

HIGH COURT OF GUJARAT

SANDIPKUMAR VASANTLAL PATEL

Versus

STATE OF GUJARAT

Date of Decision: 02 July 2008

Citation: 2008 LawSuit(Guj) 1272

Hon'ble Judges: [Abhilasha Kumari](#)

Case Type: Special Civil Application

Case No: 322 of 2008

Subject: Constitution

Acts Referred:

[Constitution of India Art 226](#)

Final Decision: Petition allowed

Advocates: [Prakash K Jani](#), [Keyur Vyas](#), [J K Shah](#), [Paritosh Calla](#), [R C Jani](#)

Cases Referred in (+): 1

[1] RULE. Mr. J.K. Shah, learned Assistant Government Pleader, waives service of notice of rule on behalf of the respondents nos. 1 to 4, Mr. Paritosh Calla, learned advocate, waives service of notice of rule on behalf of the respondents nos. 5 and 6 and Mr. R.C. Jani, learned advocate, waives service of notice of rule on behalf of the respondent no.7. In the facts and circumstances of the case, and with the consent of the learned counsel for the respective parties, the petition is being heard and finally disposed of, today.

[2] This petition has been filed with the following prayers :-

[A] That this Honourable Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus and/or any other appropriate writ, order or direction, quashing and setting, aside the order of the Secretary [Appeals], Revenue Department, in Revision Application No. 37 of 2005, dated 22nd October, 2007, as also the order of the District Collector, Mehsana dated 21st July, 2005 in RTS Revision Application No. 43 of 2005, and be further pleased to restore the order of

the Deputy Collector, Visnagar dated 27th August, 2005 in Revenue Case No. 3 of 2004;

[B] That pending admission, hearing and final disposal of the present petition, this Honourable Court may be pleased to stay the operation, implementation and execution of the order of the Secretary (Appeals), Revenue Department, in Revision Application No. 37 of 2005 dated 22nd October, 2007 as also the order of the District Collector, Mehsana dated 2st July, 2005 in RTS Revision Application No. 43 of 2005;

[C] That this Honourable Court be pleased to award the costs of this Special Civil Application to the petitioner herein;

AND

[D] That this Honourable Court be pleased to pass such other further orders as the nature and circumstances of the case may demand."

2.1. The brief facts of the case, emerging from a perusal of the averments made in the petition are that, the land bearing City Survey No. 6642 situated at Unjha, admeasuring 2630.32 sq.mtrs. was owned by one Raval Natwarlal Chhabildas, who died leaving behind his wife, daughters and one son. Smt. Kamlaben Natwarlal Raval, widow of Raval Natwarlal Chhabildas executed a registered Will dated 26th June, 2000 in favour of the present petitioners. It is averred that Smt. Kamlaben Natwarlal Raval, expired in the month of February, 2003.

2.2. It is the case of the petitioners that on 5th November, 2003, the daughters and son of Raval Natwarlal Chhabildas, gave statements before the City Survey Officer, admitting the Will and raising no objection to the same. Thereafter, on 5th December, 2003, the names of the petitioners came to be entered in the revenue records as owners of the land in question, by mutation Entry No. 102. A copy of this entry is annexed as Annexure-'A' to the petition. By order dated 7th February, 2004, the City Survey Superintendent, Unjha, cancelled the entry in favour of the petitioners and a copy of this order is annexed as Annexure-'B' to the petition. It is averred in the petition that, being aggrieved by the order of the City Survey Superintendent, the petitioners filed an Appeal before the Deputy Collector, Visnagar, which was registered as Case No. 3 of 2004. By order dated 27th August, 2004, the Deputy Collector, Unjha allowed the Appeal filed by the petitioners and quashed and set aside the order of the City Survey Superintendent dated 7th February, 2007. The Entry No. 102 dated 5th December, 2003, was ordered to be restored and certified. A copy of the order dated 27th August, 2004 passed by the Deputy Collector, has been annexed as Annexure-'D' to the petition. It further

transpires from the petition that the earlier owner of the land in question, had given a portion thereof, admeasuring 1315 sq.mtrs. on lease, to the respondents nos. 5 and 6 for a period of 30 years. Under the said lease, the respondents nos. 5 and 6 had the right to develop the property and, therefore, the said respondents constructed a Cinema Hall upon the land leased out to them, by the name of "Milan Talkies". The respondents nos. 5 and 6 filed a Revision Application before the District Collector, Mehsana under Rule 108(6) of the Gujarat Land Revenue Rules [the "Rules" for short], which was registered as RTS Revision No. 43 of 2005, challenging the order of the Deputy Collector dated 27th August, 2004. The Revision Application filed by the respondents nos. 5 and 6 was partly allowed by the Collector, Mehsana, by order dated 21st July, 2005, by directing that fresh procedure for recording the entry be carried out. A copy of this order is to be found at Annexure-'E' to the petition.

2.3. The petitioners, being aggrieved by the above order of the Collector, filed a Revision Application under Rule 108(6)(a) of the Rules, before the respondent no. 1 which was registered as Revision Application No. 37 of 2005. During the pendency of the Revision Application, the respondent no. 7, who is the daughter of Smt. Kamlaben Natwarlal Raval, original owner of the land, filed an application for intervention, which was allowed. The Revision Application filed by the petitioners was dismissed by the respondent no. 1, vide order dated 22nd October, 2007, giving rise to the filing of the present petition.

[3] Mr. P.K. Jani, learned counsel for the petitioners, has submitted that part of the land admeasuring 1315 sq.mtrs. bearing City Survey No. 6642 Paiki was bequeathed to the petitioners by a registered Will, made by Smt. Kamlaben Natwarlal Raval, wherein, one of the sons of Smt. Kamlaben Natwarlal Raval, as also Smt. Hasumatiben Bharatbhai Thaker (respondent no. 7) have appended their signatures as witnesses. It is submitted that the Will was registered before the Sub-Registrar Office at Unjha and on the basis of the aforesaid Will, the names of the petitioners rightly came to be recorded in the revenue records, as owners of the land, vide mutation Entry No. 102. It is emphasized by the learned counsel for the petitioners that the statements of the legal heirs of Smt. Kamlaben i.e. Hasumatiben Natwarlal Raval, (respondent no. 7), as also Maheshkumar Natwarlal Raval, son of the deceased were recorded and they had consented to the Will and had not filed any objections, as is evident from the copies of the statements annexed as Annexure-'I' to the petition. It is further submitted by the learned counsel for the petitioners that this Will has not been challenged by any person till date and, therefore, the City Survey Superintendent, has committed a grave error in cancelling Entry No. 102 dated 5th December, 2003, made in favour of the petitioners, pursuant to the registered Will in their favour and the orders dated 21st

July, 2005 of the Collector, as confirmed by order dated 22nd October, 2007 of the respondent no. 1 are also illegal and unsustainable in law.

3.1. Mr. P.K. Jani, learned counsel for the petitioners, has submitted that the lease in favour of the respondents nos. 5 and 6 is only qua a part of the total land bequeathed to the petitioners by the Will and, therefore, the said respondents have no right, title or interest in the entire property, apart from their right as lessees, which is also disputed and in respect of which, Special Civil Suit No. 30 of 2006 has been filed by the said respondents and the same is pending. It is fairly stated by the learned counsel for the petitioners that in this Civil Suit, an injunction has been granted in favour of the respondents nos. 5 and 6 and it has been directed that they should not be dispossessed from the land which is the subject matter of the lease.

3.2. Lastly, it is submitted by the learned counsel for the petitioners that in upholding the order of the Collector, the respondent no. 1 has committed illegality, since there is no dispute regarding the fact that the land in question has been bequeathed to the petitioners by way of Will, which has not been challenged till date and, therefore, the entry to this effect ought to have been made in the revenue records and, therefore, the impugned orders deserve to be quashed and set aside, and the petition be allowed.

3.3. Mr. J.K. Shah, learned Assistant Government Pleader, has supported the order of the Collector and has submitted that since it suffers from no illegality or infirmity, this Court may not interfere. It is, further submitted that the respondent no. 1 has taken care of the aspect regarding filing of the Civil Suit and has directed that the revenue entries shall be subject to the outcome of the Civil Suit, which finding is just and proper. It is, therefore, prayed that the petition be dismissed.

3.4. Mr. Paritosh Calla, learned counsel for the respondents nos. 5 and 6 has also supported the impugned order passed by the State Government, and has submitted that so far as the said respondents are concerned, they are protected by an order of injunction passed by the Civil Court, and till such time as the Civil Suit is not decided, the entries regarding the land in question are directed to be governed by the outcome of the Civil Suit, and, therefore, the order of the respondent no. 1 is perfectly just and legal and deserves to be upheld. Mr. Paritosh Calla, learned counsel for the respondents nos. 5 and 6 has drawn the attention of this Court to the affidavit-in-reply filed by the respondents nos. 5 and 6 and has reiterated the averments made therein. He has submitted that the Collector, Mehsana has rightly set aside the order of the City Survey Superintendent and the

respondent no. 1 has also rightly upheld the order of the Collector, and, therefore, the petition may be dismissed.

3.5. Mr. R.C. Jani, learned counsel for the respondent no. 7, has submitted that the Will, under which the petitioners claim to be the owners of the land in question is false, fabricated and concocted, since Smt. Kamlaben Natwarlal Raval usually appended her signature and never affixed her thumb impression, and since the Will does not contain the signature of Smt. Kamlaben Natwarlal Raval, but only a thumb impression, it can be inferred that the Will is a concocted one. The learned counsel for the respondent no. 7 has disputed the claim of the petitioners as owners of the land and has submitted that, in case the respondent no. 7 resort to Civil proceedings any time in the future, the entries in the revenue records may be made subject to those proceedings.

3.6. No other submissions have been made by the learned counsel for the respective parties.

[4] I have heard Mr. P.K. Jani, learned counsel for the petitioners, Mr. J.K. Shah, learned counsel for the respondents nos. 1 to 4, Mr. Paritosh Calla, learned counsel for the respondents nos. 5 and 6 and Mr. R.C. Jani, learned counsel for the respondent no. 7, at length and in great detail and have perused the averments made in the petition as well as the documents annexed thereto.

4.1. It is not in dispute that the petitioners have become owners of the land in question by the Will made by Smt. Kamlaben Natwarlal Raval, widow of the original owner, Shri Raval Natwarlal Chhabildas. Although the authenticity of the Will is disputed by the respondent no. 7, this Court, under Article 226 of the Constitution, cannot enter into such disputed questions of fact, as to whether the Will is genuine or not, since that aspect has to be decided by the Civil Court. It is not disputed that till date, no Civil Suit has been filed by any person, including the respondent no. 7, challenging the authenticity of the Will. In the above factual situation, it cannot be said that the Will is fabricated and the claim of the petitioners on its basis, is false. The admitted position is that on 5th December, 2003, Entry No. 102 had been effected in the revenue record, in pursuance to the Will. This entry has been cancelled by order dated 7th February, 2004 by the City Survey Superintendent. The Appeal of the petitioners against this order was allowed by the Deputy Collector, (Prant Officer), Visnagar, but the order of the Deputy Collector dated 27th August, 2004, was set aside by the order of the Collector dated 21st July, 2005, which has been upheld by the impugned order of the respondent no. 1 dated 22nd October, 2007. In effect, therefore, the mutation entry in favour of the petitioners on the basis of the Will has not been made in the revenue records.

4.2. A perusal of the impugned order dated 22nd October, 2007, reveals that the respondent no. 1 has come to the conclusion that the Will in favour of the petitioners could not have been made, since the property is self-acquired property and not ancestral property. It is further stated in the impugned order that since the respondents nos. 5 and 6 have been leased part of the property for a period of 30 years, the property could not have been bequeathed by way of Will, in favour of the petitioners and the petitioners cannot claim to be the owners of the property on the basis of the Will. Ultimately, the respondent no. 1 has come to the conclusion that the final outcome of the Civil Suit filed by the respondents nos. 5 and 6 will govern the entries regarding the land which is leased out to them. While passing this order, the respondent no. 1 has totally ignored the fact that there is a Will in favour of the petitioners qua the land in question which, so far has not been challenged in Civil proceedings and, therefore, still holds good. It may be relevant to notice that in order dated 21st July, 2005, passed by the Collector, one of the reasons mentioned for cancelling Entry no. 102 is that the workmen of the respondents nos. 5 and 6 who had constructed a Cinema Hall on the portion of the land leased out to them, had been awarded an amount of Rs. 1,14,735/- by the Labour Court, Kalol, which amount was reflected as an encumbrance upon the land in question. This entry was challenged by the petitioners by filing an Appeal which was registered as RTS (Appeal) No. 4 of 2006. By order dated 31st May, 2006, the Prant Officer, came to the conclusion that the amount of Rs.1,14,735/- as per the Recovery Certificate, should be recovered from the properties owned by the respondents nos. 5 and 6 and not from the property leased out to them. This order of the Prant Officer, has been upheld by the respondent no. 1 by the impugned order.

4.3. From the above narration of the facts, it becomes evident that the encumbrance upon the land in question does not survive, as far as the petitioners are concerned, since it is the respondents nos. 5 and 6 who are responsible for the dues to be paid, pursuant to the recovery certificate, which dues have been ordered to be paid from the properties owned by them and not from the property leased by them and, therefore, there is no justification why the mutation entry in favour of the petitioners on the basis of the Will cannot be made. The ground that there is an encumbrance on the land in question no longer survives, in view of the fact that the order of the Prant Officer dated 31st May, 2006, has been upheld by the respondent no. 1, by the impugned order.

4.4. It is an admitted position that till date, there is no challenge to the Will in favour of the petitioners by any person, by way of Civil proceedings. In this view of the matter, there is no cogent or sustainable reason why the mutation entries on the basis of the Will cannot be effected in the revenue records. The entire land in

question, which has been bequeathed by Will, is not the subject matter of the Civil Suit, which is pending between the respondents nos. 5 and 6 and the petitioners, and only that part of the land which has been leased out to the said respondents is the subject matter of the Civil Suit. The dispute regarding the renewal of the lease has culminated into filing of the Civil Suit and the property which is not the subject matter of the lease is not the subject matter of the Civil Suit.

4.5. As far as the portion of the land leased out by the original owners to the respondents nos. 5 and 6 is concerned, the possession of the said respondents has been protected by the Civil Court in Special Civil Suit No. 30 of 2006. By the impugned order, the respondent no. 1 has held that the outcome of the Civil Suit shall govern the revenue entries. To this extent, the impugned order does not require to be modified. However, in view of the fact that the Will has not been challenged till date, the revenue entries on the basis of the Will ought to be mutated so as to reflect the factual position regarding the land in question. There is no justification why the mutation entries reflecting the ownership of the petitioners qua the land in question, pursuant to the Will, cannot be effected in the revenue records. The reason advanced by the authorities that there is an encumbrance upon the said land, no longer survives and no other cogent or convincing reason has been given by the authorities in the impugned orders.

4.6. It is a settled position of law that mutation entries effected in the revenue records do not confer title, but are effected for fiscal purposes. The pendency of a Civil dispute between the petitioners and the respondents nos. 5 and 6, has no relevance, so far as title of the petitioners under the Will is concerned. The mere pendency of the Civil Suit between the petitioners and the respondents nos. 5 and 6, and that too regarding only a part of the land in question, which is the subject matter of the lease, is not a valid ground for refusal to effect the necessary mutation entries, in respect of the land in question, especially as there is no challenge to the Will, till date.

4.7. With regard to the averments advanced by the learned counsel for the respondent no. 7, to the effect that the Will is a concocted and fabricated one, this issue cannot be raised or gone into, by the writ Court and has to be decided by the Civil Court. The settled legal position is fortified by the observations of this Court in the case of Gandabhai Dalpatbhai Patel v. State of Gujarat & Ors. reported in 2005(2)GLR pg.1370, wherein it has been held that entries in the record of rights only have a presumptive value for fiscal purposes of recovering revenue and for payment of revenue and do not confer any right, title or interest in the property, in favour of any party. In the light of the settled legal position, there can be no

impediment in effecting the mutation entries on the basis of the Will, in respect of the land in question.

4.8. The respondent no. 7, having made a statement admitting the Will made by her mother, in favour of the petitioners on 5th November, 2003, has now changed her stand and has seriously disputed that very same Will, at this late stage. The respondent no. 1, has, therefore, rightly rejected the submissions made by the present respondent no. 7, who was permitted to intervene in the revision proceedings. The findings of the respondent no. 1 have not been challenged by the respondent no. 7, and, therefore, the submission of Mr. R.C. Jani, learned counsel for the respondent no. 7 to the effect that the entries in favour of the petitioners may be subject to any future challenge, which the respondent no. 7 may make to the Will, is not worthy of acceptance.

4.9. In the light of the aforesaid reasons and in my considered view, the correct and factual position on the basis of the Will ought to be reflected in the revenue records, by effecting the necessary entry in this regard, so that any person who opens the revenue record gets a clear and correct picture of this position and is not misled, due to the absence of the necessary mutation entries.

[5] In light of the factual and legal position, as discussed herein-above, the order dated 22nd October, 2007 of the respondent no. 1 is set aside only to the extent that it upholds the order of the Collector dated 27th August, 2004, whereby the cancellation of the entries in favour of the petitioners pursuant to the Will, has been upheld. The part of the order which pertains to the land leased to the respondents nos. 5 and 6 does not require to be interfered with and remains intact.

5.1. It is, therefore, directed that the necessary mutation entry, in respect of the land in question in favour of the petitioners, on the basis of the Will be effected in the revenue records, subject to the stipulation that the final outcome of the Civil Suit No. 30 of 2006 will govern the entries qua the portion of the land which is the subject matter of the said Civil Suit.

[6] The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.