

Mangal Sinhji Dolatsinhji and Others

Vs

State of Gujarat

Civil Appeal Nos. 1227 to 1230 of 1979

(G. N. Ray, M. H. Kania JJ)

11.10.1991

JUDGMENT

KANIA, J. –

1. These are the appeals by special leave from a common judgment of the Full Bench of the Gujarat High Court disposing of the Letters Patent Appeal Nos. 52 to 55 of 1973 and also Letters Patent Appeal No. 50 of 1973. It is a common ground that the appellants are the tenants of certain lands which form part of the estate or want of a taluqdar. The question is whether the provisions of Section 6 of the Bombay Taluqdari Tenure Abolition Act, 1949, are applicable to the lands in question, and whether under the Bombay Taluqdari Tenure Abolition Act, 1949, which came into effect from August 15, 1950, the said lands became vested in the State and all rights in the said land held by the Taluqdar became the property of the government. Under the provisions of Section 6 of the said Act, inter alia, all uncultivated lands excluding the land used for building and other non-agricultural purposes, vest in the State. Section 6 of the Bombay Taluqdari Abolition Act, 1949, runs as follows :

"6. All public roads, lanes and paths, the bridges, ditches, dikes and fences on, or beside, the same, the bed of the sea and of harbours, creeks below high water mark, and of rivers, streams, nallas, lakes, wells and tanks, and all canals, and water courses, and all standing and flowing water, all unbuilt village site lands, all waste lands and all uncultivated lands (excluding lands used for building or other non-agricultural purposes), which are not situate within the limits of the wants as belonging to a taluqdar in a taluqdari estate shall except insofar as any rights of any person other than the taluqdar may be established in and over the same and except as may otherwise be provided by any law for the time being in force, vest in and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the government and all rights held by a taluqdar in such property of the government and all rights held by a taluqdar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the Commissioner, to dispose them of as he deems fit, subject always to the rights of way and of other rights of the public or of individuals legally subsisting.

Explanation. - For the purposes of this section, land shall be deemed to be uncultivated, if it has not been cultivated for a continuous period of three years immediately before the date on which this Act comes into force."

2. The question is whether for the purposes of this section the lands in question were uncultivated lands. It is an admitted position that the lands were leased by the taluqdar to the tenants. There is also a clear and categorical finding of fact that these lands had remained uncultivated for a period of 3 years immediately before the said Act came into force. Prima facie it would appear that in view of the said explanation to Section 6 the lands must be regarded as uncultivated lands for the purposes of Section 6 of the said Act and must be deemed to be vested in government. Learned counsel for the appellants, however, contended that as the lands had been put to cultivation earlier for some time even though not cultivated for continuous three years prior to vesting they cannot be regarded as uncultivated lands. According to learned counsel, if the land is capable of being cultivated, it cannot be treated as uncultivated land within the meaning of Section 6. He relied on a decision of this Court in *State of Gujarat v. Gujarat Revenue Tribunal* [(1979) 4 SCC 40 : (1980) 1 SCR 233]. Our attention has been drawn to the observation made at page 239 of the said report (SCC p. 45). After setting out the provision of Section 6 it has been observed, as follows : (SCC p. 45, paras 14 to 16)

"On a fair reading of the section, it would be evident that the vesting is in respect of properties which could be put to public use. It leaves the private properties of the taluqdar untouched. The legislative intent is manifested by clear enumeration of certain specific properties not situate within the wants of a taluqdar. It begins by specifying 'All public roads, lanes, paths, bridges etc.' and ends up with 'all unbuilt village site lands, all waste lands and all uncultivated lands', and these being public properties situate in a taluqdar's estate must necessarily vest in the government because they are meant for public use. In spite of vesting of such property in the government, however, the conferral of the rights of an occupant on a taluqdar under Section 5(1)(b) in respect of the lands in his actual possession, is saved.

Pausing there, it is fair to observe that the words in parenthesis 'excluding lands used for building or other non-agricultural purposes', exemplify the intention of the legislature not to deprive a taluqdar of such land, even though such property is uncultivated land, due to its inherent character as well as by reason of the Explanation.

It is, therefore, evident that the determination of the question whether a particular category of property belonging to a taluqdar in a taluqdar estate is vested in the government or not, and the determination of the question whether the rights held by a taluqdar in such property shall be deemed to have been extinguished or not, will depend upon the category of that property. The expression 'all waste lands' has been joined by conjunctive 'and' with the expression 'all uncultivated lands'. They, therefore, indicate two distinct types of lands. If the legislature had intended that the aforesaid expression should indicate one class of lands, the expression rather would have been 'all waste and uncultivated lands' as against the expression 'all waste lands and all uncultivated lands'. Here we have, therefore, two distinct categories of properties viz. (1) waste lands, and (2) uncultivated lands. The contention that the grasslands on hilly tracts which were incapable of cultivation were 'waste lands' or 'uncultivated lands' within the meaning of Section 6 cannot be accepted."

3. The said decision of this Court and the observation relied on by the learned counsel do not come to the aid of the contention made by the learned counsel for the appellants. Even according to the appellants themselves, the lands were under cultivation for some time prior to the coming into force of the said Act and hence, it could not be said that they were uncultivable lands. They were in fact,

lands which were capable of cultivation and as a matter of fact subjected to cultivation for some time but, which as found by the High Court were not cultivated for continuous period of three years prior to the coming into force of the said Act. In these circumstances, the said lands are clearly covered by the definition of the expression "uncultivated land" as set out in the Explanation to Section 6. As the said lands were uncultivated lands within the meaning of Section 6, they must be deemed to have been vested in the government and the contention of the appellants to the contrary must be rejected.

4. In the result, there is not merit in the appeal and it is dismissed. There will, however, be no order as to costs.

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