

(2010) 04 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No. 4195 of 2010

Babuji Gandaji and Another through Poa Divyaben
Pankajkumar Pathak

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 48, 65, 65(1), 65A, 66
Constitution of India, 1950 — Article 226, 227

Citation : (2010) 04 GUJ CK 0008

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Nehal R. Joshi, for the Appellant; Amit P. Patel, Assistant
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Leave to amend the cause-title of the petition is granted. The amendment may be carried out forthwith.

2. Rule. Mr. Amit P. Patel, learned Assistant Government Pleader, waives service of notice of Rule on behalf of the respondents. On the facts and in the circumstances of the case, and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided, today.

3. This petition, under Article 226 and 227 of the Constitution of India, has been preferred challenging order dated 04.02.2010, passed by the Secretary, Revenue Department, in Revision Application No. 17/1998 whereby, order dated 22.12.1997, passed by the District Collector, Ahmedabad, has been confirmed.

4. The brief facts of the case are that land bearing Survey No. 424, admeasuring 5808 square metres, situated at Village: Gota, Taluka: Dascroi, District: Ahmedabad, is new tenure land, and is shown to be in the occupation of the predecessors-in-interest of the petitioners, as per revenue records. The

petitioners Nos. 1/1 and 1/2 are the heirs and legal representatives of deceased Shantaben Gandaji Thakore. The said land has been granted for agriculture use, with certain conditions. It appears that without taking the prior permission of the State Government or paying the requisite amount of premium, the petitioners started using the said land for non-agricultural purposes, in contravention of the conditions of grant. On the basis of the report of the Deputy Collector, Viramgam Prant, the Collector, Ahmedabad, initiated proceedings against the petitioners for breach of conditions of grant. By order dated 22.12.1997, the Collector, Ahmedabad, came to the conclusion that there was a breach of conditions of grant, and directed the land to be forfeited to the State Government. Aggrieved by the above-mentioned order of the Collector, the petitioners approached the State Government by filing the above-mentioned revision application, which has been dismissed by passing the impugned order. In the above circumstances, the petitioners have filed the present petition.

5. Mr. Nehal R. Joshi, learned Counsel for the petitioners, has submitted that although there are concurrent findings of both the authorities below against the petitioners, however, they are ready and willing to pay the full amount of premium at the prevailing market price.

It is further submitted that as per Section 67 of the Bombay Land Revenue Code, 1879 ("the Code" for short), the Collector has the power to grant permission, as per Rules. As the land in question cannot be used by the petitioners for agricultural purposes, and as the petitioners are doing the business of marble and granite on the said land, the respondents may be directed to accept the amount of premium and grant non-agricultural use permission in respect of the said land, to the petitioners.

It is contended by the learned Counsel for the petitioners that in fact, no opportunity of hearing has been given to the petitioners by the Collector and even otherwise, the case of the petitioners has not been properly defended by the learned advocate appearing for them before the authorities below, therefore, the petitioners should not be penalized for that. On the basis of the above submissions, it is prayed that the petition be allowed.

No other submissions have been advanced by the learned Counsel for the petitioners.

6. On the other hand, Mr. Amit Patel, learned Assistant Government Pleader for the respondents, has supported the orders of the District Collector and the State Government, respectively, by submitting that ample opportunity of hearing has been granted to the petitioners, which is obvious from a perusal of the impugned order. The request of the petitioners in the proceedings before the State Government to the effect that they are ready and willing to pay the full amount of premium at the prevailing rate has been rejected and the order of the Collector has been upheld. It is prayed by the learned Assistant Government Pleader that the petition be dismissed.

7. I have heard the learned Counsel for the respective parties, perused the averments made in the petition, contents of the impugned order and other documents on record.

8. It is an admitted position that the land in question is of new tenure, and has been granted for agricultural use to the predecessors-in-title of the petitioners, subject to certain conditions. It is also an admitted fact that the petitioners are using said land for non-agricultural purposes, by running a marble and granite business thereupon. Admittedly, no permission has been obtained from the Collector, as required, before using the land for non-agricultural purposes. This aspect is not disputed by the learned Counsel for the petitioners. As per the provisions of Section 65 of the Code, breach of conditions of grant of new tenure land would entail forfeiture to the Government, which order has been passed by the Collector and confirmed in revision by the impugned order.

9. A submission has been advanced by the learned Counsel for the petitioners that under the provisions of Section 67 of the Code, the Collector is empowered to grant permission on such terms and conditions as may be prescribed. In order to deal with the said submission, it would be necessary to look into the relevant provisions of law, which are reproduced hereinbelow, for ready reference:

65. Use to which occupant of land for purposes of agriculture may put his land --

1. Any occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents or other legal representatives, to erect farm-building, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid.

Procedure if occupant wishes to apply his land to any other purpose -- But, if any occupant wishes to use his holding or any part thereof for any other purpose the Collector's permission shall in the first place be applied for by the occupant. The Collector, on receipt of such application,

(a) shall send to the applicant a written acknowledgment of its receipt, and

(b) may, after due inquiry, either grant or refuse the permission applied for:

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application.

Unless the Collector shall in particular instances otherwise direct, no such application shall be recognised except it be made by the occupant.

(2) Notwithstanding anything contained in Sub-section (1) but subject to any terms and conditions laid down by the State Government in this behalf where an

occupant has his holding in an area comprising a gram and such area is not within an urban agglomeration or within a radius of five kilometres from the limits of a municipal borough or notified area or industrial estate and such occupant wishes to use his holding or a part thereof only for the residential purpose, it shall not be necessary for him to obtain permission of the Collector under Sub-section (1)....

"65A. Procedure if occupant wishes to apply his land from one non-agricultural purpose to another non-agricultural purpose "Where the occupant of any land assessed or held for any non-agricultural purpose wishes to use such land or part thereof for any other non-agricultural purpose, the Collector's permission shall in the first place be applied for by him and the provisions of Section 65 shall, so far as may be, apply to such application...."

"66. Penalty for using land without permission "If any land referred to in Section 65 or Section 65A be used for any purpose other than the purpose for which such land is assessed or held without the permission of the collector being first obtained, or before the expiry of three months referred to in Section 65 or despite refusal of permission during the said period of three months, then, without prejudice to the occupant's liability to pay the new assessment leviable u/s 48 or the conversion tax leviable u/s 67A --

(a) the occupant and any tenant or other person holding under or through him shall be liable to be summarily evicted by the Collector from the land so used and from the entire survey number or sub-division of the survey number of which it may form part; and

(b) the occupant shall also be liable to pay for the period during which the said land has been so used, such fine as the Collector may, subject to the general orders of the State Government, direct.

Any tenant of any occupant or any other person holding under or through an occupant, who shall without the occupant's consent use any such land for any such purpose, and thereby render the said occupant liable to the penalty aforesaid, shall be responsible to the said occupant in damages."

"67. Permission may be granted on terms "Nothing in Sections 65, 65A and 66 shall prevent the granting of the permission aforesaid on such terms or conditions as may be prescribed by the Collector, subject to any rules made in this behalf by the State Government.

10. Sections 65 and 65A, of the Bombay Land Revenue Code detail the uses to which the recipient of land for the purpose of agricultural may put the said land to, and the procedure required to be followed on an application being made by the occupant if he wishes to apply the land for any other purposes. Section 66 provides for penalty for using the land without permission. Section 67 enumerates the terms on which the Collector may grant permission. A conjoint reading of the above provisions of law would go to show that if the occupant

wishes to use the granted land for any purpose, other than agricultural use, then it is incumbent upon him to obtain the permission of the Collector in the first instance. Section 67 empowers the Collector to grant permission as provided in the said provision, subject to rules made in this regard by the State Government. For the provisions of Section 67 to come into play, it is necessary that the occupant of the land (in this case, the petitioners) make an application as required in Section 65 of the Code, for permission to apply the land for any other purpose. It is only on an application being made that the powers u/s 67 can be exercised. It is an admitted position that such an application has not been made at all by the petitioners or their predecessors-in-interest. In the above circumstances, the provisions of Section 67 cannot be pressed into service as permission can only be granted if it is prayed for by way of an application, as provided by the above-mentioned provision of law. As no permission has been sought by the petitioners, appropriate proceedings have been initiated against them, leading to the passing of the impugned orders. After passing of the order of forfeiture of the land by the Collector, as confirmed by the State Government in revision, it is not open to the petitioners at this belated stage to submit, that the Collector should be directed to consider the case of the petitioners for grant of permission u/s 67 of the Code, without ever having applied for permission.

11. Regarding the second submission advanced by the learned Counsel for the petitioners, to the effect that no opportunity of hearing has been granted to them by the Collector, the same is stated to be rejected. The impugned order of the State Government meticulously enumerates the various dates on which adjournment was sought by the petitioners. It is mentioned therein that notice regarding initiation of proceedings for breach of condition by the occupants of land was issued on 20.12.1995. The petitioners appeared on 02.01.1996 before the Collector and requested for time. Thereafter, on 25.01.1996, 16.02.1996, 30.07.1996, 10.09.1996, 23.04.1996 and 13.05.1997, the petitioners themselves, and their advocate, have prayed for adjournment. In the above circumstances, it is clear that the petitioners have been given ample opportunity to plead their case, and the submission to the contrary by the learned Counsel for the petitioners is not supported by the record. Nor is it borne out from the record, as contended on behalf of the petitioners, that their learned advocate did not represent their case.

12. It has been repeatedly submitted by the learned Counsel for the petitioners that the petitioners are ready and willing to pay the full amount of premium at the prevailing rate, as of today, therefore, this Court should direct the concerned authorities to accept the same. This submission cannot be accepted in view of the reasons stated hereinabove. It was open to the petitioners to have made an application as provided by law, to the Competent Authority, at the relevant period of time, which has not been done, therefore, directions such as those sought by the petitioners cannot be issued by this Court. The impugned order does not suffer from any illegality or infirmity, so as to warrant interference.

13. In view of the above discussion, and for the afore-stated reasons, there is no merit in the petition, which deserves to be dismissed. It is, accordingly, dismissed. Rule is discharged. There shall be no orders as to costs.