

(2012) 09 GUJ CK 0005
In the Gujarat High Court

Case No : Special Civil Application No. 7322 of 2012 With Special Civil Application No. 7323 of 2012

Abdul Raheman Haji Yusuf Padela

APPELLANT

Vs

Chief Officer Dhoraji Nagar Palika and 3

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Municipalities Act, 1963 — Section 253, 65(3)

Citation : (2012) 09 GUJ CK 0005

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Mb. Parikh for Petitioners 1, for the Appellant;

Final Decision : Dismissed

Judgement

Honourable Mr. Justice R.M. Chhaya

1. As identical question arises in both these petitions the same are dealt with together by this common judgment. The facts of Special Civil Application No.7322 of 2012 are taken as basis of this judgment. The facts which can be culled out from the petition are as under:

2. That the petitioner participated in a public auction held by the respondent-Nagarpalika, Dhoraji i.e. respondent No.1 on 02.06.1995 whereby the respondent-Nagarpalika had decided to put on auction various open plots situated Nr. Kailash Nagar Pool, Power House Road admeasuring 76.63 sq.mtrs. It is the case of the petitioner that the petitioner had deposited an amount of Rs.23,000/- as earnest money in the office of respondent No.1 as per the advertisement. Thereafter as the Nagarpalika was then governed by the administrator, the administrator on 10.04.2002 asked the petitioner to make payment of the balance amount of Rs.19,146/- as the price fixed was Rs.550/sq. Mtr. by passing Resolution No.4. It is the case of the petitioner that the said amount was required to be paid within a period of one month and accordingly the

petitioner paid the remaining amount on 22.04.2002.

3. It is further the case of the petitioner that respondent No.1 informed the petitioner that on getting the requisite permission from Collector, Rajkot a sale deed shall be executed in favour of the petitioner.

4. Thereafter the petitioner approached respondent No.1 authority for the first time on 03.10.2007. It is averred in the petitions that the petitioner approached the respondent authority personally on 04.09.2010 and as no reply was given a notice was given by the petitioner, through his advocate on 06.09.2010 being statutory notice issued u/s 253 of the Gujarat Municipalities Act, 1963 (the Act) and in response to the same, respondent No.1 gave reply on 27.04.2011 and asked for certain details which were complied with by the petitioner on 30.05.2011. It is the case of the petitioner that even though the details which were sought for were given and even though the petitioner made applications under the Right to Information Act, 2005 to get further information, except cryptic reply, no details were provided by respondent No.1 authority. It is further the case of the petitioner that as no response was given, the petitioner issued a legal notice through his advocate on 30.05.2011.

5. In view of the aforesaid factual background, Mr.Parikh, learned advocate for the petitioner, submitted that having agreed to sell the land admeasuring 76.63 sq.mtrs. in the year 1995, till date the said resolution is not being implemented and, therefore, respondent No.1 should be directed to hand over the land and execute the sale deed. In furtherance of the argument the learned advocate for the petitioner relied upon the following judgments:

(i) ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, ; AND

(ii) Common Cause, A Registered Society Vs. Union of India and Others, .

6. It was further submitted that only because the file is missing and that there are no records the petitioner cannot be deprived from the benefit of resolution dated 10.04.2002 and hence, it was submitted that the petitions deserve to be admitted and appropriate orders may be passed.

No further/other contentions are raised by learned advocate for the petitioner.

7. The judgments of the Apex Court relied upon by the learned advocate for the petitioner viz. ABL International Ltd. & Anr. and Common Cause, A Registered Society (supra) is as regards maintainability of the petition. Even if it is construed that the petitions are maintainable as per the ratio laid down by the Apex Court on appreciating the submissions made by the learned advocate for the petitioner the picture which emerges is that the plots in question were put to auction in the year 1995 on certain conditions, more particularly the said proceedings will be subject to approval of the State Government as provided u/s 65(3) of the Act. The petitioner thereafter did not approach the municipality for more than five years as can be visualized by Annexure-C to the petitions, which

is dated 03.10.2007. Thereafter again for about three years nothing was done by the petitioner and by a legal notice dated 06.09.2010 the petitioner raised requisitions in the aforesaid notice to execute sale deed followed by further notice in reply to the notice given by the respondent-Municipality dated 30.05.2011. Learned advocate for the petitioner has not been able to point out that Resolution No.4 passed by the then administrator of the Municipality on 10.04.2002 was ever approved by the State Government u/s 65(3) of the Act.

8. It further transpires that the plots in question which were sought to be transferred in favour of the petitioner in the auction was factually and actually took place on 19.06.1995 followed by administrator's resolution No.4 dated 10.04.2002 is sought to be revived for performance of the same in the year 2012 by filing this petition on 30.06.2012.

9. Taking into consideration the aforesaid factual aspects of the matters, the petitions not only suffer from delay and laches on the part of the petitioner but the prayers prayed for, which are in the form of specific performance of the proceedings of auction which took place on 02.06.1995 as prayed for would otherwise be barred by limitation if the suit would have been preferred by the petitioner. Hence, the prayers prayed for cannot be granted by this Court in the petitions under Article 226 of the Constitution of India, after lapse of 17 years from the date of auction and 10 years after the date of the aforesaid resolution No.4 dated 10.04.2002.

10. Consequently, both the petitions are meritless and the same deserve to be dismissed and the same are hereby dismissed in limine. There shall be no order as to costs.

11. It would be open for the petitioner to participate if the municipality desires to re-auction of the plots in question. Registry to place a copy of this order in connected matter