

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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ISSN

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JAMNADAS MEGHJI V/S STATE OF GUJARAT & ORS, 2005.

AUTHORED BY - MS. MAARIA LAKDAWALA (A017)

YEAR: BBA-LLB 4th YEAR, SEMESTER-VII

RESEARCH PAPER SUBMITTED

TO THE SVKM'S NMIMS, NAVI MUMBAI

KIRIT P. MEHTA SCHOOL OF LAW

FOR BBA LLB [HONS.]

INTRODUCTION TO FACTS OF THE CASE:

JAMNADAS MEGHJI v. STATE OF GUJRAT & ORS, 2005.

- In the case before the Hon'ble' High Court of Gujrat at Ahmedabad, The petitioners are in possession of property bearing survey No. 11/2, which is 3 Acres and 15 Yards in size. in Tal's Hadmatia (Gir) village. Talala, Junagadh District. Government waste land is located next to the petitioners' property.
- The Revenue officials have accused the petitioners of encroaching government waste land since the year 1970-1971. A case under Section 61 of the Bombay Land Revenue Code was filed before the Mamlatdar.
- Encroachment of 39 gunthas was recorded in the assessment. In accordance with the government's policy of legalising minor encroachments, mamlatdar issued an order imposing a fine and ordering removal of encroachment.
- The Mamlatdar gave credence to the case and approved the petitioners' request for regularisation, subject to payment of Rs. 9,750/- as the occupancy price in order dated 27.09.1990.
- In furtherance of the order dated 27.09.1990, the petitioners fulfilled the occupancy price obligation and also payment of 100 Rupees in measurement fees and the petitioners were awarded Sanad on 15.04.1991 bearing No 56/90-91.
- The land had been substantially developed by the petitioners incurring all financial

expenses including:

- a) the cost of laying down a 500ft pipeline in length,
- b) building a “bund” for Rs. 9000/-,
- c) installation of electric motor 7.5 H.P. for maintenance of irrigation land for Rs. 14000/-
- d) occupancy price for Rs. 9,750/-
- e) measurement fees of Rs. 100/-for assessment.

- The matter was taken up in suo moto revision by the deputy collector and a notice was issued bearing no. Land/rev. /case:17/91-92 dated 14. 05. 199. The Petitioners filed their respective objections/reply for the notice in due accordance of law, however the same was appreciated and got rejected by the Deputy Collector.
- Aggrieved by the decision of the Deputy Collector, Veraval the petitioners preferred an appeal before the collector bearing appeal no. Land-4-Appeal-Case-122/92, in order dated 08.06.1993 the collector dismissed the partitioners appeal bearing appeal no. Land-4-Appeal-Case-122/92.
- Aggrieved by the decision of the collector the petitioners preferred an revision of the appeal before the Secretary Revenue Department in case bearing no SRD-GMN-GND-98/93, the Secretary Revenue Department in order dated 19.12.1994 was pleased to dismiss the same.
- Aggrieved by the aforesaid orders the petitioners have appeared before this Hon’ble Court.

ISSUES RAISED

Owing to the above explained facts and circumstances the Hon’ble High Court of Gujrat, discussed, deliberated, analysed and gave their decisions on the following issues: -

i. Whether encroachment on government waste lands falls under the jurisdiction of Revenue Authority?

The revenue authority was pleased to dismiss the application and hence the petitioners approached the Hon’ble Gujrat High Court, however the jurisdiction of the revenue authority was made transparent by the Hon’ble Gujrat High Court.

ii. Whether encroachment to the extent of 1 acre can be regularized by the Mamlatdar where it is an encroachment on virgin land by persons not belonging to Schedule

Caste?

The issue regarding the extent jurisdiction of mamlatdar regarding encroachment on virgin- non virgin land by individuals not belonging to schedule caste was made clear by the Hon'ble Gujrat High Court.

iii. *Whether clause No 6 of the Government Resolution (Revenue Department) bearing No. Encroachment-1072-28765-L is applicable to the petitioners in the present case who belong to the category of non- backward class?*

The clause No 6 Government Resolution (Revenue Department) bearing No. Encroachment-1072-28765-L was submitted by the respondents in the present case to support their contentions in relation to the petitioners in the present case and the applicability of the same was analysed deliberated and made transparent by the Hon'ble Gujrat High Court.

Out of the three issues, the paper majorly deals with issue no. 2

CONTENTIONS OF BOTH THE PARTIES

The petitioners content that pursuant to the order dated 27.09.1990 by the mamlatdar for regularization for encroachment in small nature, they have paid the price for occupancy Rs.9,750/ by waly of land assessment. The petitioners have developed the land and have invested financially pursuant to this order and will suffer significant loss and irreversible financial hardship.

The Deputy collector, Veraval contented that the petitioners (encroachers) are in possession of more than 8 acres of land, and the Mamlatdar has not looked into petitioners holding records. In addition to that, in accordance with government Resolution dated 01.08.1980, a proposal for regularisation of land shall be sent to the Government by the mamlatdar. Th same was upheld by collector in order dated 08.06.1993 and by Secretary Revenue Department (Appeals) in order dated 19.12.1994.

The petitioners brought the attentions of the Hon'ble Court to the Deputy Collectors notice dated 14.05.1992, the aforesaid notice was indeterminate and did not produce concrete justifications, it only mentioned that “ the order of the Mamlatdar is not according to Government laws, circulars and their provisions, is adverse to the interest of the Government and therefore, required to be

taken into revision under Section 211 of the Bombay Land Revenue Code”, even after sufficiently detailed reply was produced the Deputy Collector did not appreciate the same and passed the order. The matter was initially filed before this Hon’ble Court on 14.02.1995 and this Hon’ble Court in order dated 24.03.1995 was pleased to grant ad interim relief till disposal of final matter directing the respondents to maintain status quo.

“By way of interim relief, respondents are directed not to interfere with the possession of the petitioners, on condition that petitioners shall not carry out any further improvements on the said land”

Respondent No. 3- Deputy Collector, Versaval contented in the affidavit filed on 23.06.1995 that Mamlatdar has been given the authority to regularise encroachments on agricultural areas up to one acre. The Collector of the affected District has the authority to regularise encroachments up to 8 acres pursuant to a circular dated June 1, 1993. Since the Mamlatdar issued the order in question in 1990, the Mamlatdar rightly had the authority to regularise encroachments on agricultural lands up to a size of 1 acre, but thanks to the resolution from the 8th of January 1980, the Mamlatdar could only do so if the applicant's total holdings did not exceed 8 acres.

In Pursuance of the Government Resolution (Revenue Department) bearing No. Encroachment-1072-28765-L dated 8th January 1980, filed by Shri Narhari dated 05.09.2005.

“This Government Resolution essentially is in regard encroachment on government land. Regarding encroachment on agricultural land, clause no. 6 is addressed. After that, the Resolution addresses the encroachment on "virgin land" and "non-virgin land." Additionally, it addresses the intrusion of "persons belonging to the backward class" and "non-backward class." The Government Resolution also addresses encroachment on land that is not used for agriculture.”

The learned AGP contented that encroachment in the present case is on waste land the petitioners do not belong to backward class hence from the aforementioned government resolution the only clause relevant is the part of 'encroachment by persons not belonging to backward class'.

Learned AGP further contented that regularisation shall be the discretion of the Revenue Authority, Encroachment on virgin land carries a 30x assessment "penalty," whereas encroachment on non-virgin land carries a 60x assessment "penalty."

He further submitted that, the Mamlatdar has the power to regularise encroachments up to one acre, the Deputy/Assistant Collector has the power to deal with encroachments up to two acres, and the Collector has the power to deal with encroachments larger than two acres.

According to Clause 6 of the Government Resolution encroachment of agricultural land to be regularized falls under the jurisdiction of collector, here the rule is removal of encroachments and the exception pertains to regularization of encroachment. Only in a position that the petitioners suffers irrefutable damage can there be application of the exception of regularization of encroachment. Sub-Clause 2 of Clause 6 of the afore-mentioned government resolution the exception cannot be applied in cases where the total holding of the applicant is more than 8 acres.

JUDGEMENT

The Hon'ble Gujrat High Court observed that sub clause 2 of clause 6 of the Government Resolution (Revenue Department) bearing No. Encroachment-1072-28765-L is not applicable in the case of the petitioners i.e. the collector can exercise regularisation where total holding of the application does not exceed 8 acres and also provides that the encroacher of the government land should be removed.

The Hon'ble Gujrat High Court further observed that the government resolution cited does not govern the encroachment committed on virgin land/non-virgin land by "persons belonging to Schedule Caste" and "not belonging to Schedule Caste." The Government Resolution's wording makes it apparent that distinct approaches must be taken to deal with encroachment on virgin versus non-virgin territory, as well as encroachment by "persons belonging to the backward class" in contrast to those to persons not belonging to backward classes. The clause outlining the maximum amount of encroachment that may be legalised is a distinct clause. The phrase "total holding" is purposefully absent from that clause in the afore mentioned government resolution.

The Hon'ble Gujrat High Court further observed that the submissions by the learned advocate for respondent does not hold any relevance in the present case, as the case of the revenue authority is not for agricultural lands and the question of outer limit is not highlighted anywhere in the facts of the case by the petitioners.

The Hon'ble Gujrat High Court further observed that the notice dated 14.05.1992 for issuing suo

moto revision by the deputy collector in relation to order by the mamlatdar dated 27.09.1990 was issued beyond the reasonable time period.

The Hon'ble Gujrat High Court further observed, that in view of the above, facts, legal submissions, government resolution the learned advocate for the respondent failed to establish encroachment to the extent of 1 acre can be regularized by the Mamlatdar where it is an encroachment on virgin land by persons not belonging to Schedule Caste.

The Hon'ble Gujrat High Court was pleased to set and quash the order dated 09.06.1992 by the Deputy Collector, Veraval, the order dated 08.06.1993 by the Collector, Junagadhand order dated 19.12.1994 by the Secretary (Appeals), Revenue Department.

The Hon'ble Gujrat High Court was pleased to restore the order dated 27.09.1990 by the mamlatdar, in pursuance of which the petitioners paid the fees of Rs. 9,750/- in occupation price. Rule was made absolute with no order as to costs.

CRITICAL ANALYSIS:

Law point of view

The present case of *Jamnadas Meghji v/s State of Gujrat, 2005* a case under sec 61 of the Bombay Land Revenue Code 1879 was filed before the mamlatdar.

Sec 61 of the act define the penalties for occupation of unauthorised land, it states that;

- Any person who unlawfully occupies any land set aside for a specific use or any unoccupied land that has not been alienated, as well as any person who uses or occupies any such land to which he is not entitled to use or occupation due to any provision of this Act or to which he is no longer entitled, shall,
- Pay for the assessment of the land for the whole period which he occupied the alienated land.
- If the said land has not been assessed, pay similar amount for the same extend or on the discretion of the collector upto 10X the assessment amount or a fine of 5 rupees or any such rules and limits fixed under sec 214 of the Bombay Land Revenue Code,
- The decision of the collector shall be concluded as final as the amount payable on land and the amount shall be conclusive for a period of whole one year,

- The person occupying such unoccupied land shall be summarily evicted and in the case of forfeitures such as crops, trees, building or any other construction he shall be liable for removal after a notice from the collector to be liable for forfeiture or summarily removal.

Sec 214 of the Bombay land revenue code:

- 214(d) prescribing the purposes for which unalienated land liable to the payment of land revenue may or may not be used, and regulating the grant of permission to use agricultural land for non-agricultural purposes;
- 214(e) regulating the disposal of land and other property [vesting in the [Government] for the purposes of the [State];
- 214(f) regulating the disposal of forfeited land;
- 214(g) prescribing the terms and conditions on which, and the periods for which unoccupied unalienated land may be granted;

The Bombay Land Revenue Code 1879 was repealed and replaced by the Maharashtra Land Revenue Code, 1966.

Sec 50 of the code deals with removal of encroachment of land vesting in the government and other incidental matters.

- In case there is encroachment of land that is vested in the government regardless of being under the purview of local authority or use of such land for selling or hawking without the approval of competent authority shall be liable for sanction by the collector.
- The person who is occupying such land if assessed shall pay for the assessment of the land for the whole period which he occupied the alienated land.
- If the said land has not been assessed, pay similar amount for the same extend for the same period
- the person shall be liable for a fine of Rs. 1000/- or such amount that is prescribed.
- By due notice the collector shall prohibit or require and abet and remove encroachments on such land.
- Even if after such notice no action has not been taken penalty of 50 rupees or such prescribed amount shall be payable on each day basis of such delay,
- Any such person has the right to appeal and revision and to approach the city civil court within 6 months of such notice.

Sec 51 of the code deals with the regularisation of encroachment and states that,

- Nothing in the section shall prevent the collector and the encroacher to pay 5X or such amount whichever is higher of the sum of the assessment,
- Provided no land shall be granted unless public notice of intimation is provided and the amount of such public notice shall be incurred by the encroacher or recovered in land arrears.

Sec 52 of the code deals with how the land revenue and value is to be calculated and states that,

- The amount shall be fixed by the collector with the valuation of the surrounding neighbouring in similar land and time period, the annual valuation should be in account with the valuation of the market in the vicinity.
- Such amount fixed of land revenue and assessment amount payable shall be final and occupation of a partial year shall also be counted as a whole year.

Sec 53 of the code deals with summary eviction unauthorised occupation land vested in the government and states that,

- The collector shall in his opinion evict any person who is occupation of such unauthorised lands after giving necessary notice of summary eviction, the collector shall record his opinion before arriving at a decision;
- A notice by the collector stating that such person or persons are required to appear before him and if there is disobedience of such notice the collector shall evict such person.
- If such person or persons continue occupation of such land even after the title has been ceased he shall be liable to pay fine of 2X assessment or rent or any such amount prescribed.

Sec 54 of the code deals with forfeiture and removal from such land after summary eviction states that,

- Any forfeiture, construction or building or such crops after reasonable notice shall be deemed to be liable for removal.
- It is in the purview of the collector to adjudged such forfeiture and any property that shall be forfeited shall be disposed off on the direction of the collector, the cost of removal of such forfeiture is incurred by the encroacher and is recoverable in land arrears.

CONCLUSION

The petitioners are in possession of property bearing survey No. 11/2, which is 3 Acres and 15 Yards in size. in Tal's Hadmatia (Gir) village. Talala, Junagadh District. Government waste land is located next to the petitioners' property. The Revenue officials have accused the petitioners of encroaching government waste land since the year 1970-1971. The matter was taken up in suo moto revision by the deputy collector and a notice was issued bearing no. Land/rev. /case:17/91-92 dated 14. 05. 199. The Petitioners filed their respective objections/reply for the notice in due accordance of law, however the same was appreciated and got rejected by the Deputy Collector. Aggrieved by the decision of the Deputy Collector, Veraval the petitioners preferred an appeal before the collector bearing appeal no. Land-4- Appeal-Case-122/92, in order dated 08.06.1993 the collector dismissed the partitioners appealbearing appeal no. Land-4-Appeal-Case-122/92. Aggrieved by the decision of the collector thepetitioners preferred an revision of the appeal before the Secretary Revenue Department in casebearing no SRD-GMN-GND-98/93, the Secretary Revenue Department in order dated 19.12.1994 was pleased to dismiss the same. Aggrieved by the aforesaid orders the petitionershave appeared before this Hon'ble Court.

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- Bombay Land Revenue Code, 1879
- Maharashtra Land Revenue Code, 1966
- Jamnadas Meghji v/s State of Gujrat High Court, 2005
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