

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 13841 /2024
[@ SLP [C] NO.31842/2012]**

AMJIBHAI KANJIBHAI (D) THR HIS LRS. Appellant(s)

VERSUS

STATE OF GUJARAT & ORS. Respondent(s)

O R D E R

Leave granted.

The appellant before us is the purchaser of the property by way of a registered deed dated 29.09.1969. The property in question was originally owned by the respondent No.2. In 1962, an action was initiated by respondent No. 2 under Section 32T of the Bombay Tenancy and Agricultural Lands Act, 1948 against the father of the appellant, who was the

earlier tenant for the purpose of resuming the land for his personal cultivation.

It was accordingly, allowed in the year 1968.

As respondent No.2 was not able to cultivate the land, it was sold in favour of the appellant, who is none other than the son of the original tenant. It is the case of the appellant that his father did not have any objection.

However, it is not in dispute that appellant has got the possession of the land and is enjoying it as the owner pursuant to the sale effected, for which no other third party has any objection including his father.

In 1973, the State of Gujarat has brought an amendment to the Bombay Tenancy and Agricultural Lands Act, 1948 by which sub-Section 1A has been introduced to Section 37. It reads as follows:

“(1A) Notwithstanding anything contained in sub-section (1), where in respect of any land, the possession of which has been taken by the landlord after the termination of the tenancy under Section 31 or 32T, the *Mamlatdar suo moto* or on an application from any person interested in such land has reason to believe that the landlord has failed to use the land for any of the purposes specified in the notice given to the tenant under section 31 or 32T, within

one year from the date on which he took possession of the land or ceases or has ceased to use it for the purposes specified in the notice, at any time within 12 years from the date on which he took possession, or has transferred the land to any other person and such transfer is inconsistent with the ground which the tenancy of the land was terminated, the *Mamlatdar* shall, after issuing notice to the landlord as the case may be, to the landlord and the transferee both, in the prescribed form to show cause why the landlord should not be disentitled to retain possession of the land, or as the case may be, why the transfer should be declared invalid and after holding such enquiry as he deems fit, declare that the landlord shall not be entitled to retain possession, of the land, or as the case may be, that the transferee shall be deemed to be unauthorizedly occupying the land."

A perusal of the said amendment would clearly show that it is neither retrospective nor retroactive and, therefore, to be applied prospectively. Suffice it is to state that it can have no application to a transaction that happened prior to the date of its introduction. The action was initiated by the official respondent in the year 1979 under Section 37 of the Act. After due notice, it was held that the transfer done by respondent No. 2 failed to cultivate

the land, thus the purpose of resumption was not fulfilled. All proceedings initiated by the appellant by way of filing an appeal, revision and Writ Petition ended against him.

Learned counsel appearing for the appellant submitted that the High Court did not go into the issues raised. By way of the non-reasoned order, it dismissed the Writ Petition *inter alia* holding that the power of judicial review is not available over facts. What the appellant has raised is a question of law. Even the other authorities did not go into the question of applicability of 1A of Section 37 of the Act. The proceedings have been initiated in the year 1979 though the amendment was brought into the statute in the year 1973. There is no objection for the transfer and therefore, the finding given with respect to interpolation of the letter given by the appellant's father is irrelevant. One has to see the object behind the Act, as the appellant here is none other than the son of the earlier tenant and, particularly, in light of Section 40 of the Act, which states that the tenancy is heritable. Not only the father of the appellant but no other person from the family has raised any issue on the transfer made. Thus, the impugned proceedings are liable to be set aside.

Learned counsel appearing for the respondent No.1 submits that sub-Section 1A of Section 37 of the Act takes into its sweep all the violations committed. If on the date of coming into force of the proviso, there is a violation, then the transaction will have to be declared as void. In such view of the matter, there is no need for interference, especially, when the action has been initiated within a period of six years.

The execution of sale is not in dispute. For a sale deed to be executed in the year 1969, followed by possession which is not in dispute, action was taken by the revenue authority only in the year 1979, there is absolutely no reason for such belated action. Sub-Section 1A though gives power for *suo motu* action, such power can be exercised only within a reasonable time, which was not done in this case. As we find that the initiation of proceedings itself is bad in law, we are not inclined to go into the other issues of as to the applicability of sub-Section 1A to Section 37 to a transaction which happened much prior to the amendment. The High Court, in our considered view, has not gone into the issues raised. Suffice it is to state that all the

proceedings initiated against the appellant cannot be sustained in the eyes of law.

Accordingly, the impugned judgment is set aside and the appeal stands allowed.

.....J.
[M.M. SUNDRESH]

.....J.
[ARAVIND KUMAR]

NEW DELHI;
NOVEMBER 28, 2024.

ITEM NO.9

COURT NO.11

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 31842/2012

[Arising out of impugned final judgment and order dated 07-10-2010
in SCA No. 819/1986 passed by the High Court of Gujarat at
Ahmedabad]

AMJIBHAI KANJIBHAI (D) THR HIS LRS.

Petitioner(s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent(s)

Date : 28-11-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.M. SUNDRESH

HON'BLE MR. JUSTICE ARAVIND KUMAR

For Petitioner(s) Mr. Amit V.thakkar, Adv.
Mr. Shamik Shirishbhai Sanjanwala, AOR
Mr. Aditya Tripathi, Adv.

For Respondent(s) Ms. Deepanwita Priyanka, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS(POONAM VAID)
COURT MASTER (NSH)

[Signed order is placed on the file]