

Mahisagar Bhatha Co-operative Agricultural Co-operative Society Ltd.

Vs

Thakore Shree Jagdevsinhji Ramsinhji and Another

Civil Appeal Nos. 1150-51 of 1979

(Kuldip Singh, N. M. Kasliwal JJ)

02.09.1992

JUDGEMENT

KASLIWAL, J.:-

1. Both those appeals by grant of Special Leave are directed against the common judgment of the High Court of Gujarat dated 6-4-1978. This litigation has a long chequered history but we would succinctly narrate such facts which are necessary for the disposal of these appeals. Thakor Sh. Jagdevsinhji since dead and now represented through his heirs and legal representatives (hereinafter referred to as the plaintiff) was the ruler of Umeta State and he was also a registered Talukdar and owner of five villages, including village Kothiykhad in the State of Gujarat. This village Kothiyakhad is situated on the bank of river Mahi. The plaintiff filed a suit for declaration that he was the owner of suit land 'A' Kothiakhad Bhatha bearing survey No. 247 admeasuring 100 acres and 38 gunthas and of landed property plot 'B' referred to as Mahmedpura land and for recovery of possession and for rendition of accounts of income from 1-1-1952 till the date of handing over possession. The plaintiff had claimed the suit properties as his personal properties as a Talukdar and in the alternative it was alleged that the suit lands were Bhatha lands beyond the purview of the Bombay Taluqdari Tenure Abolition Act, 1949 (hereinafter referred to as 'Taluqdari Abolition Act') which came into operation w.e.f. 15-8-1950. The alternative case was put up by the plaintiff to meet the allegation of the State Government that the suit property lot 'A' had vested in the State by virtue of Section 6 of the Taluqdari Abolition Act. The plaintiff's case in this regard was that the princely State of Omata had merged in the Union of India and at that time by a merger agreement dated 24-5-1948 five villages were allowed as private properties of the plaintiff and the suit lands situated in one of such village Kothiakhad remained unaffected by the provisions of the Talukdari Abolition Act.

2. The Trial Court by Judgment dated 30-3-1971 declared that the plaintiff was the owner of the suit land survey No. 247 admeasuring 100 acres, 38 gunthas and also granted a decree for delivering the possession of this land and also held that the plaintiff was entitled to accounts for this land. The suit as regards Mahmedpura Bhatha land 'B' was dismissed. It may be mentioned that the State of Gujarat allotted the suit lands to Mahisagar Bhatha Co-operative Agricultural Co-operative Society Limited, Gambhira (hereinafter referred to as 'the Society') during the pendency of this litigation and as such the Society was also impleaded as defendant in the suit. Aggrieved against the Judgment and decree of the Trial Court, first appeal No. 787 of 1971 was filed by the State of Gujarat, first appeal No. 799 of 1971 by the Society and first appeal No. 834 of 1971 by the plaintiff. The High Court disposed of all the three appeals by a common Judgment dated 6-4-1978. The High Court

dismissed the first appeals Nos. 787 of 1971 and 799 of 1971 except setting aside the decree for taking accounts. Subject to the above variation, the decree passed by the trial Court for declaring ownership and possession in respect of land survey No. 247, the Judgment and decree passed by the learned trial Judge was confirmed. The appeal No. 834 of 1971 filed by the plainiff against the dismissal of his claim for Mehmadvura Bhatha land, the High Court dismissed the appeal and upheld the judgment and decree of the trial Court.

3. The State of Gujarat and the Society have now come in appeal to this Court but no appeal has been filed by the plaintiff, as such we are only concerned with the Kothiakhad Bhatha land of survey No. 247.

4. We have heard learned counsel for the parties and have thoroughly perused the record. It was contended on behalf of the defendant/ appellants that the land came to be vested in the State of Gujarat under the provisions of Section 6 of the Talukdari Abolition Act. We do not find any force in this contention. Exhibit 102 merger agreement dated 24-5-1948 has been placed on record which clearly mentioned that the plaintiff as the Talukdar of Umata State was entitled to the full ownership use and enjoyment of all the private properties. An inventory of such private properties which formed part of such merger agreement clearly mentioned five talukdari villages in Borsad Taluka of Kaira district. Exhibit 129 letter dated 31st January, 1949 written by the Collector and Chief Administrator Kaira to the plaintiff clearly mentions that the matter regarding the five talukdari villages in Borsad Taluka had been referred to Government for orders. The Government then vide Ex. 128 dated 11-4-1950 clerly admitted the five talukdari villages as the private property of the plaintiff. The letter Ex. 128 reads as under:

D. C. No. 3449/46/13034 G,

Political and services Deptt.

Bombay Castle, dated

11th April '50

My dear Thakor Shaheb,

I am to say that the Inventory of private property securities and cash balances furnished by you in accordance with articles 3 of the instrument of merger executed by you has been considered. A copy of the Inventory as finally, accepted, is attached for your information. The decisions submitted therein have the approval of the Government of India in the Ministry of State.

As regards the five Talukdari villages claimed by you as your private property, I am to say that Government has agreed to concede your claim to these villages but as the Revenues of these villages have been included in the average annual Revenues of Umata State for purposes of calculation of your privy purse, the same (i.e. the Revenues of these villages) have now been excluded from the average Revenues of the State and your privy purse has been finally fixed at Rs. 14,450/- per annum instead of at Rs. 19,200/- per annum as previously communicated to you.

I am to request you to acknowledge the receipt of this letter and of copy of the inventory enclosed herewith.

Yours sincerely,

Sd/-

M. D. Bhatt.

5. The above letters go to show that the Government had agreed the claim of the plaintiff to the five villages as his private property as a part of the merger agreement and there is no escape from the conclusion that the land in question which lies in one of these villages, namely, Kothiakhad being the personal private property of the plaintiff could not fall within the ambit of Section 6 of the Taluqdari Abolition Act. We fully agree with the view taken by the High Court that the plaintiff was the owner and entitled to a decree for possession for the land bearing survey No. 247 admeasuring 100 acres and 38 gunthas situated in Kothiakhad village.

6. It was then contended by learned counsel appearing for the society that it is a co-operative society having 291 small farmers who are called marginal farmers. These landless farmers had formed a co-operative society and the Gujarat Government as a matter of policy was to give land to such co-operative societies of landless marginal farmers. An application for allotment was made for the land in question on or about 3-6-1960. The Government by order dated 1-7-1960, agreed to lease out the land to the society under Rule 40 of the Land Revenue Rules, 1921. The lease deed was executed on or about 2nd July, 1964 and after getting subsidy and loan, the poor farmers improved the land and made it cultivable. The land while in possession of the plaintiff was uncultivable and by dint of labour of the large number of landless and poor farmers pipelines were laid, tubewells were constructed and some portion of the land was made cultivable in 1964 and full cultivation was achieved by the year 1966-67. It was thus submitted on behalf of the society that for nearly 30 years the poor farmers and their families are residing and cultivating the land in question and it would not be in the interest of justice to dispossess them from the land in question. It was also submitted that the Gujarat Agricultural Land Ceiling Act, 1960 applies to the land in question and the plaintiff (since deceased) and his successors and legal representatives are bound to surrender the land in excess of the Ceiling area. It was thus submitted that instead of dispossessing the farmers who are in possession of the land in question, the State Government may be directed to allot some other land to the plaintiff in lieu of the land in question.

7. We have given our careful consideration to the human problem arising in this case. The State Government had allotted the land in question in the year 1964 and a large number of landless marginal farmers have improved the land for cultivation by their own labour and it would cause great harm and injustice to dispossess and dislodge these large number of families of poor farmers from the land in question. On the other hand the plaintiff has succeeded in proving his ownership and right of possession over the land admeasuring 100 acres and 38 gunthas. It is, however not disputed that the provisions of Land Ceiling Act shall apply and the legal representatives of the plaintiff are bound to surrender the area in excess of the ceiling permitted under the Ceiling Act. Thus taking in view the entire facts and circumstances of the case we deem it proper in the interest of justice to mould the relief in the following manner :-

- (i) The respondents -- Legal representatives of the plaintiff shall file statement specifying the particulars of the lands as required under the Gujarat Agricultural Lands Ceiling Act, 1960 (Act) to the competent authority under the Act within two months from today.

(2) The competent authority, thereafter, shall determine the extent of surplus land, if any, and also the "permissible area" of the respondents, within three months of the filing of the statement.

(3) The State Government shall allot an area equivalent to the "permissible area" as determined by the authorities under the Act, to the respondents - Legal representatives of the plaintiff in a nearby vicinity or at any other place acceptable to them, The possession of such equivalent land shall be given by the State Government to the respondents -legal representatives of the plaintiff within three months of the decision of the authorities under the Act.

(4) The respondents - legal representatives of the plaintiff shall not execute the decree for possession till the determination of the ceiling proceedings as well as the handing over possession of the equivalent land as directed in para 3 above.

(5) In case of failure on the part of the Government to allot equivalent land in exchange to the respondents as directed in para 3 above, it would be open for the respondents - legal representatives of the plaintiff to execute the decree for obtaining possession of the land in question itself to the extent of the permissible area determined under the Act.

8. Apart from the above directions given by us, the State Government would be free to solve the problem in any other manner by consent of the respondents - legal representatives of the plaintiff.

9. The appeals are dismissed with the above directions. No costs.

Order accordingly.

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