
(2009) 05 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No. 11508 of 2008

Balumal G. Tekwani

APPELLANT

Vs

Kandla Port Trust and Others

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Citation : (2009) 05 GUJ CK 0029

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : NV Anjaria, for the Appellant; Dhaval D. Vyas, for Respondents 1 - 3 and P.R. Nanavati, for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—The matter has been heard at length since yesterday. Hence, it is taken up for final hearing and disposal. RULE. Learned advocates for the respondents are directed to waive service.

2. The controversy lies in a very narrow compass. The petitioner, by a registered deed purchased rights in plot No. 66, Sector No. 8, Gandhidham on 18.12.1990 from Shri Kantilal Jethalal Premji and Shri Manharlal Jethalal Premji, through their duly constituted attorney-Shri Gobind K. Daryanani (hereinafter to be referred to as "the original lessees" and "Power of Attorney" respectively).

3. Respondent No. 1-Trust (hereinafter to be referred to as "KPT") is the original lessor of the said plot of land which came to be leased out under an Indenture dated 30.06.1966 to the original lessees for a period of 99 years. An application came to be made by the Power of Attorney holder for permission to transfer / assign the leasehold rights of the land under provisions of Clause (13) of the Lease Deed. It is stated that the petitioner, after obtaining necessary permission from the local authority, who approved the plans, put up construction on the land in question sometime in 1991 and the petitioner is thereafter running a hotel in the name of "City Star Hotel" continuously till date. As the mutation certificate

was not granted by KPT, the petitioner approached this Court vide Special Civil Application No. 24454 of 2005. Vide order dated 12.07.2006 the petition came to be disposed of by the High Court permitting the petitioner to withdraw the petition to enable the petitioner to make a representation. In Paragraph No. 2 of the order the Court took note of the statement made on behalf of KPT by the learned advocate stating that:

...if the representation is made, the same will be considered in accordance with law. He states that the authority is not contemplating to take any immediate coercive action.

Thereafter, the following order came to be made by the Court:

3. Considering the facts and circumstances, the petitioner is permitted to withdraw the petition with a view to make representation before the authority. If such a representation is made, the same shall be considered as early as possible preferably within a period of three months from the receipt of the order of this Court.

4. However, it deserves to be recorded that the transaction of transfer has taken place long back and as such, the transfer is not absolutely prohibited, but is subject to the permission. Therefore, it is expected that the authority will examine the matter in its proper spirit and will consider the matter in a manner by taking suitable precautions in the event, there are more disputes amongst the original occupier or their successor. Disposed of accordingly. D.S. permitted.

4. Admittedly on 19.08.2006 the petitioner made a representation to the chairman of KPT. This was followed by reminders on 03.10.2006, 20.12.2006 and 02.01.2007. Subsequent thereto, on receipt of a communication from KPT, the petitioner responded and was ultimately called for a personal hearing on 07.04.2007 by the chairman of KPT. This was followed by letter dated 19.06.2007 requiring the petitioner to bring the Power of Attorney Holder in person before the chairman of KPT. The petitioner responded by saying that on contacting the Power of Attorney Holder, it was found that the Power of Attorney Holder was indisposed and due to old age was not in a position to undertake the journey from Mumbai. Thereafter as there was no response from KPT, the petitioner has once again approached the High Court.

5. Learned advocate for the petitioner, apart from reiterating the aforesaid chronology of events submitted that at the point of time when the petitioner put up superstructure on the plot in question no objection was raised by KPT. That KPT has not taken any action till date in so far as the possession of the petitioner is concerned, and the petitioner has been enjoying uninterrupted possession of the property in question till date. It was, therefore, submitted that necessary directions as prayed for may be issued.

6. On behalf of the respondents, learned advocate invited attention to communication dated 10.08.1994 issued by KPT to the original lessees and the

fact of having endorsed copies thereof to four other persons with the following endorsement:

I draw your attention to para 3 & 4 of the above letter and to request you to confirm whether power of attorney executed in your favour in respect of plot No. 60 & 66 Sector: 8, Gandhidham have been revoked by Shri Kantilal Jethalal Premji and Manharlal Jethalal Premji with your consent on a stamp paper of appropriate value. I also request you to confirm whether any agreement to sale or sale deed has been executed in your favour in respect of the said plots.

Your confirmation and revocation deed executed with your consent is required by this office before the fresh power of Attorney executed in respect of plot No. 60 & 66, Sector-8 in favour of Shri Govind K. Daryanani and transfer of the said plots is considered by this office as transfer deed dates 18.7.1990 has already been executed for plot No. 66, Sector No. 8 by Shri Govind K. Daryanani in favour of Shri Bhalumal G. tekwni.

In this connection Xerox copies of letter dated 19.08.1986 and letter of August, 1983 received from Mrs. N.S.Palkhivala are enclosed herewith.

7. It was submitted that there were various other claimants to the plot in question staking their right and entitlement to the plot in question and, therefore, KPT was required to verify and ascertain as to the correctness or otherwise of the document on which reliance was placed by the petitioner.

8. During course of hearing learned advocate also submitted that even if today the petitioner is able to obtain an affidavit from the Power of Attorney Holder along with an indemnity bond, which, according to the learned advocate, was contemplated by the Court while passing the earlier order on 12.07.2006, KPT would be ready and willing to consider the case of the petitioner. That such precautions were necessary considering the counter-claims as could be seen from the text of communication dated 10.08.1994.

9. Lastly it was contended that in light of Clause No. 12 of the Lease Deed entered into by KPT with original lessees, KPT was entitled to initiate action against the lessees and as a consequence refuse permission to the petitioner by refusing to recognize rights stated to have been acquired by the petitioner under the deed of transfer of leasehold rights executed on 18.12.1990.

10. In so far as the last contention is concerned, suffice it to state that it is for KPT to decide whether it is open to KPT to initiate any action in accordance with law considering the period which has elapsed because the Court is not called open to determine the rights under the Lease Deed. So far as KPT is concerned, considering the position in law and its conduct during the entire period commencing from 1991 till date, it cannot take a stand that it is within its right to ignore a registered document.

11. The law on the subject is very clear. A person holding any rights acquired under a registered document cannot be treated to be a person who is not

entitled to hold such rights by ignoring the deed in question unless and until the said deed is cancelled by a competent Court in proceedings initiated in accordance with law. Therefore, in so far as the petitioner is concerned, the rights acquired under the transfer deed dated 18.12.1990 cannot be questioned in these proceedings and the Court does not intend to undertake such an exercise.

12. The Power of Attorney Holder of the original lessees had already made an application in 1991 to KPT as regards the transfer of leasehold rights in favour of the petitioner and sought permission for the same while expressing willingness to make payment of premium and the rent, which may be due at that point of time. KPT, for the reasons best known, did not take any steps, either to grant such permission or verify the genuineness of the transaction. Even otherwise, in law KPT does not have any authority to question genuineness of a registered document without initiating appropriate action in accordance with law before a competent Court who has jurisdiction and is empowered to make such a declaration after necessary evidence in this regard is led by the person challenging the document to be non-genuine. In the facts of the present case the entire exercise conducted by KPT right since inception, as can be seen from the communication issued in 1994, is to assume powers which KPT does not have and exercise jurisdiction which is not vested in KPT. The contention that, KPT as the lessor, is entitled to refuse permission to the lessee to transfer the leasehold rights and, therefore, as a consequence, can undertake an inquiry in relation to a transfer effected under a registered document, is to say the least, misplaced in law. Assuming any such right is available to KPT, namely, the right to refuse permission, under the lease deed, from the same it cannot be stated that KPT derives any right to question a registered document.

13. This is more so in the facts of the present case considering that the petitioner is the only person claiming to be a transferee of leasehold rights under a registered document. Admittedly, even as per the stand of the respondent authorities, other claimants have merely written a letter to KPT without pointing out how and in what matter the said persons have a right to claim either ownership of the leasehold rights, or possession of the property in question, which is admittedly with the petitioner. Therefore, the stand of the respondent authorities that because of various conflicting claims the permission was not granted and name of the petitioner was not mutated in records of KPT cannot be countenanced.

14. The submission that KPT is entitled to take precaution and therefore the petitioner must be asked to file an undertaking as well as indemnity bond accompanied by an affidavit from the Power of Attorney holder also does not merit acceptance. KPT wrote to the original lessees and other so-called claimants in 1994. Till date no one has come forward with any evidence to even dispute the registered document executed in favour of the petitioner. Hence the approach of the respondent authorities on this count cannot be countenanced.

15. A last attempt was made on behalf of the respondent authority by the learned advocate by referring to prayer Clause 9-(A) of the petition to contend that the Court may not grant the said relief leaving it open to KPT to take appropriate action in accordance with law. For appreciating the said contention it is necessary to reproduce the prayers made in the petition which read as under:

9. The petitioner, therefore, humbly prays that:

Your Lordships will be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction, to declare and direct Respondent No. 1, 2 and 3 that registered deed dated 18.12.1990 (Annexure-A) to the petition) executed in favour of petitioner in respect of Plot No. 66, Sector 8, Gandhidham, Kachchh is binding to the respondent for the purposes of accepting rights of the petitioner thereunder in the records of the respondent.

Your Lordships will be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction, to direct the Respondent No. 1, 2 and 3 to issue in favour of petitioner mutation certificate mutating his name in their records in respect of Plot No. 66, Sector 8, Gandhidham, Kachchh, on the basis of the registered deed dated 18.12.1990 (Annexure-A to the petition) under which the petitioner has become transferee of the leaseholds rights over the plot in question.

Pending hearing and final disposal of the present Special Civil Application, Your Lordships will be pleased to permit the petitioner to submit the plans for further construction on the Plot No. 66, Sector 8, Gandhidham, Kachchh to Respondent No. 4 Gandhidham Development Authority and be further pleased to direct respondent No. 4 to process the same without insisting for mutation certificate by the Kandla Port Trust, subject to outcome of the present petition.

And any other orders necessary in the interest of justice be passed.

16. In light of the facts and circumstances of the case which have come on record as noted hereinbefore, it becomes apparent that KPT has no right in law at this point of time to deny to mutate the name of the petitioner in the records of KPT in face of a registered document which has not been challenged by anybody before a competent forum. The petitioner is accordingly entitled to have his name mutated in records of KPT on the basis of the registered document executed on 18.12.1990 (Annexure-A) in respect of plot No. 66, Sector 8, Gandhidham. The said document has transferred the leasehold rights in the said property in favour of the petitioner and in the circumstances all the rights available to a transferee-lessee would be available to the petitioner. Whether a declaration in the form as prayed for and contested by the other side is granted or not, the consequences which flow in law cannot be avoided by stating that though a direction to mutate the name may be made the rights of the petitioner under a registered document may not be recognized. The law does not permit ignoring the rights of a transferee acquired under a registered document without the registered document being cancelled in accordance with law by an order

made by a competent forum before whom the proceedings are taken in accordance with law.

17. In the circumstances, KPT and its officers are hereby directed to mutate the name of the petitioner in the records of KPT in respect of plot No. 66, Sector No. 8, Gandhidham on the basis of registered deed dated 18.12.1990 under which the petitioner has become transferee of leasehold rights over the said plot and issue necessary mutation certificate. The respondent authorities are directed to carry out and complete the aforesaid exercise within a period of 01 (one) week from today, without waiting for a certified copy of this judgment and order. Learned advocate for the respondent authorities is directed to intimate the respondent authorities about this order to ensure compliance thereof within the stipulated time frame.

18. The petition is allowed accordingly in the aforesaid circumstances. Rule made absolute. Costs of this petition quantified at a sum of Rs. 10,000/- (Rupees Ten thousand) shall be paid by the respondent authorities to the petitioner.

19. At this stage learned advocate for the respondent authorities prays for stay of operation of the judgment and order. Considering the fact that the matter has been pending since 1991 without any justification in law, the request is rejected.