

(2016) 07 GUJ CK 0018

GUJARAT HIGH COURT

Case No: Special Civil Application No. 10171 of 2008

Rajeshbhai Vithalbhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision: July 8, 2016

Acts Referred:

- Bombay Land Revenue Code, 1879 - Section 79A
- Constitution of India, 1950 - Article 226, Article 227

Citation: (2016) 4 GLR 3499

Hon'ble Judges: Ms. Bela M. Trivedi, J.

Bench: Single Bench

Advocate: Mr. Hriday Buch, Advocate, for the Petitioner No. 1; Rule Served, for the Respondent Nos. 1 to 6, 8 and 9; Mr. Venugopal Patel, A.G.P, for the Respondent No. 1; Mr. N.V. Gandhi, Advocate, for the Respondent Nos. 6 to 9; Rule Not Recd Back, for the Respond

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ms. Bela M. Trivedi, J.(Oral) - The present petition is directed against the order dated 11.06.2008 passed by the Gujarat Revenue Tribunal (hereinafter referred to as "the Tribunal") in Review Application No. TEN/CA/No.8/2007 whereby the Tribunal has dismissed the said application and confirmed its order dated 28.02.2007 passed in the Appeal TEN/AA/3/2004, arising out of the order dated 25.11.2003 passed by the Deputy Collector, cancelling the entry No. 7177 made in the revenue record in favour of the petitioner, and directing the land in question to be vested in the Government under Section 79-A of the Gujarat Land Revenue Code (hereinafter referred to as "the Revenue Act").

2. The short facts giving rise to the present petition are that one Bhikhabhai Dhulabhai was granted the land in question bearing Survey No. 612 by the

Government. The said land was of new tenure. The said Bhikhabhai died on 01.08.1991. The present petitioner claiming to be the legatee under the Will, allegedly executed by the said Bhikhabhai, had filed an application before the competent Civil Court for issuance of the probate. In the said proceedings, the public notice was issued inviting objections. However, nobody having objected, the said Court had issued the probate in favour of the petitioner and his mother Lilaben Vithalbhai on 30.06.1994. On the basis of said probate, the petitioner had filed an application to the Mamlatdar for mutating his name in the revenue record. The Mamlatdar on 20.11.1994 made the entry being No. 7177 mutating the name of the petitioner, which was certified on 30.12.1994. The petitioner, thereafter, applied for conversion of the said land from new tenure to old tenure on 12.10.2001. The Mamlatdar, Vadodara (Rural) in April, 2002, passed an order permitting the said conversion from new tenure to old tenure for agricultural purposes only, on the conditions mentioned therein. One of the said conditions was that, the said permission was subject to review by the competent authority. It appears that thereafter the Deputy Collector issued the notice on 30.12.2002 calling upon the petitioner and the respondents Nos. 6 to 9 to show cause as to why the land should not be vested in the Government, the land having transferred in favour of the petitioner by virtue of the Will dated 14.02.1991, as per the entry No. 7177 made in the revenue record. The Deputy Collector, thereafter, passed the order dated 25.11.2003 (Annexure "C") setting aside the said entry No.7177 made by Mamlatdar on 20.11.1994, and directing to vest the land in the Government under Section 79-A of the Revenue Act by holding that there was violation of the condition of grant allotted to the original allottee Bhikhabhai, who had executed the will and transferred the land in question in favour of the petitioner. Being aggrieved by the said order, the petitioner had preferred the revision petition before the Gujarat Revenue Tribunal, who vide the order dated 28.02.2007 dismissed the same. The petitioner filed review application before the said Tribunal, however the same was also rejected vide the order dated 11.06.2008. Hence, the present petition.

3. The learned counsel Mr. Buch for the petitioner vehemently submitted that the Deputy Collector had sought to review the entry made in favour of the petitioner after an unreasonable delay of 8 years. He has relied upon the various decisions of this Court in support of his submissions that when no period of limitation is prescribed, the Authority should exercise the power to review the order of its subordinate authority within reasonable time. He further submitted that the respondents had never objected the entry in question made in favour of the petitioner nor had raised any objections against the Will executed in favour of the petitioner by the deceased Bhikhabhai. Distinguishing the judgment of Division Bench in the case of **Rajenbhai Baldevbhai Shah v. Baijiben Kabhaibhai Patanvadia and Others reported in 2009 (2) GLR 1784**, he submitted that in the said case, the land was sought to be transferred to the non-agriculturalist under the Will, and in any case the Court had left the question open to be considered by the

Court, when the equities are created on the land by virtue of lapse of period between transfer and review made by the competent authority. However, the learned AGP for the State authorities relying upon the very judgment, submitted that the assignment by virtue of Will, would lead to transfer and the land having been originally given to Bhikhabhai by way of grant, who was the member of scheduled caste, the same was non-transferable. According to him, such land could not have been transferred in favour of any third person under the Will, when the legal heirs of said Bikhabhai were alive. He has also submitted that the petitioner was granted permission in April, 2002 for converting the land from new tenure to old tenure subject to conditions mentioned in the order itself, and one of the conditions of the said order was that it was subject to review by the competent authority, and therefore, the Deputy Collector had issued the show cause notice in December, 2002, which could not be said to have been issued after an unreasonable delay. The learned counsel appearing for the respondents Nos. 6 to 9 has fairly submitted that the said respondents had not raised any objection in any of the proceedings, however, submitted that such land could not have been transferred in favour of the petitioner under the Will allegedly executed by their father Bhikhabhai.

4. In the instant case, it appears that it is not disputed that the land in question originally allotted to Bhikhabhai Dhulabhai, was a new tenure land. It is also not disputed that the order passed by the Civil Court granting probate in favour of the petitioner, was not challenged by any of the respondents Nos. 6 to 9, who were the legal heirs of deceased Bhikhabhai. It is also not disputed that on the basis of the said probate, the mutation entry being No. 7177 was made on 20.11.1994 which came to be certified on 30.12.1994 by the Mamlatdar, after issuance of notice to the said respondents under Section 135(d) of the Revenue Act. Now, it appears that the said entry was sought to be reviewed by the Deputy Collector, after almost a period of eight years, by issuing notice on 30.12.2002 calling upon the petitioner and the respondents Nos. 6 to 9 to show cause as to why the land should not be vested in the Government under Section 79-A of the Revenue Act, there being violation of the condition of the grant on which the land was allotted to the original allottee Bhikhabhai. At this juncture, it is pertinent to mention that as per the settled legal position, when the period of limitation is not prescribed under the statute, the competent authority is required to exercise the powers within reasonable time. The beneficial reference of the decision in the case of **State of Punjab v. Bhatinda District Cooperative Mulk Producers Union Ltd.**, reported in 2007 (11) SCC 363 be made in which it has been held in para 18 and 19 as under : -

"18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

19. Revisional jurisdiction, in our opinion should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years."

5. In the instant case, the revisional power was sought to be exercised by the Deputy Collector after a period of 8 years of the entry certified by the Mamlatdar, which could not to be said to be a reasonable period by any stretch of imagination. Though the court finds substance in the submission of learned AGP that assignment made in the Will, would tantamount to transfer, in view of the decision rendered by the Division Bench in the case of Rajenbhai Baldevbhai Shah (supra), the Court is not inclined to deal with the said issue at this juncture. The Court is of the opinion that the respondent-Deputy Collector had exercised the powers of revision after an unreasonable delay of 8 years. The said order of Deputy Collector having confirmed by the Gujarat Revenue Tribunal, both the orders deserve to be set aside.

6. In that view of the matter, the impugned order dated 25.11.2003 passed by the Deputy Collector, and the orders dated 11.06.2008 and 28.02.2007 passed by the Gujarat Revenue Tribunal are hereby quashed and set aside.

7. The petition is allowed accordingly. Rule is made absolute.

@Result-Petition allowed.