, so far as the exercise of the powers by the Collector as well as the Secretary under the Code for cancellation of the mutation entries is concerned, the same cannot be maintained in toto and the entries deserve to be restored to the revenue record and as such, they could have been continued in the revenue record with the prima facie observation that the transaction was in breach of the provisions of the Tenancy Act because at the relevant time, the proceedings under the Tenancy Act were pending. However, as recorded hereinabove, the proceedings under the other enactment i.e. Tenancy Act are finally concluded in favour of the petitioners, no such clarification or qualification is required to be made in the mutation entries which have been

cancelled by the order of the Collector and by the State Government."

6. Similar is the position of the petitioners in the present case qua entry No.6532 and, therefore, the impugned order passed by the Prant Officer, Collector as well as by the State Government cancelling Entry No.6532 deserves to be quashed and set aside and the said Entry No.6532 shall stand restored to the revenue record. It is made clear that the contentions of both the sides qua other entries whose legality is not considered by this Court shall remain open.

7. The petition is allowed to the aforesaid extent, Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

30-12-2004 (Jayant Patel, J.)

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