
(2013) 09 GUJ CK 0037

In the Gujarat High Court

Case No : Special Civil Application No. 1925 of 1996

Bavla Nagarpalika

APPELLANT

Vs

Collector

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2014) 2 GLR 1091

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—Heard learned Advocates for the parties. The petitioner, Municipality duly constituted under the provisions of Gujarat Municipalities Act, 1963 has approached this Court by way of this petition filed under Art. 226 of the Constitution of India, with following prayers:

(a) be pleased to admit this Special Civil Application:

(b) be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus, quashing and setting aside the orders dated 21-12-1995 passed by respondent No. 3 and dated 1-1-1996 passed by respondent No. 1, Annexure-F collectively, to the petition and further be pleased to set aside the resolution passed by the Administrator of Bavla Nagarpalika dated 16-10-1995 and further be pleased to declare that the allotment of the land to the respondent-Trust on rental basis by the Administrator is unjust, illegal and arbitrary;

(c) pending admission, hearing and final disposal of this petition, be pleased to stay the operation, implementation, execution and enforcement of the orders dated 21-12-1995 passed by the respondent No. 3 and dated 1-1-1996 passed by the Respondent No. 1 at Annexure-F collectively, and also be pleased to stay the operation, implementation, execution and enforcement of the Resolution dated 16-10-1995 passed by the Administrator of Bavla Nagarpalika whereby the

land was allotted to the respondent-Trust on rental basis;

(d) pending admission, hearing and final disposal of this petition, be pleased to restrain the respondent No. 4-Trust from taking possession of the land in question and/or constructing any building on the land in question;

(e) be pleased to award the costs of this petition;

(f) be pleased to pass such other and further orders as may be deemed just and proper in the interest of justice.

The facts in brief leading to filing this petition, deserve to be set out as under.

2. The petitioner, at the relevant time, was administered by an Administrator appointed by the State and during the tenure of Administrator, who has been joined as respondent No. 5, an application dated 24th November, 1994 came to be preferred by the Chairman of the Trust, who is shown to be respondent No. 4, for the parcel of land admeasuring approximately 5591 square meters belonging to the petitioner on token rent for putting up girls' hostel to accommodate the girls belonging to his community, so that they can prosecute their studies in Bavla. The copy of the application is placed on record at Annexure-A at Page No. 15 to the petition, wherein the Final Plot No. 122 was also mentioned. The Administrator of the petitioner, acting upon the said application, addressed communication to the concerned Collector on 7th January, 1995 seeking permission for allotting the land as requested vide notice dated 9th September, 1995. It is said that the Chief Officer invited objections. As no objections were received, and it has alleged that in fact no objections were invited and, Administrator for the reasons best known to him put up a show as if the objections were invited a resolution came to be passed being Resolution No. 59 on 16th October, 1995. The resolution is passed by the Administrator himself on 16th October, 1995 accepting the application of the respondent-Trust and giving it land. There were some queries on the part of the Mamlatdar, which were replied by the Chief Officer, wherein it is contended specifically that objections were invited, but in fact no objections were invited, as alleged by the petitioner in the memo of the petition. The petition contains allegations in paragraph Nos. 5, 6 and other Paragraphs that the then Agricultural Minister was intending to favour the petitioner. The land was sought to be given at token rent of Rs. 100/- per year for lease of 40 years. In exercise of power under Sec. 65(2) of the Gujarat Municipalities Act, 1963, the Collector granted permission vide his letter dated 1-1-1996 and the possession of the land was given to the party. The petitioner has averred in paragraph No. 6 that though the paper possession was given, actual possession was with Municipality only. The Municipality on 6th March, 1996 passed a resolution revoking the earlier resolution by following due procedure of law whereby the earlier Resolution dated 16th October, 1995 was revoked. The said resolution was not fructified into any legal and proper possession. The present petition was filed seeking relief as mentioned hereinabove. During the pendency of the petition, even the concerned authorities

were approached, as could be seen from the annexures and pleadings in the matter.

3. Learned Advocate for the petitioner contended that the land in question belongs to Municipality and Municipality could not have alienated the land under any provision without following the mandatory provision or dealing with the property, which includes land. Unfortunate it is, at the relevant time, the Municipality did not have elected representatives to fend for the wishes of the locales of Municipality and an officer of the State was discharging his duties as Administrator under the dictates or otherwise ignoring the interest of Municipality, chose to accede the unreasonable request of taking huge parcel of land on rent for meagre amount of Rs. 100/- per year for a period of 40 years. This resolution on the face of it did not seem to be in compliance with any provision of law, much less in the interest of justice of Municipality, and therefore, Municipality did not have any other option but to pass resolution in March, 1996 revoking the same and entrusting the authority to its president to set right the wrong, which was committed by the individual officer, who at the relevant time was acting as an Administrator of Municipality.

4. Learned Advocate for the petitioner contended that the passing of resolution in the year 1996 has not been subject-matter of any challenge and the suit which was filed by the respondent being Regular Civil Suit No. 28 of 1996 also could not have been characterized as a valid challenge to the resolution. The resolution when was not getting any yields in form of valid possession, the petitioner was constrained to move this Court by way of this petition. The fact remains to be noted that the suit is said to have been filed on 12th March, 1996 and the petition was filed on 12th March, 1996, i.e. both the parties have approached two different forums and at no point of time, either party requested respective Court for either staying the proceedings or invited respective Court's order on the factum and that itself as per the submission of learned Advocate for the Municipality indicate that the subject-matter of two proceedings could not be said to be common and/or the lis could be common as to hamper either of the proceedings. This was in reply to the contention raised on behalf of the respondent qua the suit and its decision not being challenged to the knowledge of the respondent in appeal or at least in 2011, there was no challenge to the decision rendered by the Court in the suit.

5. Learned Advocate for the Municipality thereafter, invited this Court's attention to the Government Circular dated 19th May, 1988, produced at Page No. 70 in the compilation and submitted that the land, which is not abutting to any building and which is open land is either to be sold or given on rent or lease by way of only public auction. This Circular dated 19th May, 1988 has not been weakened in any manner, rather it has been strengthened by subsequent detailed guidelines and provision, wherein the land resources and public property is to be maintained in the hands of Municipality and how the same are to be dealt with by the public body. The resolution of the Administrator, therefore, was

per se illegal and contrary to the provision of law, and therefore, it could have been of any avail to anyone and the petition therefore, is required to be allowed.

6. Learned Advocate for the petitioner, thereafter, invited this Court's attention to the subsequent Circular dated 12th January, 1999 and submitted that the detailed guidelines and the check list is provided for the guidance by the Municipality while dealing with the public property vis-a-vis its alienation and entrustment to private parties or otherwise. Learned Advocate for the petitioner contended that even in the year 2010, a detailed resolution was addressed to all the concerned, voicing the grievances made in respect of the subject land, which has been not put to use on account of the litigation in question.

7. Learned Advocate for the Municipality thereafter, contended that the Municipality's resources are to be utilized and required to be used so as to meet with its financial burden and budgetary provisions. Municipality cannot afford to squander away such type of resources and revenue generating properties. The State is also thereafter was under an obligation to assess and come to a specific conclusion qua the paramount public interest before according its approval to the proposal put forward by the me man of Municipality i.e. Administrator approved by concerned Collector. The petition is therefore, may be allowed in its totality.

8. Learned Advocate for the respondent No. 4 contended that the resolution passed by the Administrator could not have been said to be illegal in any manner, as the Administrator was fully competent and empowered to pass appropriate resolution in the interest of Municipality and the locales in the Municipality area. Therefore, when it was decided by the Administrator to accept the proposal as it was approved by the Collector concerned, the said resolution cannot be said to be in any manner, illegal and/or invalid nor it can be said to be illegal on account of lack of any authority. The resolution was therefore, just, proper and legal and when it was validly passed, there was no scope for any review thereof, and therefore, the petition is not required to be entertained.

9. Learned Advocate for the respondent No. 4 contended that the resolution has been passed legally and it has been approved by the State strictly in accordance with Sec. 65(2) of the Gujarat Municipalities Act, and therefore, when there is no illegality whatsoever in the procedure, the resolution cannot be reviewed by the Municipality, which has to obey the dictates of the controlling authority i.e. State. The State in its wisdom had thought it fit to pass appropriate order of sanction, which contains that the hostel, which is likely to be put-up on the premises, is to accommodate students, irrespective of caste, creed and religion, and therefore, the initial intention expressed in the application, which was sought to be capitalized upon by the petitioner did not remain operative, and therefore, nothing avail on that count to the petitioner for substantiating its submission. On the contrary, it was the wisdom of the State, which should have been accepted and prevailed, and accordingly, the possession of the land was given and when the said possession was sought to be jeopardized, the respondent was left with no other alternative but to approach concerned Court by appropriate application

for seeking appropriate relief in form of Regular Civil Suit No. 28 of 1996 and the Competent Court has clearly held in favour of the respondent that there is no illegality in the possession. The said judgment, if not challenged, should weigh with the Court and on that count also, the petitioner may not be granted any relief and the petition be dismissed.

10. Learned Advocate for the respondent No. 4 invited this Court's attention to the decision of the Division Bench of this Court reported in 1995 (1) GLH 730 in case of *Jaswantsinh Laxmansinh Chauhan v. Deesa Municipality*, and contended that the Court has acknowledged and accepted the proposition that the discretion vested in the Municipality under Sec. 65 cannot be said to be unbridled and while passing that order, upholding the vires of the provision, Court further observed that in all cases of lease, it is not compulsory for Municipality to go for public auction and Municipality has greater discretion in dispensing with the land in question. This decision is not in any manner whittled down, and therefore, this Court may not interfere with the possession of the land in question.

11. Learned Advocate for the respondent No. 4 thereafter, invited this Court's attention to the decision rendered by the Supreme Court in case of *Commissioner of Central Excise, Bolpur Vs. Ratan Melting and Wire Industries*, , and contended that the decision in case of *Jaswantsinh Laxmansinh Chauhan* (supra) is a binding decision and the said decision could not have been circumscribed or confined by the subsequent resolution or the administrative instructions or else it would amount to overreaching the process of law, which cannot be permitted in any manner.

12. Learned Advocate for the respondent No. 4 thereafter, invited Court's attention to the decision of this Court rendered in case of *Raghavbhai Arjanbhai Through His Power of Attorney Vasantrai Pragjibhai Patel and Another Vs. Amreli Nagarpalika and Another*, and submitted that the Collector's power under Sec. 258 cannot be stretched so as to affect the right accrued under the resolution, which is sought to be stayed by the Collector in exercise of power under Sec. 258 or the resolution, which is sought to be viewed or reviewed in exercise of power under Sec. 258(12), and therefore, in the instant case, when the land is handed over, the possession is taken and then the subsequent resolution in the month of March 1996, should have been of no avail, and therefore, the entire proceedings should be viewed in that perspective and the petition be dismissed.

13. Learned Advocate for the respondent No. 4, further contended that this Court had rejected one application filed by the petitioner being Civil Application (for direction) No. 4897 of 2010 in Spl. C.A. No. 1925 of 1996 and submitted that while rejecting this application vide order dated 6th September, 2010, the Court has clearly observed qua the factum of possession, and therefore, the factum of possession when it is not disputed in any manner, the resolution under which the possession was given, could be said to have been no more available for reviewing by the authority or else there will not be any sanctity to resolution of body or Municipality. The petition, therefore is required to be dismissed.

14. Learned Advocate for respondent No. 4, thereafter, placed reliance upon decision of this Court in case of Rajiv Maheshkumar Mehta and Others Vs. State of Gujarat and Others, , and submitted that the circular cannot have effect of changing the statutory provision in any manner and the statutory provision in form of Sec. 65(2) remains in the statute book.

15. Learned A.G.P. submitted that the order passed by the State, sanctioning the grant of lease is just and proper. When the petitioner has failed in pointing-out any procedural irregularity, the Court may not interfere while exercising power under Art. 226 of Constitution of India. Learned A.G.P. however submitted that in light of the provision of Sec. 64 of the Municipalities Act, when the State has complete control over the land in question, the petitioner if at all aggrieved, then it could have approached the Director of Municipality before approaching the Court straightaway, and therefore, petition being bereft of merits, deserves rejection and be rejected.

16. Learned A.G.P. further contended that the allegations of mala fide are not supported by any documentary evidences and they are baseless. The State has passed resolution upon the proposal received from the Collector as well as Director of Municipality. The purpose for allocating the land was for putting-up girls" hostel and it was not for any other purpose, and therefore, the purpose being legible, the Court may appreciate the same. The Court was not impressed by the submission canvassed by the learned A.G.P. in respect of the so-called purpose of putting-up girls" hostel. Had it been so, nothing prevented respondent No. 4 from putting forward its instance and its whereabouts and its capacity to have the girls" hostel and rather there has to be a justification that there is a real requirement of putting-up girls" hostel in the area. The State largesse and its distribution has set norms and rules, which no one can be permitted to ignore and in the instant case, the fact remains to be noted that the land in question is quite a sizable land and the application, which had been put-up is so cryptic as stated hereinabove, which did not contain any material or resource to inspire confidence qua the intention or wherewithal for putting-up girls" hostel. The status-quo order granted by this Court to be maintained by all the parties, is passed way back in the year 1996 and no attempts are made whatsoever for taking-up this matter till date and the land is alienating as itself is suggestive of the fact that there exists no intention, much less intention of putting-up land to the so-called legible use as it is said to be propounded by the State.

17. This Court has heard learned Advocates for the parties as stated hereinabove. Before advertng to the rival contentions of the learned Advocate for the parties, few indisputable aspects emerging therefrom deserve to be set-out for deciding the controversy and the purview of judicial scrutiny involved in this matter.

(a) The land in question admeasuring 5591 sq.mtrs. is of Final Plot No. 122 admittedly belonging to and vested in the petitioner Municipality. The petitioner

Municipality was not having its representative body when the proposal came to be received in form of application, which is produced in the memo of the petition at Page No. 15 dated 24th November, 1994. The said proposal or application is addressed to the Administrator of Municipality and in that application, it was indicated that the Bavla is a well developed town and many girl students of Rajput community have to commute everyday to attend the school at Bavla, and therefore, putting up a girls' hostel for them, the Final Plot No. 122 may be allotted. It is pertinent to note that this application does not indicate that the request was made for putting-up girls' hostel in respect of general community or all community girls nor did it contain any objective demand for land. Rather it was a cryptic application seeking a particular plot for which a purpose is shown to be putting-up of girls' hostel for accommodating the Rajput community's girl students. The entire application do not indicate as to what is the standing of the Trust in the field of education or in the field of such kind of activities nor has it been indicated in the application as to what are the plans and resources for putting-up girls' hostel as proposed, nor are any antecedents of the Trust contain any evidence of their activities coming forward. The proposed rent is also suggested and it is only mentioned that the "token rent". The entire application, therefore, did not contain many required information, which would have legitimately been taken into consideration, when assessing the plausibility of sanctioning such proposal.

(b) The Administrator when sending a letter to Collector, as per his communication dated 7th January, 1995, copy of which is produced at Page No. 16 also, reiterated that the permission be granted to allocate the plot in question for putting-up girls' hostel for accommodating girls belonging to Rajput community. Unfortunate it is that the Administrator, who belongs to the State Cadre, could have shown such disregard to the avowed principle enshrined in our Constitution as on the face of it such communication deserved to be frowned upon by the man learned in law. Unfortunate it is that the said audacity of the Administrator is blissfully ignored by the Collector, who appears to have forwarded the communication dated 21st December, 1995 for the State Government's approval under Sec. 65(2) of the Gujarat Municipalities Act, which indicate that the land in question is approved to be granted to the respondent at token rent of Rs. 100/- per year for the period of 40 years as per the resolution of the State dated 21st December, 1995.

(c) The resolution of the State, accorded the permission on the condition mentioned thereunder, wherein the condition No. 4 fortunately contained mandate to the respondent No. 4 that all girl students irrespective of their caste, creed or religion be given admission in their hostel. This resolution also do not indicate any requirement for allocating the land only on collecting token charges of rent nor does it disclose any deliberations, which might have gone into for justifying the alienation of land in favour of a party without following the process of auction or without recording any reason for justifying or avoiding of auction or accepting the proposal of respondent No. 4 or without exploring the plausibility

of inviting proposal or other interested parties or without indicating any availability of the proposal put forward by respondent No. 4. Therefore, in my view, the State merely endorsed the proposal, which was put-up to it, as the resolution is absolutely silent qua this aspect, which has been stated hereinabove and the State has chosen, for the reasons best known to State, not to controvert by way of filing any affidavit. The averments and allegations made by the petitioner in the memo of the petition on oath at this stage is required to be reproduced. The allegation of mala fide or illegal exercise as mentioned in Para No. 5 of the petition is required to be reproduced as under:

5. The petitioner states that on the basis of the said letters and as pressure was brought by the Hon'ble Minister for Agriculture, who also belongs to the same community of the Trust, the respondent No. 3 has given sanction for allotment of the said plot of land on rental of Rs. 100/- per year for 40 years to the Trust under Sec. 265(2) of the Gujarat Municipalities Act, 1963. That on the basis of the said letter dated 21-12-1995, the Collector has also given permission by letter dated 1-1-1996. Copy of the said letter dated 12-12-1995 and letter dated 1-1-1996 are annexed hereto and marked as Annexure-F collectively to the petition.

The Court hasten to add here that though the allegation of mala fide without any further documents or other material may not be given greater weightage, but it surely is a fact, which will have to be borne in mind while assessing and examining the entire procedure in respect of allocation of land and the attendant circumstances.

(d) The Resolution dated 11th December, 1995 was preceded by the notice, copy whereof is produced at Page No. 18, inviting objections and the exchanges between Mamlatdar and Vahivatdar (Administrator) of Municipality qua fixation of land value etc.

(e) The Civil Suit filed by the respondent No. 4 has culminated into decision in his favour, as could be seen from the order and judgment dated 17th February, 2005, but the operative part thereof also indicate qua it being rendered on the aspect of the decision in question. Though, a contention is made on behalf of the respondent No. 4 that the legality of possession includes cancellation of all aspects, and therefore, when that judgment is on record, this Court may not entertain the petition and rather, the petitioner be relegated to pursue the remedy and bring the civil litigation to its logical conclusion.

18. Thus, from the aforesaid backdrop of factual aspect, what is distinguishably emerging is scant or almost no regard to the property dealing in the State resources or the public resources and lack of justification for according sanction to the proposal for alienating land, which is contrary to the policy of body corporate, whose land is alienated by the said resolution in question.

19. The Court is of the considered view that looking to the entire scheme of Municipalities Act, there cannot be any dispute qua the proposition of law that

Sec. 65(2) does envisage the entitlement of Municipality in alienating the land in accordance with provision thereunder or restrictions thereunder. The decision of this Court cited at the bar in case of Jaswantsinh Laxmansinh Chauhan (supra) is in my view of no avail in furthering the submission of learned Advocate for the respondent No. 4, as reading the provision of Sec. 65 in light of the observations of the Court, would not suggest for a minute that the grant of property or dealing in property cannot be regulated so as to sub-serve the interest of public and answer the question of good governance as to avoid any remote plausibility of subjective consideration by those who are in charge of dealing with the public property. In the instant case, the Court has enlisted hereinabove the glaring lacunas of the public interest or lack of even attempt to indicate remotely the public interest being served on account of this proposition, which would raise serious questions qua the very action and proceedings for alienating the land in this manner in favour of a Trust, which itself had come forward with a very parochial request and purpose. In my view the Administrator himself would have been justified if he had rejected the said proposal outrightly. Unfortunately, it was not rejected, but acted upon and the said act is brought into further proceedings, whereunder the aim of obtaining land is fulfilled by giving possession of the land without even there being any lip service to the cause of public interest or as to how the public interest is likely to be served. The action in my view, therefore, is required to be deprecated as it cannot be said to be in a public interest at all.

20. A question arises as to whether this Court under Art. 226 of Constitution of India is justified in assuming the role of final arbiter qua public interest. The question is required to be answered in negative. However, when the facts of the case are leading to one and the only conclusion that there exists no public interest at all and when the entire exercise of allocation of land is on the face of it come without any justification and when the State authority has chosen not to oppose the petition in any manner, the Court can safely come to the conclusion that the entire exercise lacks the public interest and as the public interest is not the cause for allocating the land, the deviation from the propriety of distribution of largesse is not in accordance with law, Art. 14 would spring into action and when the entire action is examined on the anvil of Art. 14, the entire act fails in convincing the Court qua its being reasonable or justifiable or in the public interest so as to accept the countenance. The Court, is therefore, of the view that the ostensible legality pleaded in respect of Administrator's power, competence and the State's action of according its approval to the allocation of land in favour of the respondent No. 4 is required to be viewed from the angle of the petitioner, who has been deprived of the land, which otherwise could have put to a useful revenue generating purpose, which would have been impeccable for public interest. Therefore, the competence of Administrator, the sanctioning of the State would be required to be viewed from the angle of the fact, where the land, which vested in the Municipality could have been alienated de hors the clamoring of Municipality against such alienation in absence of any justification

much less an attempt of justification, the answer would be emphatic No.

21. The decision at the bar in respect of Collector's power to suspend the resolution is to be exercised under Sec. 258. The Municipality's power to review or pass Resolution under Sec. 51(12) are also of no avail to the respondent No. 4. As in the instant case, it is the Municipality, who is primarily and essentially required to be a party, whose consent cannot be brushed aside, as the act which is complained of by the Municipality is no act, which can be said even by remotest possibility to be an act sub-serving the interest of public at large and/or the Municipality in particular. Therefore, the State in our scheme of governance and in light of the provision of Gujarat Municipalities Act, and when the Municipality is given status of body corporate has to take the steps only in accordance with law and when the State has chosen to accord a favour by withdrawing the land from Municipality and acted merely as an approving authority, then the entire act at the behest of Municipality is required to be said to be not in conformity with law and the principle of Art. 14, and therefore, the resolution of the State as well as the subsequent action is contrary to the provision of Art. 14 and is required to be quashed and set aside.

22. The Court need not feel deterred on account of the judgment of the Civil Court pressed into service on behalf of the respondent No. 4. As plain reading of judgment is a clear indicative of the fact that the judgment cannot be said to be a judgment pronounced upon the law which sought in the present petition. Had it been so, nothing prevented the parties to show pleadings either before this Court before the final hearing taken-up or even before the trial Court where the suit was conducted. The conduct of the respondent No. 4 is clearly indicative of the fact that both the parties had clear understanding of the purview and purport of the suit, which indicate that lis was different than lis in the present petition, wherein the question is raised by way of invoking Art. 226 of the Constitution of India. Therefore, the petition cannot be said to be not maintainable or required to be rejected only on account of the result in the Civil Suit.

23. The Court, is therefore, of the view that the petition is required to be allowed and is accordingly allowed. The Resolution dated 16-10-1995 as well as, the allotment pursuant thereof are quashed and set aside, result whereof the Municipality will be at liberty to recover the possession from the respondent No. 4.

24. The respondent No. 4 is directed to handover the possession within 7 days from the date of the receipt of copy of this order. Learned Advocate for the respondent No. 4 has requested for extending the status-quo order, which was granted by this Court and which is enuring since years. Ordinarily, the Court would have accepted such request, but as the Court had already given 7 days' time for handing over the possession, the request need not be accepted and it is accordingly rejected. Rule made absolute. No costs.