

(2013) 07 GUJ CK 0067

In the Gujarat High Court

Case No : Special Civil Application No. 7863 of 1993

Babalabhai Tapubhai Khuman

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2014) 1 GLR 346

Hon'ble Judges : Bhaskar Bhattacharya, C.J;J.B. Pardiwala, J

Bench : Division Bench

Final Decision : Allowed

Judgement

J.B. Pardiwala, J.—By this writ-application in the nature of a Public Interest Litigation, the petitioner, a resident of Savarkundla, seeks to challenge the order dated July 1, 1993 passed by respondent No. 3-Collector, Bhavnagar, allotting land admeasuring 2,276 sq.mtrs. of Survey No. 481 situated at Savarkundla Sama Padar in favour of the respondent No. 4 for an industrial purpose. The case made out by the petitioner in this petition may be summed up thus:

1.1. The petitioner is a resident of Savarkundla and also holds the office of the President of Savarkundla Taluka Panchayat. According to the petitioner, he owes a duty to see that there is a proper and effective implementation of the Gujarat Town Planning and Urban Development Act, 1976 and the provisions of the Bombay Land Revenue Code, 1879. The respondent No. 4 preferred an application with the Collector requesting him to allot a parcel of land admeasuring 2,276 sq.mtrs. of Survey No. 481 situated at Savarkundla Sama Padar within the Municipal limits of Savarkundla Municipality for industrial purpose. The respondent No. 3-Collector on receipt of such application from the respondent No. 4 forwarded the same to the Revenue Department of the State Government and the Revenue Department accorded its sanction for such allotment vide communication dated May 29, 1993. The land was ordered to be allotted in favour of the respondent No. 4 at the rate of Rs. 37-89 per sq.mtr. Pursuant to the order of allotment, the respondent No. 4 deposited a sum of Rs.

86,237-70 ps. in the first instance and subsequently a sum of Rs. 3,68,963/-, thus, aggregating to an amount of Rs. 4,55,200-70 ps.

1.2. According to the petitioner, the Savarkundla Municipality had requested the Collector to allot some portion of the land bearing Survey No. 481 for Fire-fighter and Store Department. However, the said request was rejected by the Collector. Even the respondent No. 4 in the past had requested the Collector to allot 2,500 sq.mtrs. of land on per meter basis for the industrial purpose, but the same was turned down by the respondent No. 3-Collector, Bhavnagar, vide order dated August 7, 1992, on the ground that the land has been reserved for the construction of Mamlatdar's quarters.

1.3. According to the petitioner, the land is situated within the residential zone and the market value at the time of allotment of land in favour of the respondent No. 4 was approximately Rs. 750/- per sq.yd. The market value thereafter was assessed at Rs. 1,000/- per sq.yd. as fixed by the Municipality for the purpose of tax.

1.4. The petitioner has cited the instance of one auction of a Municipal plot admeasuring 340 sq.yds. situated at Mahuva Road, which was sold for Rs. 7,61,000/-.

1.5. According to the petitioner, the allotment of the Government land could not have been made in favour of the respondent No. 4 without putting such a plot of land to a public auction and that too, for an industrial purpose in a residential zone.

1.6. In such circumstances, the petitioner has prayed that the order of allotment in favour of the respondent No. 4 deserves to be quashed and set aside.

2. It appears that the land in question admeasuring 2,276 sq.mtrs. of Survey No. 481 at the relevant point of time was within the revenue limits of the Bhavnagar District, but thereafter, due to some alterations in the revenue jurisdiction, the land is now a part of District Amreli. In such circumstances, the Collector, Amreli, was permitted to be joined as the respondent No. 5 and the Deputy Collector, Savarkundla, District Amreli, has filed an affidavit-in-reply.

I. Stance of Respondent No. 3-Collector:

3. According to the Deputy Collector, the order dated July 1, 1993, allotting the land in favour of the respondent No. 4 was passed after taking into consideration the opinion of the General Manager, District Industrial Centre as well as the Executive Engineer, R. & B. Department, Bhavnagar. The land, according to the Deputy Collector, has not been granted on ownership basis, but the same has been granted for the industrial purpose as a new and impartible tenure with specific conditions. According to the Deputy Collector, a sum of Rs. 4,55,200-70 ps. has been recovered from the respondent No. 4 towards the allotment of the land. It is also the case of the Deputy Collector that the opinion of the Savarkundla Municipality was also obtained and the same was in favour of

respondent No. 4, and therefore, after taking into consideration all the relevant aspects, the final order of allotment was passed in favour of respondent No. 4.

II. Stance of Respondent No. 4.:

4. According to the respondent No. 4, the petitioner has no locus standi to file this petition as there is no element of public interest involved in the same. It is his case that after obtaining opinion of various authorities, the Collector passed an order allotting the land in his favour. He intends to start a small scale industry and is ready and willing to abide by all the conditions which have been imposed by the Collector at the time of grant of the land. According to the respondent No. 4, this petition has been preferred with an oblique motive and only with a view to wreak personal vendetta. It is also the case of the respondent No. 4 that although the allotment is of the year 1993, but till this date the possession of the land has not been handed over to him due to the order of status quo passed by this Court way back on August 6, 1993, which has continued till this date. It is also his case that vide application dated November 7, 2009, addressed to the Collector, he requested for change of user of the land from industrial purpose to commercial purpose. According to him, the Collector, Amreli, vide order dated July 26, 2010 passed an order imposing a fine of Rs. 6,840/- for having not put up any construction on the said plot and extended the permission for the same by further period of two years.

4.1. It is the case of the respondent No. 4 that the Collector, Amreli vide letter dated August 31, 2012 addressed to him, inquired, whether the respondent No. 4 was ready and willing to deposit 75% of the premium amount, which was fixed at the rate of Rs. 5,250/- per sq.mtr. This development took place in the wake of the respondent No. 4's request to permit him to use the land for commercial purpose instead of industrial purpose. The Collector assessed the value of the land, keeping in mind the commercial purpose, at the rate of Rs. 5,250/- per sq.mtr., which aggregates to Rs. 1,19,49,000/-; and 75% of the said amount aggregates to Rs. 89,61,750/-. It is the case of the respondent No. 4 that vide letter dated September 5, 2012 addressed to the Collector, he informed the Collector that he was ready and willing to deposit an amount of Rs. 89,61,750/- being 75% of the premium amount of the total value of the land.

4.2. In such circumstances, according to the respondent No. 4, he should be permitted to reap the benefits of allotment of the land in his favour and this Public Interest Litigation being devoid of any merits, the same be dismissed.

III. Submissions on behalf of petitioner:

5. Mr. J.D. Ajmera, the learned Counsel appearing for the petitioner, submitted that the Government land could not have been allotted in favour of an individual for any purpose. According to Mr. Ajmera, the manner in which the order has been passed in favour of the respondent No. 4 would suggest that there was no transparency in the decision making process. Mr. Ajmera also submitted that the land has been ordered to be allotted at a meagre rate of Rs. 37-89 per sq.mtr.,

whereas the actual market value of the land at the relevant point of time was around Rs. 1,000/- per sq.yd. In the year 1993 itself, the value of the land was approximately Rs. 45 lakh. Such a valuable piece of land was ordered to be allotted at a throwaway price for the reasons not justifiable in law. Mr. Ajmera also submitted that if the petitioner has the capacity of depositing a crore of rupees as reflected from his letter dated September 5, 2012, addressed to the Collector, Amreli, then in such circumstances, such a person should not request the State Government to allot the land for business purpose. The petitioner may very well buy another plot of land from any individual, if available in the town. In such circumstances, Mr. Ajmera prays that this petition deserves to be allowed and the order of allotment deserves to be quashed and set aside.

IV. Submissions on behalf of Respondent No. 4:

6. Mr. A.M. Parekh, the learned Advocate appearing for respondent No. 4, submitted that this petition has been filed only with a view to wreak personal vengeance with his client due to political rivalry. Mr. Parekh submitted that almost more than 25 years have elapsed, but his client has not been able to reap the benefits of the allotment of the land in question. He further submitted that his client, as on today, is ready and willing to deposit 75% of the premium amount fixed by the Collector, and therefore, in such circumstances, the petition deserves to be dismissed.

7. Having heard the learned Counsel for the respective parties and having gone through the materials on record, the only question that falls for our consideration in this petition is whether the Collector, Bhavnagar, was justified in allotting the land in question in favour of the respondent No. 4.

7.1. It may not be out of place to state that although the allotment was made way back in the year 1993, the respondent No. 4 could not take the possession of the land as by that time this petition was filed and this Court directed to maintain status quo with respect to the land in question. Indisputably, the land is a Government land. It is also not in dispute that the same came to be allotted on the basis of an application made by the respondent No. 4. It is also not in dispute that although the land was required for a public purpose i.e. for the purpose of Fire-fighter and Store department of the Municipality, the request was turned down by the Collector. It also appears from the materials on record that first in point of time, even the request of the respondent No. 4 was turned down by the Collector on the ground that the land was kept reserved for construction of Mamlatdar's quarters.

7.2. We have also taken note of the fact that the land in question is a part of residential zone and despite the same, it was allotted for industrial purpose. Although, such allotment for industrial purpose in a residential zone has been sought to be explained by the authorities, we are not convinced by such explanation.

7.3. In the first place, we do not approve the allotment of Government land to

any private individual on his application for the same. While selling a public property or granting its lease, the normal method is auction or calling for tenders/bids, so that all the intending purchasers/lessees will have an equal opportunity of submitting their bids/tenders. We are conscious of the fact that there may be exceptional situations where adopting such a course may not be insisted upon, but in the present case, there are no such exceptional situations brought to our notice justifying the grant of the land in favour of the respondent No. 4 on one simple application.

7.4. The practice and the policy of the State and/or its agencies/instrumentalities in allotting the land on the basis of applications made by individuals has been very strongly deprecated by the Supreme Court in one of its recent pronouncements in the case of *Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others*, . We may quote with profit the observations made by the Supreme Court in Paragraphs 65, 66 and 67 as under:

65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet-will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a nondiscriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit, licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Art. 14 of the Constitution.

67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or

identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similar situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed -price but in that case also allotment must be preceded by a wholesome exercise consistent with Art. 14 of the Constitution.

(Emphasis supplied)

7.5. Bearing the aforesaid principles in mind, we hold that the Government should not act in a manner which would benefit a private party at the cost of the State. Such an action would be both unreasonable and contrary to public interest. The Supreme Court in the case of *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , has observed that the State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles will have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of the property, is to sell the property by public auction or by inviting tenders. In the words of the Supreme Court, nothing should be done which gives an appearance of bias, jobbery or nepotism.

7.6. We are not impressed by the submission of Mr. A. M. Parekh, the learned Advocate appearing on behalf of respondent No. 4, that his client is ready and willing to deposit an amount of Rs. 89,61,750/- being 75% of the premium amount fixed by the Collector on assessment of the market value of the land at the rate of Rs. 5,250/- per sq.mtr. At the most, the respondent No. 4 is entitled to refund of the amount i.e. Rs. 86,237-70 ps. + Rs. 3,68,963/- i.e. Rs. 4,55,200-70 ps. deposited by him so far with the office of the Collector with interest at the rate of 12% per annum from the year 1993 to 1999 and for the period thereafter till realisation at the rate of 8% per annum. Although, Ms. Vacha Desai, the learned Assistant Government Pleader, has opposed to the grant of interest, we are of the opinion that there is no hard and fast rule about how much interest should be granted and it all depends on the facts and circumstances of each case. In *Alok Shanker Pandey Vs. Union of India (UOI) and Others*, , the Supreme Court observed in Paragraph 9 that there is a misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. The Court proceeded to give an example in the following words:

9. ...For example, if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence, equity

demands that A should not only pay back the principal amount but also the interest thereon to B.

7.7. It is needless to clarify that if the two amounts i.e. Rs. 86,237-70 ps. and Rs. 3,68,963/-, have been paid on different dates, then in such circumstances, the interest be calculated accordingly from the date of actual deposit of the amounts. If the amount of Rs. 3,68,963/- was deposited by the respondent No. 4 after the year 1999, then on such amount the interest shall be calculated at the rate of 8% per annum.

7.8. For the aforementioned reasons, the petition deserves to be allowed and the same is, accordingly, allowed. The order of allotment of land dated July 1, 1993 passed by the respondent No. 3-Collector, Bhavnagar, and the order dated May 29, 1993, passed by the Revenue Department of the State of Gujarat sanctioning such allotment, are hereby quashed and set aside. The respondent No. 5-Collector, Amreli, is directed to refund the amount of Rs. 4,55,200-70 ps. with interest as referred to above to the respondent No. 4 within a period of four weeks from today. Before parting, we would like to clarify that in future if the State authorities decide to allot the aforesaid land in favour of an individual or an institution in public interest, then the same shall be allotted by way of a public auction. The authorities are directed that they shall publish a notice of such public auction well in advance in two local newspapers fixing an offset price of the land according to the "jantri" and shall also recover the offset price from the persons interested in participating in the auction before actual auction takes place.

FURTHER ORDER:

After this order is passed, the learned Advocate appearing on behalf of respondent No. 4 prays for stay of operation of our order. In view of what has been stated above, we find no reason to stay our order. The prayer is, therefore, rejected.