SUPREME COURT OF INDIA

Dhanvanthkumariba

Vs

State of Gujarat

Civil Appeal No.1908 of 1999

(Shivraj V.Patil and B.N.Srikrishna)

01/10/2004

JUDGMENT

SHIVARAJ V. PATIL, J.

1. The appellants are the legal representatives of Padhiar Jagdevsinhji Ramsinhji who was ex-ruler of erstwhile State of Umeta which comprised of five villages including Umeta. According to him, the lands of these villages belonged to him. In the year 1948, the State of Umeta was merged into India under the Merger Agreement dated 24.05.1948. The land bearing Survey No.410 which is the disputed land is situated at village Umetra. By virtue of Merger Agreement, this land was also given to ex-ruler as Talukdar. The land bearing Survey No.410 comprised of large area - 742 acres and 32 guntas. The Bombay Talukdari Tenure Abolition Act, 1949 (for short 'the Act') came into force on 15.8.1950. According to the respondent-State, the said land bearing Survey No.410 vested in the Government by virtue of Section 6 of the Act. The Government transferred 560 acres out of this land to the District Panchyat, Kheda. Hence, the ex-ruler filed Civil Suit O.S. No. 5 of 1970 contending that the transfer of the land by the Government in favour of the District panchyat was wrong as it belonged to him and Government had no authority to transfer the land when the said land had not vested in the Government. In that suit, reliefs of declaration, possession and permanent injunction were sought. The trial court decreed the said suit. The first appeal filed by the respondent against the decree of the trial court was allowed by learned Single Judge of the High Court, reversing the decree passed by the trial court. The original plaintiff filed LPA before the High Court questioning the validity and correctness of the order made by the learned Single Judge. The

Division Bench of the High Court, by the impugned judgment, dismissed the appeal concurring with the findings recorded by learned Single Judge. Hence, this appeal by the legal representatives of the original plaintiff, as already stated above.

2. The State of Bombay on 1.4.1952 took possession of about 30 acres out of the land in Survey No.410 from the possession of the plaintiff on the ground that it was a waste land and, therefore, vested in the Government under Section 6 of the Act. Challenging the action of the Government, the original plaintiff filed regular Suit No.185/1953 against the State seeking declaration that he was the owner of 30 acres of land which was part of Survey No.410; it was not waste land; it did not vest in the Government and that the order dated 1.4.1952 vesting the land in the Government was null and void. When the said suit, was pending, Mahendrsinhji, brother of the original plaintiff, made a claim of ownership to the extent of 147 acres and 15 guntas of land in the same Survey No.410. The State Government after making enquiry under Section 37(2) of the Bombay Land Revenue Code by its order dated 27.11.1958 held that Mahendersinhji was the owner of that piece of land measuring 147 acres 15 guntas. By the same order, it also declared that the remaining 590 acres and 30 guntas in Survey No.410 was a waste land and, therefore, it vested in the Government. The trial court decreed the said regular Civil Suit No.185/53 and declared that the original plaintiff was the full owner of 30 acres of land and ordered for delivery of possession to him. In the judgment, the trial court recorded that five villages in the State of Umeta were private properties of the original plaintiff. The trial court also recorded a finding that the original plaintiff was the owner of the 'Wanta' situated in Umeta and that Survey No.410 formed part of the 'Wanta' of Umeta. The Government of Bombay filed first appeal No.60 of 1960, aggrieved by the judgment and decree passed in the said suit No.185/53. The first appellate court dismissed the appeal on 16.7.1962. The State Government pursued the matter further by filing second appeal in the High Court of Gujarat. Pursuant to the decree passed by the trial court, possession of 30 acres of land was handed over to the original plaintiff on 5.12.1969 in Execution Application No. 34/69. The High Court by its judgment dated 12.3.1970 dismissed the second appeal also.

3. On the basis of the pleadings of the parties in Regular Civil Suit No.185/53, as many as 17 issues were framed. Issue Nos.4 and 6 read as under:-

"4. Whether the five Talukdari villages of Umeta, Kuthiskhad, Sankhyad, Anmrol and Asarms are of plaintiff's private ownership as alleged by plaintiff?

6. Whether the plaintiff is the owner of the Wanta situated in Umeta? If yes, whether Survey No.410 forms part of the Wanta of Umeta? *

4. Both the issues were answered in favour of the original plaintiff holding that five villages of Umeta were of the private ownership of the original plaintiff as Talukdar; he was the owner of the 'wanta' situated in Umeta and the entire land bearing Survey No.410 formed part of 'wanta' of Umeta. In Civil Appeal No.60/1960 filed against the decree in Regular Civil Suit No.185/53, the appellate court in para 4 has recorded thus:-

"4. During the arguments, the learned Government Pleader conceded that the plaintiff was the owner of Talukdari village Umeta and S.No. 410 was within the limits of village Umeta." *

5. In the said appeal, the following three points arose for determination:-

"1. Whether the suit land is a part of the bed of Mahl River?

2. Whether the suit land is waste land?

3. Whether the suit land for uncultivated land when the Bombay Talukdari Tenure Abolition Act, 1949 came into operation?" *

6. All the three points were answered in the negative against the defendant-State. A finding was recorded that Government failed to prove that suit land was part of the bed of Mahi river or that the suit land was waste land or the suit land was uncultivated on the date when the Act came into Force. Further, it was held that the land bearing Survey No. 410 belonged to the original plaintiff and that the suit had been rightly decreed. The defendant-State filed second appeal against the judgment and decree passed in the said appeal. The High Court, by its order dated 12.3.1970, dismissed the second appeal affirming the findings recorded by the two courts below. In the said judgment, it is noticed that although several contentions were urged by the State in the trial court resisting the suit of the plaintiff but in the second appeal the only point that was urged was that whether the lower appellate court had committed an error of law in forming the opinion as regards the category of the land in dispute. After a detailed discussion, the High Court concluded thus:-

"This not having done, the lower appellate court came to the conclusion that the defendant-State failed to show that the disputed land was river bed land. In this view of the matter, the lower appellate court has formed the opinion that the disputed land does not fall within one of the three categories specified in Section 6 of the Act as claimed by the defendant-State." *

7. By this, it followed that the land bearing Survey No.410 did not vest in the Government under Section 6 of the Act.

8. In the present suit O.S. No.5/1970, on the basis of the pleadings of the parties, several issues were framed. The relevant issues which are required to be seen for

the purpose of disposal of this appeal are issue nos.4, 5 and 6 which read:-

"4. Whether the plaintiff proves that his ownership of the five villages mentioned in para 2 of the plaint, was acknowledged and admitted by the Government?

5. Whether it is proved that Survey No. 410 is of Wanta land of Umeta village?

6. Whether Survey No.410 is proved to be of the ownership of the plaintiff?" *

9. The trial court answered these issues in the affirmative in favour of the original plaintiff.

10. In the first appeal No. 914/77 filed against the judgment and decree in O.S. No. 5/1970, learned Single Judge of the High Court held that the suit O.S. No. 5/1970 filed in respect of rest of 560 acres of land bearing Survey No. 410 of Umeta was not hit by the principles of res-judicata on the ground that the subject matter of the dispute in O.S. No.185/1953 was only in relation to 30 acres of land bearing Survey No.410 and not in regard to the remaining area of the land. He also held that the suit land stood vested in Government under Section 6 of the Act. The High Court, by the impugned judgment, as already stated above, dismissed the L.P.A. affirming the order of the learned Single Judge.

11. The learned Senior Counsel for the appellants contended that the judgment in the second appeal No. 826/62 decided on 12.3.1970 by the High Court affirming the decree made in O.S. No.185/53 concludes the case against the respondents-State inasmuch as in the said judgment, appellants are held to be the owners and that the land in question did not vest under Section 6 of the Act; the said judgment operated as res-judicata against the respondent-State in the present case; the trial court was right in holding so; learned Single Judge and Division Bench of the High Court committed error in reversing the decree of the trial court. In support of his submissions, the learned Senior Counsel relied on the decision of this Court in Mahisagar Bhatha Cooperative Agriculture Cooperative Society Ltd. Borsad and Ors. vs. Thakore Shree Jagdevsinhji Ramsinhji (dead by L.Rs. & Anr. 3]

12. In opposition, the learned counsel for the respondent-State made submissions supporting the impugned judgment. He urged that learned Single Judge was right in holding that the decision in O.S. No.185/1953 did not operate as res-judicata in deciding the present O.S. No.5/1970, adopting the same reasons given in the judgment of the learned Single Judge. He further urged that during the pendency of O.S. No.185/1953, brother of the original plaintiff Mahendrsinhji had made a claim for ownership of a portion of land measuring 147 acres and 15 guntas in the same land in Survey No.410 under Section 37(2) of the Bombay Land Revenue Code. The competent authority, after making enquiry by the order dated 27th November, 1958 held that Mahendrsinhji was the owner of the said portion of the land; the original plaintiff did not take any action against the said order dated 27th November, 1958 declaring 590 acres of Survey No.410 to be Government wasteland. Hence, the original plaintiff having failed to take action for nearly 12 years from the date of the said order, the relief of ownership claimed by him in O.S. No.5/1970 being inconsistent with the order of 27th November, 1958 was not maintainable and the suit could not have been decreed.

13. We have considered the submissions made by the learned counsel for the parties.

14. In the case of Mahisagar Bhatha Cooperative Agriculture Cooperative Society Ltd. Borsad and Ors. (supra), this Court had occasion to consider as to the ownership of plaintiff as Talukdar of Umeta State itself in respect of another village. In the said decision, it is held that the plaintiff as Talukdar of Umeta State was entitled to full ownership, use and enjoyment of the said five villages. It was further held that suit land in that case which formed the part of one such village, did not fall within the ambit of Section 6 of the Act and it did not vest in the State. The original plaintiff in the present case namely, Shri Jagdevsinhji was the plaintiff in that case also. He was the ex-ruler of Umeta State and he was also a registered Talukdar and owner of five villages, namely, Umeta, Kuthiyakhad, Sankhyad, Anmrol and Asarms. In that case, he was concerned with village Kothiyakhad. He filed a suit for declaration and for possession that he was the owner of suit land in Survey No.247 measuring 100 acres and 30 guntas situated at village Kithiyakhad. The trial court, by its judgment dated March 30, 1971 declared that he was the owner of the said land. The State of Gujarat filed appeal to the High Court which was dismissed. Thereafter, they filed appeal in this Court. This Court in paragraph 4 has held thus:-

"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. Ex.102 merger agreement dated May 24, 1948 has been placed on record which clearly mentioned that the plaintiff as the Talukdar of Umeta 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 Talukadari villages in Borsad Taluka of Kaira district. Ex.129 letter dated January 31,1949 written by the Collector and Chief Administrator, Kaira to the plaintiff clearly mentions that the matter regarding the five Talukdari village in Borsad Taluka had been referred to Government for orders. The Government then vide Ex. 128 dated April 11, 1950 clearly admitted the five Talukdari villages as the private property of the plaintiff. The letter Ex. 128 reads as under:

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

Political and Services Deptt.

Bombay Castle, dated 11th April, 1950

My dear Thakore Saheb,

I am to say that the inventory of private property securities and cash balances furnished by you in accordance with Article 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 Umeta State of 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 16,200 per annum as previously communicated to you.

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

Yours sincerely,

Sd/-

M.D. Bhatt" *

15. Having stated so in paragraph 4 as extracted above, this Court observed that the Government had agreed to the claim of the plaintiff to the five villages as his private property as part of the Merger Agreement and there was no escape from the conclusion that the land in question which lies in one of the five villages being the personal private property of the plaintiff, could not fall within the ambit of Section 6 of the Act. The Merger Agreement dated May 24, 1948 and the letter of the Government dated April 11, 1950 equally cover the legal position in regard to the land in Survey No.410 of Umeta in question. To this judgment, State of Gujarat was a party. In other words, this judgment, being inter-parties between the original plaintiff and the State of Gujarat, is binding on the State of Gujarat.

16. In O.S. No.185/53, the trial court held that five talukdari villages including Umeta were of private ownership of the plaintiff as Talukdar. Although the suit was confined to a portion of 30 acres of land in Survey No.410, the issue No.6 as already noticed above while narrating the facts, as framed was whether the plaintiff was the owner of Survey No.410 of Umeta and the issue was answered in favour of the plaintiff holding that the plaintiff was the owner of the entire land in Survey No.410. Even under issue No.5 in that suit, a finding was recorded that the rights of the plaintiff as owner of the five villages were kept intact under the Merger Agreement. In the second appeal No.826/1962 filed against the judgment passed in Civil Appeal No.60/1960, the High Court, after extracting Section 6 of the Act, elaborately considered as to whether the land in Survey No.410 fell in any one of the categories so as to vest in the State under Section 6 of the Act. Having considered the evidence and looking to the findings recorded by the courts below, the High Court concluded that an area of 30 acres of land in Survey No.410 did not vest with the State under Section 6 of the Act. In the said judgment, it is stated thus:

"Numerous contentions were raised by the defendant-State in the trial court for resisting the plaintiff's suit. It is not necessary to refer to any of those contentions as the only point that is urged before this Court is that the lower appellate court had committed an error of law in forming the opinion as regards the category of the land in dispute. The learned Assistant Government Pleader for the appellant-State has argued that the disputed land falls within one or the other of the three

categories namely, river-bed or waste or land which was not cultivated for three years immediately preceding August 15, 1950, the date on which the Act came into force. Appellate court ought to have come to the conclusion that the disputed land had vested unto the State Government inasmuch as it fell within one or the other of the aforesaid three categories envisioned by Section 6 of the Act. The only question that arises for decision in the present appeal, therefore, is whether the lower appellate court has committed any error of law in rejecting the contention of the State as regards the category of the land." *

17. The High Court in the said second appeal, as already stated above looked into oral and documentary evidence, concluded that the lower appellate court was right and no exception could be taken thereto in forming the opinion that the disputed land did not fall within any one of the three categories specified in Section 6 of the Act as claimed by the respondent-State. Under the circumstances, second appeal was also dismissed by the High Court.

18. Thus, in the light of the judgment in Mahisagar Bhatha Cooperative Agriculture Cooperative Society Ltd. Borsad and Ors. (supra) and also the judgment of the High Court in second Appeal No.826/62 arising out of O.S. No.185/1953 in regard to the very Survey No.410, it can be safely concluded that the land in Survey No.410 of Umeta as claimed by the original plaintiff did not vest in the State under Section 6 of the Act and the plaintiff was the owner of the said land, it being his private property. This apart, in O.S. No.185/1953, it was not the case of the respondent-State that the remaining area in Survey No.410, after excluding area of 30 acres which was the subject matter of that suit was either river bed area or a wasteland or uncultivated land. On the other hand, the issue framed in the said suit covered the entire land in Survey No.410 about which the reference is made already in relation to the issues and findings. The trial was right in the present suit in holding that the judgment and decree passed in O.S. No.185/1953 were binding on the parties and they operate against the respondent-State on the principle of res-judicate. The first appellate court committed an error in taking a contrary view on this question merely on the ground that in the earlier suit, subject matter was confined to only 30 acres of land in Survey No.410 without looking to the issues raised in the earlier suit. The issue raised in earlier suit as regards ownership of the land in Survey No. 410 or vesting of the said land under Section 6 were not confined to an area of 30 acres. On the other hand, they covered the entire land in Survey No.410. The Division Bench also committed the same error in affirming the judgment of the learned Single Judge. The contention that the plaintiff did not challenge the order dated 27th November, 1958 passed under Section 37(2) of the Bombay Land Revenue Code in the proceedings initiated by his brother Mahendrsinhji has no force for the reasons more than one. **The original plaintiff was not a party to those proceedings; it was confined to an area of 147 acres and 15 guntas; the ownership of the original plaintiff in regard to Survey No.410 and it not vesting in the State under Section 6 of the Act were specifically decided in the O.S. No.185/1953; the judgment and decree passed in that suit attained finality when the High Court dismissed the second appeal filed by the State affirming the decree passed in the said suit. This decree binds the respondent-State as it was a party to the said suit. In this view, the order passed under Section 37(2) in the proceedings initiated by the brother of the plaintiff cannot override or take away the effect of the above-mentioned civil court decree. #**

19. Thus, viewed from any angle, we find it difficult to sustain the impugned judgment passed by

the Division Bench affirming the judgment passed by the learned Single Judge in the first appeal. Hence, the appeal is allowed, the impugned judgment is set aside and the judgment and decree passed by the trial court is restored.

No costs.