

(2013) 02 GUJ CK 0029

In the Gujarat High Court

Case No : Misc. Civil Application (for Orders) No. 1807 of 2011 in Special Civil Application No. 1691 of 2010

Bharat Sanchar Nigam Limited

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Citation : (2013) 02 GUJ CK 0029

Hon'ble Judges : R.M. Chhaya, J; Harsha Devani, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Harsha Devani, J.—By this application, the applicant-original petitioner seeks a direction to the respondent No. 2-Amreli Municipality to refund the amount of Rs. 9,50,000/- deposited by the petitioner-BSNL, Amreli in compliance with the oral order dated 23.2.2010 passed in Special Civil Application No. 1691 of 2010. The petitioner herein had filed the above-referred petition being Special Civil Application No. 1691 of 2010 challenging the Government Resolution dated 20.11.2009 issued by the respondent No. 1-State of Gujarat as well as the final notices dated 15.1.2010 and 16.2.2010 demanding Rs. 48,92,280/- from the petitioner, issued by the respondent No. 2-Amreli Municipality. In the said petition, the Court, while issuing Rule, had granted ad-interim relief to the petitioner subject to deposit of an amount of Rs. 9,50,000/- with the respondent No. 2-Amreli Municipality on or before the returnable date. Pursuant thereto, the petitioner had deposited such amount with the respondent No. 2-Municipality. Thereafter, the petition came to be disposed of by an order dated 6.7.2010, whereby the learned advocate for the petitioner sought permission to withdraw the petition to enable the petitioner to challenge the resolution dated 5.5.2005 of the respondent No. 2-Municipality. Permission was granted and the petition was disposed of as withdrawn. It appears that at that time, on account of inadvertence, the learned advocate for the petitioner did not seek refund of the

amount which was deposited by him pursuant to the interim order passed by this Court. Subsequently, the petitioner filed another petition being Special Civil Application No. 10816 of 2010 challenging the Government Resolution dated 20.11.2009 as well as final notices dated 15.1.2010 and 16.2.2010 demanding Rs. 48,92,280/- from the petitioner as well as the resolution dated 5.5.2005 passed by Amreli Municipality. The petitioner also sought refund of the amount of Rs. 9,50,000/- deposited by it in compliance with the order dated 23.2.2010 passed in Special Civil Application No. 1691 of 2010.

2. By a judgment and order dated 4.2.2011, the said petition was allowed in part. The resolution dated 5.5.2005 passed by Amreli Municipality to the extent it sought to levy installation charges and user charges based on the height of telecommunication towers was quashed and set aside. The demand notices dated 15.1.2010 and 16.2.2010 to the extent the same sought to recover installation charges and user charges based on the height of telecommunication towers were also quashed and set aside. It was observed that insofar as the resolution dated 20.11.2009 is concerned, the same had already been set aside in the earlier judgment passed by this Court in the case of Indus Towers Ltd. Vs. State of Gujarat & Ors. In Para 7 of the said order, it was observed that insofar as the relief regarding refund of the amount deposited pursuant to the order dated 23.2.2010 passed in Special Civil Application No. 1691 of 2010 is concerned, the same could not have been made subject matter of the said petition as the same had been deposited pursuant to the interim orders passed in Special Civil Application No. 1691 of 2010. Accordingly, the petitioner has moved the present application in Special Civil Application No. 1691 of 2010 seeking refund of the amount deposited pursuant to the above-referred interim order.

3. Mr. Gaurang Bhatt, learned advocate for the applicant submitted that in the light of the fact that the petitioner had succeeded in its challenge to the impugned resolution dated 5.5.2005 as well as in view of the fact that the resolution dated 20.11.2009 passed by respondent No. 1 had already been quashed and set aside, the respondent No. 2 is not entitled to retain the amount deposited by the petitioner pursuant to the interim order passed by this Court.

4. On the other hand, Ms. Khyati Hathi, learned advocate for respondent No. 2 opposed the application by submitting that the claim of refund of the amount is not justified, inasmuch as, the same amounts to only one-fourth of the amount which was due and payable to the Municipality under the demand notices. Under the circumstances, there is no question of refunding the said amount.

5. In light of the facts noted hereinabove as well as the submissions advanced by the learned advocates for the respective parties, it is apparent that the petitioner had been directed to deposit the amount of Rs. 9,50,000/- with respondent No. 2-Amreli Municipality with a view to secure payment of the demand made by Amreli Municipality from the petitioner under the impugned notices. However, as noted hereinabove, the petitioner ultimately succeeded in its challenge to the resolution passed by Amreli Municipality as well as the Government Resolution

and the impugned demand notices came to be quashed and set aside to the extent the same sought to recover installation charges and user charges based on the height of the telecommunication towers. It is an admitted position that the challenge in the above petition pertains to the recovery of installation charges and user charges based on the height of the telecommunication towers and hence, the amount of Rs. 9,50,000/- deposited with respondent No. 2-Municipality has been deposited in respect of such demand. The petitioner having succeeded in its challenge to the resolutions referred to hereinabove and the impugned demand notices having been set aside, respondent No. 2 is not entitled to retain the amount so deposited by the petitioner pursuant to the ad-interim order passed by this Court. Under the circumstances, the application deserves to be allowed.

6. For the foregoing reasons, the application succeeds and is accordingly allowed. The respondent No. 2-Municipality is directed to refund the amount of Rs. 9,50,000/- deposited by the petitioner pursuant to the order dated 23.2.2010 passed in Special Civil Application No. 1691 of 2010 as expeditiously as possible, and not later than six weeks from the date of receipt of a copy of this order. Rule is made absolute accordingly with no order as to costs. It is clarified that in case any amount was payable by the petitioner in respect of part of the resolution passed by Amreli Municipality which has been sustained by this Court, this order shall not come in the way of the respondent No. 2-Municipality in recovering such amount.