

HIGH COURT OF GUJARAT

KOLI BHANGABHAI

Versus

KOLI BHURABHAI VAJABHAI

Date of Decision: 23 June 2000

Citation: 2000 LawSuit(Guj) 478

Hon'ble Judges: [R K Abichandani](#)

Case Type: Special Civil Application

Case No: 4529 of 1988

Subject: Constitution

Acts Referred:

[Constitution Of India Art 227](#)

[Bombay Prevention Of Fragmentation And Consolidation Of Holdings Act, 1947 Sec 9](#)

Final Decision: Petition dismissed

Advocates: [H S Myliya](#), [R C Jani](#), [Jitendra M Patel](#)

[1] The petitioners have challenged the order dated 14/12/1987 of the Deputy Collector, Vadodara at Annexure 'A' to the petition in fragmentation case No. 26/86, and the order of the State Government dated 15.6.1988 at Annexure 'B' to the petition, rejecting the petitioners, revision application and confirming the order of the Deputy Collector.

[2] According to the petitioners, the respondent No. 2 who is the elder brother of the respondent No. 1 had sold the land bearing Survey No. 45 to the petitioner No. 1 by an oral agreement for a consideration of Rs. 3,600/- and handed over possession therefore to the petitioner No. 1. The petitioner No. 1 has thereafter been cultivating the land. The respondent No. 1 was a minor at the relevant time, as stated in the petition. According to the petitioners, they are owners of Survey No. 55 in which there is a well. The petitioners had spent a sum of Rs. 18,000/- for laying down a pipeline for getting water from survey No. 55 to Survey No. 45 so that they could cultivate survey No. 45. About four years prior to the filing of the petition, a well was constructed in survey No. 45 in which a considerable amount was spent. The Deputy Collector, Chhota

Udepur had issued notice to the petitioner No. 1 and in those proceedings, he came to a finding that the transfer of the said land was contrary to the provision of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947, and therefore, void as per Sec. 9(1) thereof. The consequential orders under Sec. 9(2) and 9(3) imposing fine and summary eviction of the petitioner No. 1 were also made. 2.1 Against that decision, the petitioners filed a revision application before the State Government, which was rejected for the reasons mentioned in the order, a copy which is at Annexure 'B' to the petition.

[3] Learned counsel appearing for the petitioners contended that a huge investment was made by the petitioners by sinking a well in the land which was purchased by the petitioner No. 1. It was also contended that the powers under Sec. 9 could not have been exercised by the Deputy Collector after an inordinate delay of nearly 29 years. Reliance was placed on the decision of this Court in Ranchhodbhai vs. State of Gujarat, reported in 25(2) GLR 1225, in which it was held that on the peculiar facts of that case, it had got to be held that the powers exercised by the concerned authorities under Sec. 9 was at grossly belated stage and that the exercise of powers was ex facie unreasonable, unjust and illegal. It was also tried to be contended on behalf of the petitioners that survey No.55 belonging to the petitioners was contiguous to survey No. 45, and therefore, the transfer could not be said to be void.

[4] Learned counsel appearing for the respondents supported the impugned decisions and relied upon the decision of the Supreme Court in case of State of Orissa & ors. vs. Brundaban Sharma & Anr., reported in 1999 Supp. (3) SCC 249, in which the Supreme Court in Para 18 of the judgment held that,

"A non set order is a void order and it confers no title and its validity can be questioned or invalidity be set up in any proceeding or at any stage."

4.1 In the case before the Supreme Court, the Board of Revenue had exercised revisional powers under Sec. 38(B) of the Orissa Estates Abolition Act, 1951 after 27 years from the date of the alleged grant of 'Patta'. It was held by the Board of Revenue that the order passed by the Tehsildar granting 'Patta' without confirmation by the Board was non est. In that context, it was held that such non est order was void and conferred no title and could be questioned at any stage. 4.2 In context of the provision of Sec. 9(1), it has been held by this Court in case of Koli Nagjibhai Varjan vs. State of Gujarat, reported in 1992(1) 33 GLR. 14 that a transaction which is void, and non est cannot get life merely because the powers of summary eviction were not exercised immediately. The delay in exercise of powers by the officers cannot validate a transaction which is void ab initio and the Court ought not to recognize the void transaction even in an indirect way by preventing

the authority to exercise its powers consequent upon a void transaction on the ground that the powers should have been exercised within reasonable time from the date of transaction. 4.3 In another decision of this Court in case of Patel Jividas Trikamdas & Ors. vs. District Collector, Mehsana & Ors., reported in 1996(2) 37(2) GLR. 688, it has been held that validity of an order which is void ab initio could be questioned in any proceedings at any stage by anybody. Thus, a transfer which is void and hit by the provision of Sec. 9(1) can be declared at any stage under Sec. 9 of the Act.

[5] Even according to petitioner No.1, the transfer of land in question for a consideration of Rs. 3,600/- was by an oral agreement between the respondent No. 2 and the petitioner No. 1. It is difficult to comprehend such valid transfer in view of Sec. 54 of the Transfer of property Act. Even if it is to be treated as transfer, it was clearly hit by provision of Sec. 9 of the Act because it was never pleaded that it was a transfer in favour of the owner of a contiguous survey number as envisaged under Sec. 7(1) of the said Act, a point which was cavassed at the time of arguments for the first time and never urged before the lower authorities. Such a new factual contention cannot be considered in exercise of powers of this Court under Art. 227 of the Constitution. The revisional authority has based its decision on the facts on record and has acted lawfully in exercise of its jurisdiction. It took note of the fact that the land continued to be used for the agricultural purpose and that it was a fragment which could not be transferred. A well which is said to have been sunk in the Survey No. 45 was sunk after the alleged transfer of land and had therefore no implication on the aspect of its being a fragment at the time of transfer. It was held that the ratio of the decision of this Court in Ranchhodbhai 's case (Supra) was not attracted in the present case because the facts were entirely different. [The inappropriate way in which the name of the Hon'ble Judge who had delivered the decision in Ranchhodbhai's case is referred to in Para 4 of the revisional order is disapproved. The revisional authority ought to know by its experience about the manner in which the Hon'ble Judge are referred while referring to their pronouncements].

[6] As there is no warrant whatsoever for interference with the impugned decision, the petition is rejected. Rule is discharged with no orders as to costs. Interim relief stands vacated.