

(1984) 02 GUJ CK 0003

In the Gujarat High Court

Case No : Spl. Civil Application No. 1816 of 1982

Bhagubhai H. Devani

APPELLANT

Vs

Porbandar

RESPONDENT

Date of Decision : 21-02-1984

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Gujarat Municipalities Act, 1963 — Section 44, 44(1), 615, 65, 80

Citation : AIR 1984 Guj 134

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : S.M. Shah, for the Appellant; A.H. Mehta, K.A. Mehta and D.N. Trivedi, for the Respondent

Judgement

1 to 15. XX XX

16. In the instant case, two questions are involved:

(1) Disposal of public, property by the "State" or "other authorities" as defined under Art, 12 of the Constitution.

(2) Disposal of the property by an authority which is required to hold the property as trustee as per the provisions of the Act by which the authority is constituted and which is supposed to run its affair in accordance with the provisions of the Act.

17. It is an undisputed position that the petitioner is an elected Councillor of the Municipality. He represents a section of the people who have reposed confidence in him believing that he will safeguard their interests as far as the affairs of the Municipality is concerned. It is also his duty to see that the Municipality .acts in the best interest of the people. It is also-his duty to see that the Municipality acts, In accordance with law. Apart from the fact that whether he has been actuated by the high motives of public interest, litigation or not, the fact remains that by virtue of his- office as Councillor, he is required to perform his duties as

stated above. He will be answerable to the people if he fails in, the discharge of his duties. Therefore it cannot be said that the petitioner who was an elected representatives- of the people and who was a sitting councillor at the time of filing of this petition, is a busybody and that he is an intermeddler and a foreigner so far as the affairs of the Municipality are concerned. As per the provisions of the Act itself, the municipal government, vests in the Municipality (sec S. 44(1) of the Act). A Municipality means the entire general body, meeting thereby all the councillors of the Municipality, who, constitute the general body of the Municipality. Thus the petitioner is a part of the Municipality. As per the statute itself, the municipal government vests in the Municipality. Therefore he is also a part of the governing body. When he feels that the Municipality is not acting in the best interest of the society and in accordance with the provisions of law, certainly he will be a person who can be said to be an aggrieved person though -lie may not have direct "or , indirect interest ia the subject matter which is lo be decided by the Municipality or which is a matter of dispute. In this view of the matter, that the petitioner is a busybody and at his instance, the question regarding- disposal of the. property in favour of respondent No. 2-society cannot decided has got to be rejected.

18. The argument that the petitioner has not filed: the petition as public interest litigation and the same is not for and on behalf of the poor, ignorant or socially and economically backward class of people who may otherwise be unable to approach the court and therefore the same should be rejected may be examined. It is contended by the counsel for the respondent-Municipality that the petition is actuated by political motives and the same is filed with, a view to vindicate ones personal ego or, personal political interest, In democratic form of government existence of political party cannot be denied. Therefore, in such cases, it is bound to happen that a person who is in public life and a member of any political party or group may have certain other, motives also. Such motives may be political or may lot be political. They may be express or implicit. Sometimes such motives may have been directly articulated or may be hidden and there fore difficult to be unearthed by simple exercise of reading the averments in a petition. But in such cases, this aspect should pale into insignificance and should not be given over much importance.

19. The paramount consideration) should be, what are the merits of the contention raised by the petitioner? Will it not have repercussions on the public interest? Will it not serve the interest of a sizeable section of the society? Will it not be in the interest of society to see that the property belonging to the public at large is disposed of so as to sub serve the common good and best interests of the society and therefore be dealt With in accordance with some known principles of law and without arbitrariness? In the instant case, strictly speaking, the petition cannot be termed as a public interest litigation, -But it partakes the character of a public interest litigation. The question to be resolved will have effect on the entire society meaning thereby, it is going to affect the entire population of the town. All the sections of the society will be affected by the

distribution of land in a society . where the problem of providing housing accommodation to the people acute. Hence the manner and method of distribution. of land by public institution is surely a question which pertaining to all the makers, of the society including the poor, ignorant, as well as socially and economically backward people. As stated hereinabove motive, of the petitioner, though cannot be said to be a determining factor as regards the maintainability of the petition is concerned. Many good ..things which are in the public interest or in the interest of nation are being done by people with a view to persecute their opponent. For example, the information with regard to hoarding of essential commodities by a blackmarketeer If information is given by a trade rival with a view to see that his competitor is prosecuted, simply because it emancipates from a trade rival it cannot be rejected. Take the example, of some officer who might have taken some illegal action. His rival in the same office discusses the same to superior officers. Should the superior officer not take action simply because the information emanates from arrival who is bent upon taking revenge against the officer concerned? Be it noted that the respondent-Municipality is a public body. It is charged with a duty to act as trustee in respect of its property. It is further "State" within the meaning of Art. 121 of the Constitution. The respondent Municipality cannot take shelter under the plea that, because the motive of the petitioner is actuated by political considerations, the petition filed by him should not be entertained. In such cases what matters is the merit of the plea, not the motive behind it. Hence this contention has also got to be rejected.

20. It was next contended that in the petition there is no sufficient material so as to make out a case for discrimination. The petitioner only says that the property should be disposed of by public auction or the distribution of land should be on the basis of the date of registration of the society. In the affidavit-in-reply filed on behalf of the respondent-Municipality it is also submitted that the Municipality is within its right when it sells the property to a co-operative housing society by private sale.

21. As far as the sufficiency or otherwise of the particulars is concerned, reference may be made to the pleadings of the parties, In para 11 of the petition it is stated that in pas" the Municipality has turned down many applications submitted by various societies- In this connection reply given by the Municipality so that the monopoly in land may not be created by private traders. It is further pointed out that the ex-President, Shri Dolatrai Chotai had taken away all the applications received by the Municipality with him and despite many requests having been made, the record is not returned by the ex-President. The cases of all the societies will have to be considered on merits and will be given land in accordance with law. On this basis it has been submitted that there is no case of discrimination. It may further be noted that in this connection the petitioner has alleged that the members of this particular society includes wives and certain other relatives of the Municipal councillors (see para 12 of the affidavit-in-reply dt. June 14, 1982 and para 5 of the affidavit-in-rejoinder dt. June 25. 1982). From the pleadings of the parties, the following facts emerge:

1. That there were societies which did apply to the Municipality for grant of land,
 2. The applications were duly received by the Municipality. But they are now lying with the ex-President of the Municipality who has not parted with the records despite several requests having been made.
 3. That respondent No. 2-Society is a newly formed society. It is not borne out from the record of the case that respondent No. 2-Society is a society of which the founder members belong to the weaker sections of the society or belong to scheduled castes or scheduled tribes. To put it in other words, the members of the society are not belonging to weaker sections of the society or socially and economically backward sections of the society. It is neither a society of employees of any Government or semi-Government institution or of any other institution.
- (5) There appears to be some substance, in the allegation that founder members of the society are relations of the President, Vice-President and other Councillors of the Municipality.

In above view of the matter, what are the reasons why the Municipality should enter into a private sale with such a cooperative housing society? It is difficult to agree with the contentions of the counsel for the Municipality that where transferring the land to this society the Municipality is actuated by high ideas of promotion of co-operative institution as provided in S. 91-F(a) of the Act and hence it is a step towards encouragement of co-operative societies. Assuming for a moment that this particular action of the Municipality is taken with a view to promote and encourage cooperative institutions, then the question arises, why select this particular co-operative society alone? Even according to the admission of the Municipality, there are other housing co-operative societies which have applied to the Municipality for grant of land but their applications are with the ex-President of the Municipality who has not parted with the record. In such a situation, the easiest course for the Municipality would have been to invite fresh applications or to refer to its own inward register and find out as to how many societies had applied during the course of last two to three years. It is not the case of the Municipality that even the inward register has been taken away by the ex-President of the Municipality. Therefore, the argument that since the record is not available with the Municipality and the same is taken away by the ex-President and hence the Municipality has decided, or proposes to decide and give the land to this particular society alone cannot be accepted.

22. Counsel for the Municipality has submitted that in cases when the Municipality disposes of its land or any property for the revenue purposes, i. e. for the purposes of raising funds, then only it may be compelled to dispose of the land or property by public auction and not in any other circumstance. Let us assume that the argument is quite valid and proper. But that does not mean that whenever a question of distribution of land arises, the Municipality can dispose of the same by private sale. For the reasons mentioned herein below, the

Municipality cannot be permitted to dispose of the land by private sale without following some known reasonable principles:

- (1) The Municipality is "State" within the meaning of Art.12 of the Constitution,
- (2) The Municipality is the trustee of all the property vested in it and a statutory duty is cast upon it to deal with the property as trustee thereof (see S. 65 of the Act).
- (3) The Municipality is an elected body. Every citizen of the town has interest in each and every paisa of the Municipality.
- (4) The Municipality being accountable to the people, cannot and should not act otherwise than in accordance with law. Simply because the law permits and puts only restrictions as provided under S. 65 of the Act, it does not mean that the Municipality can act arbitrarily in the manner not consistent with the normally accepted principles of administration of public properties.
- (5) If the Municipality has large area of land which can be set apart for the purposes of providing residential accommodation to its citizens, then also the same cannot be distributed at random.

The fact that there is large area of land at the disposal of the Municipality means that there will be choice for particular piece of land on account of the factors like the development in the area, the facilities of road, drainage, etc. available in the area. The competitive claims of different groups with regard to a particular piece of land will have to be decided in a rational and reasonable manner on the basis of certain principles and guidelines.

If the Municipality wishes that the entire land admeasuring about 8 lakhs sq. yards is to be distributed for the purposes of residential accommodation of the people, it can well do the same. But in that case the Municipality will have to lay down certain guidelines and frame rules if necessary. If the Municipality does not wish to frame rules, at least a resolution laying down the criteria for disposal of the land in question should be passed. The same should be made known to the public and wide publicity thereof should be given. This is in the interest of the Municipality itself. It will also be in the best interests of the elected councillors who are accountable to the people. They can say that they have not acted mala fide, arbitrarily or with partiality. They can assert, "look here, the principles regarding disposal of land were laid down well in advance. They were made public. Every one concerned was invited to apply. The applications were considered on merits and thereafter the property is disposed of." Nothing of this sort has been done in this case. It is clear that this particular society alone is selected and sought to be treated favourably. Therefore, the Municipality cannot be permitted to dispose of the land in favour of respondent No. 2 Society as it proposed to do,

23. It was submitted by the counsel for the Municipality that the Municipality has been conferred with power under the statute and unless contrary is proved, the

Municipality should be presumed to be acting in a just and fair manner. Much more so because the Municipality consists of elected and chosen representatives of the people. It consists of a large number of persons who are people's representatives and who are accountable to the people. True, the Legislature has reposed confidence in the elected body. But at the same time the Legislature has said that the property shall be held and administered by the Municipality as trustee. It should also not be forgotten that by virtue of the provisions of Art. 12 of the Constitution, the Municipality is "State Therefore the persons in charge of the Municipal administration are subjected to the limitations which spring from the provisions of the Constitution and the Act. If the principles which govern the administration of public property and which flow from the provisions of the Constitution and the provisions of the statute itself, are invoked and applied in this case, the Municipality cannot be permitted to sell the land in favour of respondent No. 2 Society by resorting to private sale and ignoring the claim of other similarly situated co-operative housing societies.

24. It may also be considered that the interim relief was modified by this Court (Coram: S. B. Majmudar, J.) on July 29, 1982. Thereafter, as stated by the counsel for the Municipality, the Municipality has executed sale deed in favour of respondent No. 2-Well-Done Co-operative Housing Society. However, even while modifying the interim relief, the Society has been restrained from changing the physical position of the land in question. A question may be raised that., now the sale document has already been executed, would it be open to this Court to grant relief in favour of the petitioner as prayed for. It must have been realised by the executants of the documents, namely, the Municipality and respondent No. 2-Society, that the litigation in respect of this very dispute was pending before the Court. They got the interim relief modified. Simply because at the interim stage they were permitted to execute the sale document, it does not mean that the sale document became final. Execution of the sale document for that matter any action whatsoever permitted to be taken at the interim stage by virtue of the interim order passed by the Court, it always subject to the final result of the petition, unless otherwise specifically mentioned to the contrary by the Court. When the Court modified the interim relief, it did not put its imprimatur on the sale document. Such permission, in the facts and circumstances of the case, only means that: if the parties were ready to run the risk, the Court , would not come in their way. At the interim stage of the litigation what , the parties have done has turned out to be illegal. It was their own action. Now the parties cannot be permitted to urge that they had run "be risk and therefore even though the Court may hold the action to be unlawful and against the public interest, same should be condoned or legalised. The Court merely modified "be interim relief and permitted to do something Which they desired to do pending the litigation. If the sale is otherwise illegal, it remains illegal or ineffective. Parties cannot take shelter under the interim order passed by the Court and seek to protect an illegality. Court never permits illegality. Court can never be made party to such illegality. By their voluntary action of execution

of document of sale, if the parties have landed themselves in complications, they must thank themselves and take the consequences. And in this case what is going to happen after, all, return of the consideration amount received by the Municipality to respondent No. 2-WellDone Co-operative Housing Society, and then both should forget about the transaction. That is all.

25. In the final result, the decision and consequent action of the Municipality in respect of the sale of land to respondent No. 2-Society for the reasons stated hereinabove cannot be sustained. Hence, even if" the sale document is executed in favour of respondent No. 2Society, the same cannot come in the way of this Court of granting the final relief. It would not be necessary for the petitioner to amend the petition because the parties have executed the document knowing fully well that it was by way of interim relief " only, that the Court permitted to execute the document at an interim stage and it was not the final order. Assigning for a moment that any such technical consideration can be raised and is required to be dealt with, then also the sale effected in favour of respondent No. 2-Society being against the public Interest and being contrary to the provisions of the, Constitution and the provisions of law as stated hereinabove, it has got to be ignored.

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27. Petition partly allowed.