

(1999) 11 GUJ CK 0007
In the Gujarat High Court

Case No : Special Civil Application No. 5188 of 1987

Chimanbhai Narottambhai Solanki

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-11-1999

Acts Referred:

Citation : (1999) 11 GUJ CK 0007

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Advocate : Bhushan B. Oza, for the Appellant; V.M. Pancholi, Asstt. Government Pleader for Respondent No. 1 and B.J. Jadeja, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Abichandani, J.—The petitioner challenges the order of the State Government, served on the petitioner on 22.9.1987, which is at Annexure "B" to the petition, allowing the Revision Application of the respondent No.4 and setting aside the order of the Collector dated 27.3.1985, by which the Collector had granted land admeasuring 16ft x 10ft. of city survey No. 162, Tika No. 3/2 of Kathor within the city survey limits, to the petitioner.

2. The land in question was allotted to the petitioner on payment of the occupancy price for residential purpose. According to the petitioner, it was kharaba land and the petitioner who was a junior lawyer belonging to the Scheduled Caste was given the land by the respondent No.3 in exercise of his powers to allot such land. According to the petitioner, he was given the land on 11.4.1985 under the receipt at Annexure "C" to the petition.

3. It is contended on behalf of the petitioner that it was not obligatory on the part of the respondent No.3 to auction the land in question and therefore, there was no warrant for setting aside the order of allotment.

4. The petitioner had applied for allotment of land on 30.11.1984. The said land was required by the Sarpanch for a public lavatory. The land was situated near

the Police gate and there were buildings surrounding it. There were demands for the said land by others who had offered large amounts as mentioned in the revisional order. The Collector had sent a proposal on 2.11.1984 and certain information was sought by the Government by its letter dated 25.2.1985. Instead of forwarding the information to the Government, the Collector allotted the land to the petitioner.

5. It has been found that there was no enquiry made as to the financial condition of the petitioner and his income. It is further found that the land in question was in the market area and was used as a public road. It was also found that even the demand of land by the respondent No.4 was not justified. The land was opposite a shop. According to the revisional authority, as per Rule 43 of the Gujarat Land Revenue Rules, land was ordinarily required to be sold by an auction to the highest bidder. It was held that before such land on which public had right of way could be allotted to anyone, it was necessary to make an order u/s 37A(1) of the Bombay Land Revenue Code for extinction of the right of public over the public road, lane or path, but no such procedure was undertaken by the Collector. It was also held that the land which was within the limits of a village, could be disposed of only by the District Development Officer and not by a Collector. It was found that the Collector had disposed of the land which was in an area in respect of which he did not have the power to allot.

6. It will be seen that the land was in the village in a market place and there were demands made for it by others who had offered higher price. The matter was under consideration of the State Government, which had sought for some information, but the Collector instead of forwarding the information, short-circuited the matter by making an order in favour of the petitioner. When the matter was under consideration of the State Government, it was not appropriate on the part of the Collector to have pre-empted the exercise of power by the State Government. There was an important issue involved about the rights of the public over the said land which they were using as a public road, as it was situated in the market area. The revisional authority therefore, rightly held that without determining the rights u/s 37A(1) of the public, no such allotment could have been made in favour of the petitioner. There is also no satisfactory reason why the land should not have been put to a public auction. No extra-ordinary circumstances were placed on record to deviate from the ordinary procedure of putting the land to public auction as provided in Rule 42 of the Gujarat Land Revenue Rules. The impugned revisional order has been made by the revisional authority in lawful exercise of its powers and in accordance with law. The order is just and proper warranting no interference by this Court. The petition is therefore, rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.