

(2012) 07 GUJ CK 0004

Gujarat High Court

Case No: Special Civil Application No. 2051 of 2000

Paliben

APPELLANT

Vs

Dy. Collector, Valsad
and Others

RESPONDENT

Date of Decision: July 13, 2012

Acts Referred:

- Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 - Section 35, 6, 7(1), 8AA, 9
- Constitution of India, 1950 - Article 226, 227

Citation: (2013) 1 GLR 231

Hon'ble Judges: C.L. Soni, J

Bench: Single Bench

Advocate: Rushabh R. Shah, for the Appellant; Trusha Mehta, A.G.P., for Respondent Nos. 1 and 2, B.R. Kyada, for Respondent No. 1, Notice Served, for the Respondent

Final Decision: Allowed

Judgement

C.L. Soni, J.

This petition is filed under Art. 226/ 227 of the Constitution of India against the orders passed under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947 (hereinafter referred to as "the Act").

It is the case of the petitioner that the petitioner purchased the land bearing Survey No. 52-A3 admeasuring 13 Gunthas situated in village Retlav, Taluka Pardi by registered sale-deed in the year 1986. The petitioner is an agriculturist and having adjacent land bearing Survey No. 54-A3. Abovesaid transaction of sale was considered by the Deputy Collector in breach of the Act. The Deputy Collector, therefore, initiated proceedings under Sec. 9 of the Act and the case was registered as Breach of Fragment/225/93. In the said case, the petitioner appeared and pointed out that the petitioner purchased the land because the petitioner was

already owner of the contiguous land and if the contiguous land is taken into consideration, then, total area of both would be more than 20 Gunthas which was the limit prescribed for the fragment. The Deputy Collector, however, came to the conclusion that the petitioner was not the sole owner of the contiguous land, and as petitioner being the co-owner of the land, she could not be considered to be in possession of contiguous land, and therefore, the sale transaction was in breach of the provisions of the Act. Accordingly, the Deputy Collector passed order dated 31-1-1996 cancelling the said transaction holding to be in breach of the provisions of the Act. The Deputy Collector also imposed penalty of Rs. 250/- on the original owners of the land and passed further order for removing the petitioner from the possession of the land in question.

Above order of the Deputy Collector came to be challenged by the petitioner before the State Government i.e. Principal Secretary (Appeals), Revenue Department by preferring Revision Application under Sec. 35 of the Act. In the Revision Application, the petitioner raised two important contentions. One is that the petitioner was though co-owner of the land, however, for the purpose of deciding the proceedings under the Act, rights as co-owner of the adjacent land were required to be taken into consideration and if the petitioner was co-owner of the contiguous land for which there was no dispute, the petitioner could not have been said to have committed breach of the provisions of the Act because the land under purchase with the land of which the petitioner was co-owner would be, together, more than 20 Gunthas and in that case, there would not be any breach of the provisions of the Act. Second main contention raised by the petitioner was to the effect that the proceedings under the provisions of the Act were initiated against the petitioner in respect of the purchase of the land after unreasonable long delay of eight years, and therefore, action of declaring the sale transaction as invalid and in contravention of the Act could not be sustained. The Revisional Authority, however, considered and decided only one contention out of the two, that is about the co-ownership of the petitioner of the land contiguous to the land purchased by the petitioner whereby there would be no breach of the provisions of the Act. The Revisional Authority has not considered the important contention raised by the petitioner about initiation of the proceedings under Sec. 9 of the Act against the petitioner after unreasonable long delay of more than eight years. As regards the first contention raised by the petitioner, the Revisional Authority came to the conclusion that the petitioner alone was not the owner of the land bearing Survey No. 54-A3 admeasuring 8 Gunthas, but there were other three persons who were the joint owners of the said land whereas the land purchased in the year 1986 is purchased only in the name of the petitioner, therefore, the land in the co-ownership of the petitioner that is Survey No. 54-A3 admeasuring 3 Gunthas cannot be considered to be contiguous land to the lands purchased by the petitioner for the purpose of deciding the proceedings under the Fragmentation Act. Accordingly, on the above basis, the Revisional Authority rejected the revision

application filed by the petitioner by order dated 17-1-2000. It is this order which is under challenge in this petition.

I have heard the learned Advocate Shri Rushabh Shah for the petitioner, the learned A.G.P. Miss Trusha Mehta for the respondent-State Authority and learned Advocate Mr. R.A. Patel for respondent No. 3 who is the original owner.

2. Learned Advocate Shri Rushabh Shah for the petitioner has submitted that the authorities below have committed grave error in not considering the ownership of the petitioner in respect of the contiguous land bearing Survey No. 54-A3 on the ground that the petitioner was co-owner of the said land with three persons. Learned Advocate Shri Shah submitted that even if the petitioner was co-owner of the adjacent land, the same ought to have been considered by the authorities below for the purpose of deciding the proceedings initiated against the petitioner under Sec. 9 of the Act. In support of his contention, learned Advocate Shri Shah has relied on the decision of this Court in the case of [Rathod Nayamatkhan Ahmedkhan \(decd.\) Through his heirs and Lrs. Vs. M.K. Dass, Dy. Collector and Others](#), . He pointed out from the said decision that the Legislature did not deny the right to purchase a fragment, which is conferred on the owner of a contiguous survey number, to a co-owner of a contiguous survey number. He further pointed out that in the said judgment, it is further held that the purchase of such a fragment by one or more co-owners of a contiguous survey number will be more conducive to achievement of the object of the Act to prevent fragmentation and to achieve consolidation of holdings of agricultural lands.

3. Learned Advocate Shri Shah has further submitted that the petitioner has purchased the land in the year 1986 and the proceedings under the Act were initiated in the year 1994, that is after unreasonable delay of more than eight years. He submitted that it was not open to the authorities to initiate the proceedings after unreasonable delay, and the orders which are passed for declaring the sale transaction as invalid and cancelling such transaction for breach of the Act, cannot be sustained. He submitted that any proceedings to be initiated by the competent authority for breach of the provisions of the Act are required to be initiated within reasonable time and if such proceedings are initiated after unreasonable delay, orders passed for cancellation of such transaction cannot stand scrutiny of law. In support of his submission, learned Advocate Shri Shah relied on the decision of this Court in the case of Ranchhodbhai Lallubhai Patel v. State of Gujarat, reported in 1984 (2) GLR 1225 and pointed out that this Court has held that the exercise of powers under Sec. 9 of the Act is unreasonable, unjust and illegal, having been exercised at belated stage.

4. Learned Advocate Shri Shah has also relied on one more decision of this Court in the case of [Dahyabhai Manorbhai Patel Vs. The Competent Authority and Additional Collector, Unit No. 2, Vadoara and Another](#), and submitted that the powers to be exercised under the provisions of the Act, especially Sec. 9 of the Act cannot be

exercised after gross delay. Learned Advocate Mr. Shah has, thus, urged that on both the counts, the orders passed by the authorities below are required to be quashed and set aside.

In reply to the above contentions raised by the learned Advocate Mr. Shah, learned A.G.P. Ms. Trusha Mehta submitted that the transaction in question was invalid and void from the very beginning. She would submit that the petitioner was rightly not considered to be the owner of the contiguous lands. She submitted that if the petitioner was not the sole owner, her status as owner of the contiguous land adjacent to the land purchased by her could not be taken into consideration for the purpose of deciding validity or otherwise of the transaction in question. She submitted that admittedly the land purchased by the petitioner was below 20 Gunthas which was fragment in the concerned area. She has further submitted that since the transaction in question was void and invalid, delay would not come in the way of the authorities for initiating the proceedings under the Act. She further submitted that the authorities below have not committed any error in ordering cancelling the transaction of sale and ordering for removal of the petitioner from the possession of the land in question.

Learned Advocate Mr. R.A. Patel for respondent No. 3 has supported the arguments advanced by the learned A.G.P., and has further argued that for the transaction which was entered in the year 1986, the petitioner could not be considered to be the sole owner of the contiguous land bearing Survey No. 54-A3 admeasuring 8 Gunthas. He would further submit that with the petitioner, there were other three persons who were also joint owners of the contiguous land, and therefore, the petitioner being co-owner of the land, such contiguous land was rightly not considered for the purpose of deciding the proceeding under the Act. He, thus, urged that the authorities having not committed any error in initiating the proceedings as also in declaring the transaction in question as invalid and for removal of the petitioner from the land in question, this Court may not interfere with the orders in question while exercising the powers under Art. 226/ 227 of the Constitution of India.

5. Having heard the learned Advocates for the parties and having perused the orders passed by the authorities below, it appears that when the petitioner purchased the land in the year 1986, admittedly, the petitioner was co-owner of the land bearing Survey No. 54-A3. There is no dispute that the land of which the petitioner was co-owner is contiguous to the land purchased by the petitioner. It also cannot be disputed that putting both the lands together, total area of both the lands would be beyond 20 Gunthas, therefore, same would not be fragment land. This Court has, in the case of [Rathod Nayamatkhan Ahmedkhan \(decd.\) Through his heirs and Lrs. Vs. M.K. Dass, Dy. Collector and Others](#), , held that the co-owner of the contiguous land is entitled to purchase fragment survey number and in fact, that would be more conducive to achieve the object of the Act. Observations from Para 7

of the said judgment are reproduced below:

7. Section 7(1) of the Act provides that no person shall transfer any fragment in respect of which a notice has been given under sub-sec. (2) of Sec. 6 except to the owner of a contiguous survey number or recognized sub-division of survey number. The question which arises is whether a co-owner will also be covered by this exception. At this stage, it is also required to be noted that by introducing Sec. 8AA the Legislature did contemplate co-ownership of land, and therefore, provided that where two or more persons are entitled to share in an undivided agricultural land and the land has to be partitioned amongst them, no such partition shall be effected so as to create a fragment. However, the Legislature did not deny the right to purchase a fragment, which is conferred on the owner of a contiguous survey number, to a co-owner of a contiguous survey number. Moreover, purchase of such a fragment by one or more co-owners of a contiguous survey number will be more conducive to achievement of the object of the Act to prevent fragmentation and to achieve consolidation of holdings of agricultural lands.

6. In view of the above law laid down by this Court, the authorities below could not have discarded the contiguous land of the co-ownership of the petitioner for the purpose of examining the sale transaction under the provisions of the Act.

7. As regards next contention advanced by the learned Advocate Mr. Shah, what is required to be noted is that the petitioner purchased the land in question in the year 1986. The proceedings came to be initiated against the petitioner for breach of the provisions of the Act in the year 1994 that is after the period of more than eight years. The period of eight years cannot be considered to be the reasonable period for the purpose of initiating proceedings under the Act. By now, it is well settled position of law that any authority either under the provisions of the Fragmentation Act or under the provisions of the Saurashtra Gharkhed Ordinance or under the Bombay Tenancy Act, wants to initiate proceedings for deciding the validity or otherwise of any transaction, such proceedings are required to be initiated within reasonable period. In fact, as held by the Hon"ble Supreme Court, one year is reasonable time, but some time it differs from facts to facts but it cannot be said that the period of eight years by any stretch of imagination would fall within the arena of reasonable period. Transaction in question though contrary to the provisions of the Act, still, the fact remains that the competent authority did not think it fit to initiate the proceedings for about eight years. In my view, the period of eight years in the facts of the present case was grossly unreasonable long period so as to make the competent authority disentitled to initiate the proceedings under the Act. In the case of Ranchhodbhai, (1984 (2) GLR 1225), this Court has held as under: It is true that no period of limitation is laid down by the said Act indicating as to within what period, the concerned authorities can initiate proceedings under Sec. 9. It is also true that power given to the authorities is coupled with duty to act as per the provisions of Sec. 9 if power under Sec. 9 can be validly invoked. But that does

not mean that power can be exercised at any time, may be after years or decades. Exercise of power has to be justified on the facts of each case and if on the facts of a given case, it is found that exercise of power after lapse of sufficiently long period between the impugned transaction and the date of exercise of that power would be arbitrary and unreasonable due to the fact that, in the mean while, parties had changed their position irretrievably obvious of any possibility of future action by the authorities functioning under the Act on account of prolonged inaction on the part of these authorities and any attempt to put back the clock would result in irreparable injury to the concerned parties, then, such exercise has to be treated to be unjust and illegal. In that view of the matter, as seen above, on the facts of this case, the exercise of the power under Sec. 9 against the petitioner would be unreasonable and arbitrary. Only on this short ground and without going into the other contentions which are sought to be canvassed by Mr. Sanjanwala in support of the petition, this petition will have to be allowed.

8. In the said case, the Court was concerned with the similar kind of issue in the context of the very provisions of the Act. In that case, the competent authority initiated the proceedings for breach of Sec. 9 of the Act after the period of seven years. This Court has held that the period of seven years for initiating proceedings under Sec. 9 of the Act is to be taken as quite unreasonable period. In the present case, the competent authorities initiated the proceedings under Sec. 9 of the Act after eight years. Considering the facts of the case and relying on the aforesaid decisions cited by the learned Advocate Mr. Shah, period of eight years is to be taken as quite unreasonable and long, and therefore, on this count also, the orders passed by the authorities below cannot be sustained. The orders are, therefore, required to be quashed and set aside. Accordingly, this petition is allowed. The order passed by the Principal Secretary (Appeals), Revenue Department, Government of Gujarat dated 17-1-2000 in Revision Application No. 5 of 1997 as well as the order passed by the Deputy Collector, Valsad dated 31-1-1996 in Fragment Case No. 225 of 1993 are hereby quashed and set aside. Rule is made absolute with no order as to costs.