

(2013) 04 GUJ CK 0057

In the Gujarat High Court

Case No : Special Civil Application No. 4219 of 2004

Bhagvatibhai Narottambhai Patel

APPELLANT

Vs

Collector and 1

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 04 GUJ CK 0057

Hon'ble Judges : J.B. Pardiwala, J

Bench : Single Bench

Advocate : R.R. Marshall, for the Petitioners No. 1, for the Appellant; Parth A. Bhatt, AGP for the Respondents No. 1-2, for the Respondent

Final Decision : Allowed

Judgement

J.B. Pardiwala, J.—By this application under Article 226 of the Constitution of India, the petitioner has prayed for a appropriate writ, order or direction to set aside the order dated 25th December 2003 passed by the Collector, Surat, and also the order dated 19th March 2004 passed by the respondent no. 2. The facts shortly stated be thus:

2. The petitioner was allotted a plot of land bearing Survey No. 198 admeasuring 1302 sq.mtrs. situated in Village-Olpad, Taluka-Olpad, District-Surat, by the Collector vide its order dated 2nd March 1982. The petitioner was allotted the land on payment of Rs. 3,906/- subject to certain terms and conditions, more particularly, on the condition that the land in question shall be used for village level workshop.

3. It is the case of the petitioner that the land in question was a Kharaba land on which wild trees were growing. The land was not only fit for any cultivation but was not even fit for putting up any construction as it required lot of reclamation. After the possession of the land was handed over the petitioner invested a sum of Rs. 1 Lac in leveling the land for the purpose for which it was allotted.

4. It appears that the petitioner started a unit in the name of Ratna Engineering Works and was carrying on the business of fabrication and galvanizing work and other metal work. The petitioner continued with this business from 1982 till 1990 and unfortunately in the year 1990 the petitioner met with a near fatal accident resulting in fracture of hip joint. The petitioner never recovered from the disability which he suffered as a result of this unfortunate accident.

5. As a result of which the petitioner applied with the Collector seeking permission for change of user of the land. He prayed before the Collector that he may be permitted to use the land for the purpose of lodging, boarding, renting etc. over and above the purpose for which the land was granted.

6. The Collector vide its order dated 12th October 1992 permitted the petitioner to use the land for the other purposes also, over and above the original purpose for which the land was allotted.

7. Pursuant to the order passed by the Collector dated 12th October 1992, the petitioner also paid conversion fees to the tune of Rs. 976.50 ps.

8. It appears that thereafter the petitioner put up a small shop in 1992, where video movies are shown to the villagers. Indisputably, the petitioner has also obtained a license to run the local mini theater which was valid till 31st December 2004.

9. It appears that thereafter one application was preferred with the Collector to the effect that the land in question was not being used for the purpose for which it was allotted and that there was a change of user thereby committing breach of the conditions which were imposed at the time of allotment.

10. The Collector issued a notice dated 11th January 1999 calling upon the petitioner to show cause as to why the allotment should not be cancelled.

11. The record further reveals that after the show cause notice was issued and before any final decision could be taken pursuant to the show cause notice the Collector thought fit to inform the petitioner vide letter dated 4/8th September 2000, Annexure-E to this petition, calling upon the petitioner that if the petitioner intended to use the land for the purpose other than for which it was granted then according to the rules and regulations and the policy of the State Government the petitioner shall pay the necessary premium excluding the amount already deposited by the petitioner at the time of first allotment.

12. The Collector inquired with the petitioner whether he was ready and willing to pay 100% premium or not. Such response of the petitioner was called for within a period of seven days. It appears that the petitioner vide his reply dated 21st September 2000 informed the Collector that he was ready and willing to make the necessary payment of premium that may be fixed by the Collector for the purpose of continuing in possession of the land.

13. It appears from the record and it is not disputed that after the reply of the

petitioner no steps were taken by the Collector to pass the necessary orders as regards fixing of the premium.

14. In the meantime, the Collector proceeded to pass the order which has been impugned in this petition by which he directed that the possession of the land be taken over from the petitioner and shall vest with the Government in terms of Section 68 of the Bombay Land Revenue Code. Being dissatisfied the petitioner preferred a revision application before the Secretary Revenue (Appeals), u/s 211 of the Bombay Land Revenue Code, and the Secretary, Revenue (Appeals), vide its order dated 19th March 2004 rejected the revision application thereby confirming the order passed by the Collector.

15. Being dissatisfied the petitioner has come up with this application.

16. Mr. R.R. Marshall, the learned Senior Counsel appearing for the petitioner vehemently submitted that the Collector as well as the Secretary, Revenue (Appeals), committed a serious error in taking the view that the petitioner committed breach of the terms of allotment and that the land should be forfeited with the Government in terms of Section 68 of the Bombay Land Revenue Code. Mr. Marshall submitted that the order passed by Special Secretary is in breach of the principles of natural justice inasmuch as no opportunity of hearing was given before passing such order. Mr. Marshall also submitted that his client is in possession of the land in question since 1982. The violation of the terms and conditions is not of that a nature warranting dispossession of the petitioner from the land. Mr. Marshall submitted that, in the year 2000, when the Collector called upon his client to make necessary payment of premium he expressed his willingness but thereafter no orders were passed. Mr. Marshall also submitted that even as on today his client is ready and willing to make the requisite payment of the amount of premium that may be fixed by the Collector as on the year 2000. Mr. Marshall laid stress on the fact that as a matter of fact the permission for the change of user was granted inasmuch as there is a permission in writing accorded by the Collector. In such circumstances, Mr. Marshall prays that the orders impugned may be set aside and this petition may be allowed.

17. Mr. Bhatt, the learned AGP appearing for the respondents vehemently opposed this application submitting that Section 68 of the Bombay Land Revenue Code is very clear and provides for not only dispossession or forfeiture of the land but also entails payment of penalty. Mr. Bhatt laid stress on the fact that the petitioner was called upon to give his response within seven days so far as the aspect of payment of premium is concerned but since the petitioner failed to respond within seven days, the Collector did not deem fit to pursue the matter further in that regard. Mr. Bhatt submitted that since this is a case of change of user the orders which have been passed by the authorities below may not be disturbed and there being no merit in this application, the application may be rejected.

18. Having heard the learned counsel for the respective parties and having gone

through the materials on record, the only question that falls for my consideration is whether the authorities below namely the Collector and the Secretary, Revenue (appeals), were justified in passing the orders impugned.

19. Indisputably the petitioner is in possession of the land since 1982. He was accorded permission to run an engineering unit which the petitioner did start in the year 1982 and which is being run even as on today. However, it appears that in 1990 he met with a very severe accident resulting in fracture of hip joint rendering him almost disabled. Due to such disability, over and above the engineering unit which he was not able to look after well the petitioner decided to use the land for the purpose of lodging, boarding, renting and such other purpose for which he sought necessary permission from the Collector. The Collector, after taking into consideration the relevant consideration, thought fit to accord such permission for change of user of the land. After such permission was accorded the necessary fees were also deposited.

20. It appears that thereafter some disgruntled person complained to the Collector that in the said land the petitioner is running a mini theater by showing films on a projector. This according to the Collector was breach of the terms and conditions of user of the land. Accordingly, the proceedings were initiated and the orders came to be passed.

21. I am of the opinion that the petitioner could not be said to have committed such a serious default or a breach of condition which should entail the consequence of dispossession and forfeiture of land in question. The petitioner as on today also is ready and willing to pay the amount of premium of the land that the Collector could have fixed in the year 2000. I am of the opinion that the petitioner should be asked to deposit the requisite amount of premium payable in the year 2000 as demanded by the Collector himself and on such condition he should be allowed to retain the possession of the land in question. It is also not the case of the authorities that the premises in question is being used for some illegal or immoral activities.

22. In the aforesaid premises, I direct the Collector, Olpad, Surat, to fix the amount of premium as it was decided in the year 2000 vide letter dated 4/8th September 2000, Annexure-E to this petition. For the purpose of completion of the legal formality, the petitioner shall apply with the Collector within a period of fortnight from today requesting the Collector to fix the requisite amount of premium payable on the land in question and on such application being received by the Collector, the Collector shall pass necessary orders within a period of four weeks thereafter. The amount of premium that shall be fixed by the Collector shall be paid by the petitioner immediately thereafter. For the foregoing reasons, this petition partly succeeds. The order passed by the Collector dated 25th December 2003 and the order passed by the Secretary, Revenue (Appeals), dated 19th March 2004 are hereby set aside. Rule is made absolute to the aforesaid extent.