

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 937 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

=====

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

WIDOW HIRUBEN BIJALBHAI HARIJAN

Versus

SPECIAL SECRETARY

Appearance:

1. Special Civil Application No. 937 of 2005
MR AMAR D MITHANI for Petitioner No. 1-5
MR MENGDEY, Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 29/03/2005

ORAL JUDGEMENT

Rule. Mr.Mengdey, learned AGP waives service of rule for respondents. With the consent of the learned

Counsel appearing for both the sides, the matter is finally heard today.

2. The short facts of the case are that the husband of the petitioner was granted government land admeasuring 5 acres bearing Survey No.1202 at Village Bhalpara for growing trees for 30 years as per the order dated 14.12.1978. It is the case of the petitioners that the petitioners have made efforts to grow the maximum trees over the land and it was also the case of the petitioners before the Collector that due to heavy rain and consequential flood in the area, the plants were destroyed and as a result thereof the requisite number of trees as per the resolution of the Government could not be grown well in time. It appears that the District Collector issued notice for termination of the lease on the ground that the requisite number of trees are not grown. The petitioners submitted reply and contended, inter alia, on the aspects of circumstances beyond the control for non-growing of the requisite number of trees. It also appears that the Collector while passing the impugned order considered the matter on the ground that the requisite number of trees are not grown and relied upon the revenue record of Village Form No.7 and 12 and it was shown that the crops were grown by the petitioner. It appears that thereafter the Collector passed the order of forfeiture of the land. The matter was carried before the State Government by petitioners and the said order of the Collector is confirmed. It is under these circumstances the petitioners have approached this Court by preferring this petition.

3. I have heard Mr.Mithani, learned Counsel for the petitioners and Mr.Mengdey, learned AGP for the respondent authorities.

4. Considering the facts and circumstances and the perusal of the impugned order passed by the Collector and its confirmation thereof by the State Government in revisional jurisdiction shows that neither the Collector nor the State have taken into consideration the aspect as to whether there were circumstances beyond the control of the petitioner for non-growing of the requisite number of trees within the stipulated time limit. Further, it is also not considered as to whether the extract of Village Forms No.7/12 can be accepted as it is or opportunity is required to be given to the petitioner concerned, even if it is to be relied upon for the purpose of passing the order of forfeiture, because as per the case of the petitioner, the genuineness of the relevant entry in the village Forms No.7 and 12 are disputed.

5. It may be recorded in the case of "Kodaji Mangaji v State of Gujarat" dated 21.9.2004 in SCA No.3802/2004 and allied matters, while considering the question for forfeiture of the land on the ground that the cultivation is shown by the person other than the holder of the land in Village Form No.7 and 12 and, therefore transfer, this Court at para 6 observed as under:

"6. Even if the matter is considered on the substance of the subject matter also, the net effect would be that as there was cultivation shown in the revenue record of village Form 7/12 of the land in question, the Prant Officer proceeded on the basis that the land is transferred in breach of conditions since it was a new tenure land, and therefore, the land is ordered to be forfeited. Merely because the show cause notice has been issued and the owner of the land could not represent the case would not be a sufficient ground to hold that the land is transferred to a third party, may be for cultivation. It is well settled that the village Form 7/12 or revenue record is relevant only for fiscal purposes and merely mutation or other aspect of cultivation is recorded in revenue record, no right which otherwise exists in accordance with law gets altered qua the property in question. If there is any authenticated record in the village panchayat or with Talati-cum-Mantri showing those rights are created by the transfer by the holder of the land in favour of some other party it may stand on different footing. It appears that there was no record available for altering the rights, possession and/or ownership of the land in question before the Prant Officer. In the absence of such record, the Prant Officer could not have come to conclusion that the land is transferred in breach of conditions. As regards the orders of the State Govt in revision are concerned, it has proceeded on the basis as if the burden is upon the owner of the land to show that he has not transferred. When a statement is made or it is the case of the petitioner that the land is not transferred and is in possession and ownership of the petitioner, it will be for the authority to consider if there is any authenticated record available for transfer. In the absence of any lawful document for transferring or creating lawful right in the

property in question, it could not be even concluded that the property is transferred in breach of conditions. It may be recorded that the person who is alleged to have transferred the land namely Vardhabhai is represented through respondent Nos 4 and 5, Legal representatives of deceased Vadhabhai Pranlal. Mr.Goswami, Ld.counsel for respondent Nos 4 and 5 also confirms the position that no transfer whatsoever has taken place. It also appears that before the State Govt in the proceedings of revision the affidavit was also filed for such purpose. Further, it appears that the orders are passed by the Prant Officer simply on the basis of noting in Village Form No.7/12 of the land in question showing that the cultivation is by other person and not by petitioner and therefore the land is ordered to be forfeited to State. When it is a matter pertaining to taking away the property of any citizen mere reliance upon revenue record of village Form No.7/12 can not be said as sufficient proof for breach of condition. As such, when such aspect is denied by the holder of the property, it must be examined as to whether concerned Talati-cum-Mantri made such entry on the basis of hearsay or on the basis of so called material which can not be relied upon or on some extraneous consideration and, if yes, then such entry in village Form No.7/12 can not assume value authorising for concluding the breach and consequential forfeiture of the property. There must be cogent, authenticated and lawful material for altering the rights in immovable properties for such breach. Moreover, even if it is established that there is a breach, and if the authority is to take action of forfeiture, then it should also be examined as to whether the breach was due to circumstances beyond the control of the holder of the property and, if yes, then in that case, harsh action of forfeiture of the property would not be required but the authority will have to consider the matter for imposition of forfeiture considering the gravity of the breach, including the period for such breach. If it is a matter resulting into action of forfeiture of land, then principles of natural justice to its full extent considering the facts and circumstances of the case will be required to be followed. Therefore, only entry in village Form No.7/12 can not be said as sufficient material attracting the power

of authority for forfeiture of the land to the State Government. (emphasis supplied) Under the circumstances, it is apparent that the Prant Officer as well as the State Govt have committed apparent jurisdictional error in exercising power on the basis of the entry in village Form No.7/12 and holding that there is breach of conditions of grant of land and holding that the land deserves to be forfeited to the State Govt."

6. If the matter is examined in light of the observation reproduced hereinabove in the aforesaid decision, it appears that there is no reference made in the show-cause notice of the Collector in respect to the relevant entry in the Village Forms No.7 and 12 which has been considered by the District Collector while passing the impugned order. Further, in any case it is not examined by the District Collector that whether the breach was due to the circumstances beyond the control of the holder of the property and if yes, in that case, harsh action for forfeiture of the property may not be required and the matter may also be considered for imposition of fine or penalty, considering the gravity of the breach and the period during which the breach is committed.

7. As the aforesaid aspects are not at all considered by the District Collector while passing the impugned order and the same is lost sight of by the State Government while confirming the order passed by the District Collector. Hence, the impugned order passed by the Collector for forfeiture of the land and its confirmation thereof by the State Government cannot be sustained in the eye of law. In the result, the impugned orders passed by the Collector dated 29.11.2001 and its confirmation thereof by the State Government as per the order dated 23.6.2003 are quashed and set aside with the direction that the matter shall stand restored to the file on District Collector and the District Collector shall give opportunity of hearing to the petitioner in light of the observations made hereinabove in this judgement and shall decide the matter as per the observations made hereinabove in this judgement and in accordance with law as early as possible, preferably within a period of six months from the date of receipt of the writ of this Court.

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

29.3.2005 (Jayant Patel, J.)

vinod