
(2013) 05 GUJ CK 0059

In the Gujarat High Court

Case No : Special Civil Application No's. 7507, 7869 and 7893 of 2012 and Civil Application No. 4440 of 2013 in Special Civil Application No. 7507 of 2012

Borse Vimalben and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 05 GUJ CK 0059

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : Shalin Mehta and Mr. Hemang M. Shah, for the Petitioners Nos. 5, 11, 13, 16, 19, 95, 105-106, 113 and 115, for the Appellant; K.B. Trivedi and Mr. Maulin Raval for M/s. R.J. Rawal Assoc., Advocate for the Respondent(s) No. 2 and M.S. Shivya A. Desai, Advocate for the Respondent(s) No. 2, for the Respondent

Judgement

Harsha Devani, J.—By these petitions under Article 226 of the Constitution of India, the petitioners have challenged notices issued to the residents of Shastrinagar Chhapra whereby the petitioners have been informed by the Deputy Estate Officer of the respondent No. 2-Ahmedabad Municipal Corporation (hereinafter referred to as "the Corporation") that a draw has been organized for allotment of plots by way of alternate arrangement to the persons affected by the widening of the 60 feet road of T.P. Scheme No. 11, Bapunagar Cross Road to Vaishali-Amrapali-Bhaktinagar Road flats and going towards National Highway No. 8, and calling upon them to remain present with the necessary documents, failing which the draw shall be conducted in their absence and they shall be deemed to have accepted the same. The petitions also seek a direction to the Corporation to provide alternative accommodation as per the order of this court dated 17th May, 2012 made in Special Civil Application No. 7156/2012. Alternatively, the petitioners seek a direction to the Corporation to provide flats

which are vacant at Naroda, Odhav, Rakhial or near the vicinity of Bapunagar within 2 kms of the residences of the petitioners. The petitioners in each of these petitions are slum dwellers and are residents of Shastrinagar Chhapra. It is the case of the petitioners that in terms of the resolution bearing No. 30/2012-13 dated 11th April, 2012 passed by the Standing Committee, Ahmedabad Municipal Corporation, the petitioners are required to be given alternative residential premises. The case of the petitioners is that they were to be given alternative residential premises but till the date of filing of the petitions, no arrangements had been made and at the same time, notice dated 26th April, 2012 came to be issued for demolition of kutcha-pucca houses of the petitioners. That the petitioners had made representation to the Corporation to give alternative accommodation as is being given to the dwellers of Danilimda, River Front, Kankaria Macha Pith and Gulbai Tekra etc., but there is no response thereto. Reference is made to the order dated 17th May, 2012 made in Special Civil Application No. 7156 of 2012 whereby this court had directed the Corporation not to evict the petitioners from their respective huts till they are provided alternative accommodation. Thereafter the impugned notices were received whereby the Corporation intends to give small piece of land instead of providing alternative accommodation. Being aggrieved, the petitioners have filed the present petitions.

2. The Corporation has filed a civil application being Civil Application No. 4440/2013 in Special Civil Application No. 7507 of 2012 seeking permission of this court to remove new encroachments made by the occupiers on 60 feet existing wide road of T.P. Scheme No. 11, Bapunagar Cross Road to Vaishali-Amrapali-Bhaktinagar Road flats and going towards National Highway No. 8.

3. In the said application, it is stated that the Corporation has provided alternative arrangement to total 227 hutment dwellers out of 338 hutment dwellers on draw basis only for the purpose of location of plot. It is further stated that the Corporation had demolished the encroachment on the 60 feet road in question on 11th/12th/13th June, 2012 and alternative arrangements had been provided to the affected persons. However, thereafter, some of the local residents had started encroaching upon the T.P. road and had been putting up unauthorised construction by using debris. Since the encroachment still continues on the T.P. road, the application came to be filed seeking permission to remove the new encroachments.

4. Having regard to the controversy involved in the petitions, with the consent of the learned counsel for the respective parties, all the three petitions as well as the civil application came to be taken up for final hearing together and are accordingly disposed of by this common judgment.

5. The present litigation not being adversarial in nature, efforts were made by all concerned to bring an amicable resolution to the dispute.

6. During the course of hearing the matters, on behalf of the Corporation it was

pointed out to the court that 227 families had been allotted plots at mauje Rakhial, Revenue Survey No. 146/P and Revenue Survey No. 141/P and that the following facilities were already provided at the plots:-

1. Two stand posts with water taps for drinking water.
2. Two mobile toilet vans (Each having five sanitation units for women and five sanitation units for men)
3. Arrangements are made for free of cost "pay and use" toilets which are adjoining to the said plots. (6 gents and 4 ladies toilets, 2 showers for gents and 2 showers for ladies and 5 urinals for gents)
4. Main connection at the plot is already provided for distribution of water from main trunk line. It can also be used for laying down internal pipeline network at individual houses after they are constructed.
5. Main connection at the plot is already provided for drainage facility to be attached to the main drainage line and it can also be used for laying down internal drainage network at individual houses after they are constructed.
6. Well equipped urban health centre which provides primary health facilities is situated very next to the plot in question.
7. The following facilities shall be provided after the constructions of houses are completed on the plot.

? (I) An internal 3 mtrs. road and pavement

? (I) Asphalting on 20 feet road adjoining the plot.

7. However, the learned counsel for the petitioners had submitted that the facilities provided at the plot are not adequate. Upon a query by this court as to what exactly were the expectations of the petitioners, the learned advocate for the petitioners had placed on record a list of demands dated 6th May, 2013 which reads thus:-

List of Demands

The petitioners submit the following demands:

1. Allotment of houses under the JNNURM Scheme.
2. Accommodating 166 families of the eastern side of the road on permanent basis at the proposed alternative site near Mamtanagar. The allotment shall be on permanent basis. The plots allotted to the allottee shall be transferred into the name of the allottee so that in future they are not evacuated under the pretext of road widening or development of town planning scheme.
3. Since the size of the plot allotted is admeasuring 10 ft by 15 ft, permission to construct a double storey house so that all family members of the house can reside.

4. Permission to construct houses using materials such as bricks and cement on permanent basis.

5. Water connection and drainage facilities to each allottee. At present water is not flowing through the taps which have been put up. There is only one mobile toilet van.

6. Corporation would be ready to bear the electricity connection charges levied by Torrent.

8. In response to the above demands raised by the petitioners, Mr. K.B. Trivedi, Senior Advocate, learned counsel appearing on behalf of the Corporation, under instructions, stated before the court that the Corporation has no objection to granting the plots on permanent basis and that the plots would be allotted in the names of the applicants. However, the same would be transferred in the name of the applicants after ten years, but even after ten years, they would not be able to sell the same. A further assurance was given that the applicants would not be removed during the course of widening of the road or framing of T.P. scheme. It was reiterated that a special condition for allotment of the plots is that even in future, the same cannot be sold. However, for the purpose of availing loan against the plot, the Corporation would grant NOC.

8.1. As regards the demand for construction of double storeyed house, it was stated that permission would be granted for construction of a single storey (ground floor) in the 10 feet x 15 feet area and if by putting a staircase inside such construction a first floor is to be constructed, then as a special case, the Corporation would grant permission. (As per the present policy, permission is only granted for ground floor, however, as a special case, in this case, Corporation would grant permission).

8.2. As regards the demand for permission to construct houses using material such as bricks and cement on permanent basis, the learned counsel submitted that the Corporation is agreeable to the same. As regards the demand for water connection and drainage facilities to each allottee, it was submitted that the same would be provided as and when the petitioners put up constructions on their respective plots. It was further submitted that the Corporation would also be ready to bear the electricity connection charges levied by Torrent.

8.3. However, as regards the demand for allotment of houses under the JNNURM Scheme, it was submitted that allotment of houses is scheme specific and in respect of the widening of the road in question there is no such scheme and hence allotment can only be made in terms of the existing scheme of the Corporation.

9. Thus, except for providing constructed houses, which is scheme specific and not applicable to the present case, the Corporation has agreed to all the aforesaid demands submitted by the petitioners. However, today, Mr. Shalin Mehta, Senior Advocate, learned counsel for the petitioners submitted that the

internal roads which are provided between the plots allotted to the petitioners are of a width of 10 feet only and that the width of such roads is required to be increased to at least 15 feet. In response to which, the learned counsel for the Corporation after taking instructions submitted that it would not be possible to increase the width of the roads, as the same would entail re-plotting and re-allotment of all the plots. It was submitted that to increase the width of the roads, some of the rows would be required to be excluded and such persons would have to be relocated elsewhere which would require the entire exercise to be carried out once again and would be very time consuming and would hinder the widening of the road. It was urged that having regard to the fact that as a special case, the petitioners are permitted to put up a second storey, the request for widening the roads may not be accepted.

10. In the light of the facts noted hereinabove, it is apparent that insofar as the list of demands submitted by the petitioners is concerned, the Corporation has substantially agreed to all the requests made by them, except to the demand for constructed houses which does not fall within the framework of the scheme of the Corporation. Insofar as the fresh demand made by the petitioners for increasing the width of the road between the plots allotted to the petitioners is concerned, it appears that the allotment of plots has already been made to the individual petitioners and other persons also who are not before this court. Widening of the roads would require the entire allotment to be scrapped and to be made afresh which would consume a lot of time. Under the circumstances, having regard to the fact that the scheme does not provide for any specific width of the internal roads as well as the fact that as a special case, the petitioners would be permitted to put up a second storey, the request for increasing the width of the roads cannot be accepted.

11. In view of the fact that the demands made by the petitioners have been substantially met with, the learned counsel for the petitioners has submitted that the petitioners may be granted a period of 45 (forty-five) days to vacate the existing premises so as to enable them to make alternative arrangements at the site allotted to them. The learned counsel for the respondents has submitted that in view of the onset of monsoon, such a period for vacating the existing premises be restricted to one month only.

12. Having regard to the facts and circumstances of this case, the court is of the view that a period of 45 (forty-five) days, as requested by the petitioners, is quite reasonable. Under the circumstances, having regard to the fact that alternative plots have already been allotted to the petitioners with the basic facilities, the petitioners shall vacate the existing premises within a period of 45 (forty-five) days from tomorrow. Till then, the respondent Corporation shall not take any coercive steps against them. However, it is expected that the petitioners vacate the premises within the time limit stated by them. In view of the fact that the Corporation has already allotted the plots to the petitioners and the petitioners would be vacating the premises within the period stipulated

hereinabove, subject to compliance with the aforesaid demands to the extent the same have been accepted by the Corporation, nothing survives in these petitions. Under the circumstances, all the three petitions and the civil application stand disposed of in the above terms with liberty to the petitioners to revive the petitions in case of difficulty.