

HIGH COURT OF GUJARAT

ARUNBHAI LALJIBHAI GADHIYA & 2 OTHER(S)

Versus

STATE OF GUJARAT & 6 OTHER(S)

Date of Decision: 15 February 2024

Citation: 2024 LawSuit(Guj) 485

Hon'ble Judges: [Nirzar S Desai](#)

Eq. Citations: 2024 GUJHC 10280

Case Type: Special Civil Application

Case No: 14712 of 2016

Subject: Civil

Acts Referred:

[Gujarat Tenancy And Agricultural Lands Act, 1948](#) [Sec 32G](#), [Sec 76A](#), [Sec 43](#), [Sec 32M](#),
[Sec 84\(c\)\(2\)](#), [Sec 84\(c\)](#).

Final Decision: Petition allowed

Advocates: [Jitendra M Patel](#), [R C Jani & Associate](#), [Jayneel Parikh](#), [Rushi A Barot](#)

Nirzar S. Desai, J.

[1] Heard learned advocate Mr. R. C. Jani appearing for the petitioners, learned AGP Mr. Jayneel Parikh appearing for the respondents no. 1 to 3 and learned advocate Mr. Rushi A. Barot appearing for the respondents no. 5 to 7. Despite the service of notice, no-one has appeared for the respondent no. 5.

[2] By way of this petition, the petitioners have challenged the order dated 15.06.2016 passed by the learned Secretary, Revenue Department (Appeals) in Revision Application No. MVV/BKHP/SUO-MOTO/ST/8 of 2011 whereby learned Secretary, Revenue Department (Appeals) has quashed and set aside the order dated 03.01.2009 passed by the Collector, Surat granting the N. A. Permission to the predecessor in title of the petitioner namely Dakshambhai Paragajibhai Desai.

[3] The brief facts giving rise to the present petition are stated as under:-

3.1. The petition is in respect of a land situated at Village : Veshu, Taluka : Surat and District: Surat bearing old Survey No. 503, Re-Survey No. 285 admeasuring H-Are-Sq. Mtrs 1-72-00. The said land was owned by one Takhatsinh Anopsinh and Kacharabhai @ Devabhai Dityabhai was the tenant of the aforesaid land. The tenant applied to the Mamlatdar for permission to purchase the land from the land owner under the provisions of Tenancy Act and the same was granted by the Mamlatdar vide an order dated 25.02.1958 passed in Tenancy Case No. 56 of 1958.

3.2. Thereafter, the land owner Takhatsinh Anopsinh executed a sale deed in favour of the tenant Kacharabhai @ Devabhai Dityabhai which was registered with the Sub Registrar, Surat at Serial No. 310 dated 25.02.1958 for which Mutation Entry No. 213 was mutated on 17.04.1958. The said entry was certified as well.

3.3. It is the case of the petitioners that the proceedings under section 32 G and 32 M of the Tenancy Act have never taken place in the present case and the Mamlatdar gave permission to execute the sale deed in favour of the tenant and the same was regularized under section 84 (C) (2) of the Tenancy Act. In respect of the aforesaid sale, the land was shown as restricted tenure land under section 84 (C) of the Tenancy Act in the revenue record and upon death of original tenant Devabhai Dityabhai, his son - Mohanbhai Devabhai applied to the Mamlatdar and ALT for removal of restriction under section 43 of the Act and vide order dated 31.01.2007, those restrictions under section 43 of the Act were removed. The aforesaid order was approved by Deputy Collector, Choryasi Prant vide order dated 01.06.2007 and the same was mutated in the revenue record accordingly vide entry no. 4792 dated 04.06.2007 and the said entry is also duly certified as per the case of the petitioners. A notice was issued by the Deputy Collector, Surat purporting to exercise the revisional jurisdiction under section 76 A of the Tenancy Act vide show cause notice dated 21.03.2011 asking as to why the order of the Mamlatdar dated 31.01.2007 should not be revised and cancelled.

3.4. In the meantime, the land changed hands from person to person and ultimately the present petitioners became the owners of final plots no. 47 and 48 as the petitioners purchased the land by way of registered sale deed dated 04.01.2010 and 01.02.2010.

3.5. The details of transaction are as under:-

i. The petitioners submit that the owners of the said land Nandubhai wd/o Mohanbhai Deva and others have sold certain portion of the land out of Final Plot No.47 and 48 by two separate Sale Deeds to one Daxay Pragjibhai Desai, Meenaben Rameshbhai Desai, Dilip Jagjivandas Shah, Pratimaben d/o Narendrabhai

Arjunbhai Desai and w/o Dhrukumar Dhirajlal Desai, respondent no. 4 to 7 herein, by a registered Sale Deed. A mutation entry No.5244 dated 11.6.2008 to that effect was posted in revenue record and the said entry was certified.

ii. That thereafter Daxay Pragjibhai Desai and others have sold the land admeasuring 1380.68 sq. meters out of F.P. No. 47 and 1672.00 sq. meters out of F.P. No.48, in all the land admeasuring 3052.68 sq. meters sold to Devendra Jashubhai and others by a registered Sale Deed No.1350 dated 28.07.2008 and a mutation entry No.5587 dated 14.7.2009 to that effect was posted in revenue record and the same was duly certified.

iii. The petitioners submit that thereafter Daxay Pragjibhai Desai and others applied to the Collector, Surat, to convert this land from agriculture to non-agriculture for residential purpose, who by his impugned order No. A/BKP/SR No. 247/07-08/Vashi 5063 to 5075/2008 dated 3.1.2009, granted the permission for nonagricultural use. The order of the Collector granting N.A. permission is mutated in revenue record by Entry No.5600 dated 24.7.2009 and said entry was certified.

iv. That thereafter, out of the said land Hemantbhai jashubhai, Punam Hemantbhai, Devendrabhai Jashuhai, Komalben Devendrabhai sold the land admeasuring 1380.68 sq. meters by a registered Sale Deed No.2133 dated 23.2.2010 to M/s. Minaxi Developers, a registered Partnership Firm, petitioner no. 3 herein and a mutation entry No.5924 dated 30.4.2010 to that effect was posted in revenue record which was also duly certified. It is submitted that thereafter, out of the land of FP No. 48 admeasuring 3855 sq. meters was sold by registered Sale Deed No. 3339 dated 18.3.2010 to Neel Jagdishbhai Desai and mutation entry No.5933 dated 6.5.2010 was posted in the revenue record which was duly certified. It is submitted that thereafter out of the said FP No.47 the land admeasuring 3504 sq. meters was sold by registered Sale Deed No.3330 dated 18.3.2010 to Neel Jagdishbhai Desai and mutation entry No.5934 dated 6.5.2010 was posted in the revenue record which was duly certified.

v. It is submitted that thereafter the land admeasuring 4699 sq. meters was sold by Daxay Pragjibhai Desai and others by a registered Sale Deed No.111 dated 4.1.2010 to the petitioner Arunbhai Laljibhai and others and mutation entry No.5960 dated 26.5.2010 to that effect was posted in revenue record which was duly certified. It is submitted that thereafter the land admeasuring 4500.32 sq. meters was sold by Daxay Pragjibhai Desai and others by a registered Sale Deed No.1164 dated 1.2.2010 to Minaxi Developers, petitioner no. 3 herein and mutation entry No. 5961 dated 26.5.2010 to that effect was posted in revenue record which was duly certified.

3.6. In the meantime, the Collector, Surat issued a communication dated 08.08.2011 to the Deputy Collector, City Prant, Surat to initiate the proceedings under section 76 A of the Tenancy Act on the ground that the Mamlatdar and ALT did not have the powers to pass the order dated 31.01.2007 removing the restrictions under section 43 of the Tenancy Act.

3.7. The aforesaid communication was challenged by the present petitioners before the Gujarat Revenue Tribunal by filing revision application which was dismissed by the Tribunal vide order dated 11.06.2013 and by holding that the said communication was merely on administrative instructions and not a judicial order.

3.8. Being aggrieved by the said order of the Tribunal, the petitioners preferred Special Civil Application No. 11814 of 2013 before this Court. However, the said petition was also withdrawn by learned advocate for the petitioners with a view to file appropriate proceedings under section 76 A of the Tenancy Act as the Collector had in the meantime issued the show cause notice dated 21.09.2011 to the legal heirs of the original tenant and thereafter, the petitioners preferred a petition being Special Civil Application No. 12640 of 2013 before this Court challenging the aforesaid show cause notice dated 21.09.2011.

3.9. The Coordinate Bench of this Court vide its judgment dated 22.06.2016 passed in Special Civil Application No. 12640 of 2013 quashed the aforesaid show cause notice dated 21.09.2011 issued by the Deputy Collector, Surat.

3.10. The aforesaid judgment was carried in appeal by way of Letters Patent Appeal No. 138 of 2019 by the State Government before the Division Bench of this Court, however, vide judgment dated 08.03.2022 even the above Letters Patent Appeal No. 138 of 2019 also was dismissed.

[4] In view of above factual background, the matter was heard.

[5] As stated in foregoing paragraph, by way of this petition, the petitioners have challenged the order dated 15.06.2016 passed by the respondent no. 2 whereby the N. A. permission granted to the predecessor of the petitioners has been cancelled by the Special Secretary, Revenue Department (Appeals).

[6] Learned advocate Mr. R. C. Jani appearing for the petitioners submitted that the very basis for cancelling the N. A. Permission as can be seen from the order dated 15.06.2016 passed by the Special Secretary, Revenue Department was the communication dated 08.08.2011 as the Special Secretary, Revenue Department has considered the said communication and that is the only aspect upon which the N. A. Permission was cancelled. He submitted that the Coordinate Bench in its judgment

dated 22.06.2016 passed in Special Civil Application No. 12640 of 2013 in paragraph no. 3 specifically made a reference to the aforesaid communication and on the basis of the aforesaid communication only, show cause notice dated 21.09.2011 was issued for initiating the proceedings under section 76 A of the Tenancy Act against the present petitioners. However, the Coordinate Bench vide judgment dated 22.06.2016 quashed and set aside the aforesaid show cause notice dated 21.09.2011 and the aforesaid order has already been confirmed by the Division Bench of this Court vide judgment dated 08.03.2020 in Letters Patent Appeal No. 138 of 2019.

6.1. Learned advocate Mr. Jani, therefore, submitted that the very basis on the basis on which the N. A. Permission granted to the predecessor in title of the petitioner was cancelled, does not exist now as the show cause notice based upon the communication dated 08.08.2011 itself is quashed and set aside and therefore, in absence of existence of the very basis, even the order dated 15.06.2016 quashing and setting aside the N. A. Permission in favour of the petitioners / predecessor in title of the petitioners also is required to be quashed and set aside, as the N. A. Permission cancelled only on the above basis. Except above, learned advocate Mr. Jani did not make any other submission.

6.2. Learned advocate Mr. Jani also submitted that in view of the fact that judgment dated 08.03.2022 passed in Letters Patent Appeal No. 138 of 2019 has become final as there is no Special Leave Petition preferred against said order, now the impugned order may be quashed and set aside as the same is based on communication dated 08.08.2011 and the proceedings initiated upon the aforesaid communication are already quashed and set aside.

[7] Learned AGP Mr. Jayneel Parikh appearing for the respondent State though vehemently opposed this petition, he could not dispute the fact that the show cause notice dated 21.09.2011 based upon the communication dated 08.08.2011 which has been referred to and which was the sole basis of the order dated 15.06.2016 is quashed and set aside and therefore, today, there is no basis to confirm the order passed by the learned Special Secretary, Revenue Department (Appeals). He also could not point out that any Special Leave Petition is preferred against the judgment dated 08.03.2022 by the State Government and therefore, though he opposed the petition vehemently, in absence of there being any material on record as well as considering the fact that even though the petition is of the year 2016 till date, reply is not filed, learned AGP Mr. Parikh prayed for passing the appropriate order.

[8] I have heard learned advocates for the parties and perused the record. On perusal of record, I found that in this 2016 petition, the State has not filed any reply. However, considering the fact that the petition preferred by the petitioners being Special Civil

Application No. 12640 of 2013 is already allowed vide order dated 22.06.2016 and the said order has been confirmed in Letters Patent Appeal No. 138 of 2019 vide judgment dated 08.03.2022 whereby the aforesaid Letters Patent Appeal was dismissed. The show cause notice dated 21.09.2011 was quashed and set aside. The show cause notice dated 21.09.2011 was issued on the basis of the communication dated 08.08.2011 whereas even the Special Secretary, Revenue Department (Appeals) also has cancelled the N. A. Permission granted in favour of the petitioners by taking into consideration the aforesaid communication dated 08.08.2011 only.

[9] In view of above, when the show cause notice dated 21.09.2011 is quashed which is issued on the basis of communication dated 08.08.2011, it is rightly pointed out by learned advocate Mr. Jani that very basis on which the N. A. Permission was cancelled does not exist now and therefore, considering the fact that the impugned order is passed only on the sole consideration of aforesaid communication dated 08.08.2011, the impugned order dated 15.06.2016 is also required to be quashed and set aside.

[10] Accordingly, the petition is allowed. The impugned order dated 15.06.2016 passed by the learned Secretary, Revenue Department (Appeals) in Revision Application No. MVV/BKHP/SUO-MOTO/ ST/8 of 2011 is hereby quashed and set aside.

[11] Rule is made absolute to the aforesaid extent. Direct service is permitted.