(2002) 08 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 6161 of 2000 and Civil Application No. 10050 of 2001

Crystal Quinone Pvt. Ltd. APPELLANT

Vs

Gujarat Industrial Develop Corpn. RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Citation : (2002) 08 GUJ CK 0021

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : Mihir H. Joshi, for Petitioner Nos. 1-2, for the Appellant; Trivedi and Gupta, for the Respondent

Final Decision : Partly Allowed

Judgement

P.B. Majmudar, J.—The petitioner No.1 is a Private Limited Company (hereinafter referred to as "The Petitioner"), registered and incorporated under the Companies Act, 1956. The Petitioner, for the purpose of its business, purchased a plot, bearing No.A-2/20, Phase II, GIDC, Vatva. The said plot was purchased by the petitioner in an auction held by the respondent-Corporation. The petitioner was the highest bidder and its bid was accepted. Thereafter, the petitioner was issued an allotment letter. The same was followed by an Agreement between the petitioner and the respondent-Corporation. The total price which the petitioner was required to pay was Rs.13,07,000/- and as per the Agreement, the petitioner was required to pay initial payment of 25% of the amount. The entire amount was to be cleared up by 32 instalments and the last of such instalments was to be paid on or before June, 2002. It is not in dispute that at the time of taking possession, the petitioner had paid 25% of the amount, i.e. Rs.3,26,750/-. It is the say of the petitioner that at the time of handing over the possession, the GIDC was informed that considerable repairs were necessary to make the shed usable and that the same was required to be adjusted against the price and instalments.

The grievance of the petitioner is that, after accepting the possession and after the initial payment of 25% of the amount, it came to the notice of the petitioner that there is a tax liability of the Ahmedabad Municipal Corporation to the tune of Rs.3,61,964/-. The petitioner came to know about the same when he received the property tax bill from the Municipal Corporation. At that stage, the petitioner started corresponding with the GIDC for the purpose of clarifying the situation about the tax liability in question. In the meanwhile, the petitioner also received a bill from the Ahmedabad Electricity Company to the tune of Rs.15,421/-, which was towards the past dues of the earlier occupant. In the meanwhile, after purchasing the present plot in question, the petitioner was also allotted another plot and by allotment letter dated 9.2.1993, the petitioner was allotted an open plot, bearing No.80/1+2+3/A, situated at Phase I, GIDC, Vatva, admeasuring 1084 sq. metres. The petitioner had made the part payment of Rs.71,815/- in connection with the purchase of the said plot. However, at the time of taking physical possession of the said plot, it was found by the petitioner that the said plot was already allotted to another party.

Under the aforesaid circumstances, the petitioner requested the Managing Director of GIDC to refund Rs.71,815/- and for that purpose, the petitioner also wrote a letter dated 24th September, 1994, to the M.D. of the respondent-Corporation. So far as the aforesaid transaction is concerned, of course, it relates to the allotment of other plot, but it is required to be noted that so far as the other plot, which was allotted to the petitioner is concerned, in spite of the fact that the amount of the petitioner was accepted by the GIDC towards part payment, i.e. Rs.71,815/-, the GIDC failed to give peaceful possession to the present petitioner. Therefore, the aforesaid amount of the petitioner remained with GIDC all throughout. In view of the aforesaid circumstances, the petitioner started making correspondence with GIDC to clarify the stand regarding the demand of the Municipal Corporation towards arrears of tax amount, amount the petitioner was required to pay to the Electricity Company as well as requesting the Corporation to refund Rs.71,815/- as well as reimbursing the petitioner for the amount which he has spent towards repairs for the existing plot, which is allotted to the petitioner, i.e. the concerned plot, which is in the possession of the present petitioner. In view of the aforesaid subsequent aspect which happened after the purchase of the present plot, the petitioner went on making correspondence with the GIDC to sort out the aforesaid issues.

2. In view of the circumstances narrated above, the petitioner did not pay the regular instalments to the respondent-Corporation. In the meanwhile, it seems that, in the year 1996, the respondent-Corporation had given notice to the petitioner for eviction since it had not complied with the instalments regularly. At that time, the petitioner had paid Rs.5,00,000/- to the Corporation and a request was made that this amount may be adjusted towards the principal amount due from the petitioner. In the meanwhile, the petitioner went on making correspondence with the respondent. One of the representations of the petitioner is annexed at Annexure ''M'', which is dated 16th February, 1998. In the said

representation, the petitioner pointed out that since certain issues, which are not resolved by the Corporation till date, in spite of various reminders from the petitioner, the issue raised in the letter may be decided. In his representation, the petitioner had pointed out, in detail, the factual aspect of the existing plot as well as the one which he has purchased subsequently. In the said representation, the petitioner pointed out that the amount of Rs.15,421.75, which he has paid towards electricity bill, may be refunded to him. It is also pointed out by the petitioner in the representation that the issue about payment of tax to AMC also may be resolved at the earliest. The petitioner in the said letter pointed out that he has paid a sum of Rs.5,00,000/- towards the principal amount pending the issues regarding Corporation tax. The petitioner also pointed out in his representation that he has made payment of Rs.71,815/- towards purchase of plot, bearing No.80/1+2+3/A and still, the GIDC has failed to hand over the possession of the said plot since it is occupied by some other party. The petitioner, therefore, requested the Corporation to resolve all these issues which he highlighted in the aforesaid representation. Subsequently also, the petitioner made representations dated 21st February, 2000 and 9th June, 2000, but the fact remains that the aforesaid issues were not finalised by the GIDC and no final decision was taken in connection with the same. Under the said circumstances, since the GIDC failed to take any appropriate decision in this connection and since appropriate adjustment, as requested for by the petitioner, was not given to him by the GIDC, the petitioner has ultimately challenged the said action by filing this petition. It is prayed by the petitioner that the action of the respondent in refusing to revise the instalment schedule after appropriately accounting for payments made by the petitioner, as set out in the petition, as being towards the principal sum due, may be quashed and set aside and the Corporation may be directed to accept the computation or schedule of payment placed by the petitioner at Annexure ''R'' to the petition.

3. The facts of the case, as narrated above, clearly suggest that the petitioner, after obtaining the possession of the plot in question, and after making initial deposit of Rs.3,26,750/-, came to know that there were some outstanding liabilities of the earlier plot holder, which was never brought to the notice of the petitioner by the GIDC. Having realised that aspect, the petitioner started making representations with the GIDC, requesting them to clarify the situation. It is argued by Mr.Joshi that at the time of purchasing the property, the petitioner was made to understand that they had to pay only a certain amount by way of various instalments, which would roughly come to Rs.13,07,000/-. At that time, it was not known to the petitioner that there was a large tax liability of the Municipal Corporation or there was any outstanding liability of AEC, which is also required to be cleared up by the present petitioner. Under these circumstances, the conduct of the petitioner was most natural to the effect that, before paying the subsequent dues, as a prudent purchaser, he tried to ascertain the factual aspect from the GIDC, as according to the petitioner, this fact was required to be brought to its notice by the GIDC in advance. It is, therefore, submitted that it

can never be said that there was any intention on the part of the petitioner to withhold the payment of GIDC without any valid reason or that there was any mens rea on the part of the petitioner to withhold the aforesaid payment of the GIDC. It is submitted that in view of the fact that certain things were brought to their notice at a later point of time, when the petitioner received a notice from the Municipal Corporation for paying dues or the bill from the AEC for payment of the electricity charges, the petitioner started corresponding with the GIDC in this aspect. Subsequently, the petitioner, on its own, paid Rs.5,00,000/- in the year 1996 to the GIDC, when GIDC was threatening with some coercive process for taking possession. It is also required to be noted that even the respondent-Corporation failed to adjust the aforesaid payment towards the principal dues of the petitioner. Under these circumstances, it is prayed by the petitioner that prayer of the petitioner deserves to be granted.

4. On behalf of the GIDC, Mr.Macwan, however, submitted that it is, no doubt, true that the dues of the Electricity Company or dues of the Corporation were not required to be borne by the petitioner as there was no contract between the petitioner and the Corporation / Electricity Company in this behalf; yet, the petitioner should have continued to pay regular instalments awaiting final reply from the GIDC to its correspondence. He further submitted that so far as the other claims of the petitioner regarding adjustment of Rs.71,815/- regarding the plot, which was offered to the petitioner, in which there was an encroachment, as well as set off of Rs.50,940/- as repairing charges are concerned, even though there is justification on the part of the petitioner on the aforesaid two points, yet, the petitioner should have paid the instalments and, therafter, should have entered into correspondence for settling the aforesaid claims. Mr. Macwan has also relied upon the affidavit-in-reply filed by the GIDC.

5. I have heard Advocates of both the sides in detail and in my view, the stand taken by the GIDC in the present proceedings is highly unjustified.

As stated above, it is not in dispute that after payment of Rs.3,26,750/- towards 25% of the initial payment, the petitioner subsequently came to know about the amount payable to the Electricity Company as well as the amount payable to the Municipal Corporation. Under these circumstances, as a prudent purchaser, the petitioner tried to get the aforesaid factual aspect cleared from the GIDC before paying some more amount by instalments to the GIDC. When the petitioner is paying such a large amount, naturally, the petitioner would like to know whether their title to the property is clear or not. Considering the facts of the case, in my view, it cannot be said that the petitioner deliberately withheld the payment of instalments to the GIDC. In fact, it was expected from a public body, like the respondent-Corporation, to clarify the aforesaid factual aspect before the agreement was entered into by the petitioner and the GIDC in this behalf and that thing should have been clarified even before the allotment was made in favour of the petitioner. The GIDC, being a public body, therefore, should have acted in a reasonable manner and should have disclosed the aforesaid aspect to the present petitioner. Under these circumstances, in my view, it cannot be said that without any valid reason, the petitioner failed to pay the regular instalments of the GIDC. Even apart from that, subsequently, the petitioner did pay Rs.5,00,000/in the year 1996 and they had requested the GIDC to adjust the said amount towards the principal dues and that in view of the aforesaid factual aspect, the said prayer of the petitioner was absolutely justified and the said amount was required to be adjusted towards the principal amount. It is also required to be noted that, subsequently, the petitioner entered into another transaction of purchasing another plot, as mentioned in the earlier part of this order, and, as stated by Mr.Joshi, the petitioner in fact had paid Rs.71,815/ towards part payment of the total price. It is, however, not in dispute that the respondent-Corporation failed to hand over peaceful possession to the petitioner as the said plot was in possession of some third party and this fact is not at all in dispute. It is, no doubt, true that this is a different transaction and it may not have direct connection with the existing issue about the present plot of the petitioner. But it is also equally not in dispute that the Corporation retained the aforesaid amount of Rs.71,815/- with them, which was paid by the petitioner in 1992 and did not pay back the said amount even till today. Since the second transaction took place, practically, within a period of a couple of months, naturally, the petitioner requested the authorities to adjust the aforesaid amount towards the dues which are required to be paid by the petitioner by way of purchase price of the existing plot. In my view, such request on the part of the petitioner cannot be said to be unreasonable in any manner. On the one hand, the Corporation withheld the amount of the petitioner for more than 10 years and failed to hand over the possession to the petitioner, spoiling all the future plans of the petitioner for the purpose of starting its business activity and started demanding a larger amount towards penal interest from the petitioner towards unpaid instalments of the amount towards the present plot in question. It is required to be noted that the second transaction also relates to the same parties, i.e. the present petitioner and the respondent-Corporation, and it is also an admitted fact that till today, the Corporation failed to hand over the possession to the present petitioner. Under these circumstances, there was no justification on the part of the Corporation to refuse the request of the petitioner for adjustment of the aforesaid amount towards the principal amount, which the petitioner was required to pay towards the purchase of the present plot. If the petitioner had failed to pay up the instalments regularly and as per the time bound programme, the petitioner had some genuine reason for the same, as indicated above, i.e. the bills which they have received from the Corporation, Electricity Company, etc., while, on the other hand, the GIDC withheld the amount of the petitioner without any valid reason for such a considerable time and, in turn, failed to hand over the possession. Under the aforesaid circumstances, the petitioner went on making request to the GIDC to adjust the aforesaid amount of Rs.71,815/-, which is lying with the Corporation. Under the aforesaid circumstances, the petitioner had no alternative but to approach this Court with the present petition with a prayer that the GIDC may be directed to make necessary adjustments, as prayed for by the petitioner, and whatever payment which they have already made is requested to be adjusted towards the principal dues of the petitioner for the purpose of purchase of the present plot.

6. This Court (Coram : M.S. Shah, J.) passed the following order on 3.7.2000 :-

" ... ...

Mr.Joshi seeks leave to substitute Annexure-R. As per the Annexure-R tendered today, according to the petitioners, the petitioner-Company owes a sum of Rs.11,87,407/- only to the G.I.D.C. as on today.

On condition that the petitioner Company deposits aforesaid sum of Rs.11,87,407/- within ten days from today, notice returnable on 17/7/2000. Till then, there shall be ad interim relief in terms of para 21(B). To be placed in the first Board. D.S. Permitted.

... ... "

The petitioner deposited the said amount as per the aforesaid order of this Court and the said fact is not in dispute. On the subsequent date, i.e. on 13.10.2000, the Court admitted the petition and the respondent-Corporation was permitted to withdraw the deposit of Rs.11,87,407/-, which the petitioner made, and accordingly, the Corporation had withdrawn the said amount from this Court.

7. Since the Corporation adjusted the aforesaid payment of the substantial amount made by the petitioner towards interest only, the petitioner again moved this Court by way of Civil Application No.10050 of 2001. This Court, while admitting the said Civil Application, observed as under in paragraphs 3, 4 and 5 :-

" ... ...

3. The object underling the aforesaid directions was further that even if according to the GIDC''s calculations, any amount higher than the amount deposited was payable by the petitioners, at least the interest would stop running on the amount deposited by the petitioner and withdrawn by the GIDC. However, although the Court had made it clear that withdrawal of the amount is without prejudice to the rights and contentions of the parties and that the contention raised will be considered at the time of next hearing, by receipt dated 10.1.2001 issued by the Senior Accounts Officer, GIDC, Ahmedabad an amount of Rs.10,70,640/- has been adjusted against the penal interest and only Rs.1,05,480/has been adjusted against the principal amount. This is clear from Annexure III to this application.

4. The receipt at Annexure III to the application, therefore, prima facie runs counter to the letter as well as the spirit of the aforesaid orders passed by this Court on 3.7.2000 and 13.10.2000 which expected the GIDC to take a reasonable stand and to make an attempt for resolving the differences with the petitioner in the spirit in which the above orders were made.

5. An affidavit shall, therefore, be filed by the GIDC explaining why the calculations made by the petitioners as per Annexure "R" (pages 39 to 41) to the petition have not been accepted.

... ..."

It is not in dispute that the Corporation has not filed the affidavit, as ordered by this Court in paragraph 5 of the said order. In view of the same, it is argued by Mr.Joshi that it should be presumed that the Corporation has nothing to explain or nothing to say as regards the calculation put in by the petitioner, as per Annexure ''R'' and the said Annexure ''R'' should be presumed to have been accepted by the GIDC in view of the conduct of the GIDC by not filing a reply to the same.

8. At this stage, the affidavit-in-reply filed by the Corporation is also required to be considered. In paragraph 5.2 of the reply, the Corporation has averred as under :-

" ... ...

5.2 With reference to the contents of paragraph 5 of the petition, I deny the contentions of the petitioner inasmuch as it is not true that the petitioner had brought to the notice the repairs to be carried out in the shed of the respondent Corporation by a separate list. However, I submit that the respondent Corporation has given a set off of Rs.50,940/- as repairing costs vide order No.RMA-AO-GTW-SHD-5886 dated 19-11-1996. (Annexure "K" to the petition). The grievance as stated in the said paragraph, therefore, does not survive.

... ..."

In view of the said averment, it is clear that the Corporation has agreed and, in fact, has given set off of Rs.50,940/- as repairing costs by an order dated 29.11.1996. In view of this clear averment, in my view, this amount is really required to be adjusted towards the principal amount which the petitioner was required to pay to the Corporation. Under the circumstances, it is not open for the Corporation to adjust this amount only from 29.11.1996 as this was required to be done from the very beginning and since the GIDC has accepted the liability to pay the said amount, it is not open for them to charge penal interest for the period in question.

In paragraph 4.3 of the reply, it is averred by the GIDC that the petitioner was not required to pay the amount payable to the AEC and AMC as it was the outstanding bills of a third party. It is, however, required to be noted that in order to prevent the disconnection, the petitioner was required to pay the amount payable to the Electricity Company and the said amount is not adjusted by the GIDC till today.

So far as the amount payable to the petitioner towards another plot are concerned, the averment in paragraph 5.5 of the reply is as under :-

" ... ...

5.5 With reference to the contents of paragraph 8 of the petition, the averments of the petitioner are true in as much as the respondent Corporation has allotted to ACI plot No.80/1+2+3/A admeasuring 1084 sq. mts. (tentative area) of land. However, due to encroachment and trespass committed by the adjoining allottee, namely, M/s. Gayatri Pesti. Chem., I submit that now the respondent Corporation has decided to lodge a criminal complaint as well as other legal action against the said encroacher M/s. Gayatri Pesti. Chem and is willing and ready to hand over the possession of the said plot to the petitioner when the possession is obtained or alternatively refund the initial amount paid by the petitioner with interest, if any, as per the rules of the respondent-Corporation. In my humble submission, this matter can be resolved by negotiations and mutual understanding.

... ..."

It is required to be noted that, on the one hand, the Corporation suggests that the matter can be resolved by negotiations and mutual understanding, but, the Corporation has not thought it fit to resolve the points raised by the petitioner in this petition in a similar manner of mutual understanding and negotiations, even though the petitioner went on making representations from time to time in this behalf. This type of conduct is, therefore, not expected from a public body. Since the factual aspect about payment of amount to the Electricity Company as well as not refunding the amount payable to the petitioner concerning another plot is not in dispute, and it is also equally not in dispute that the said amount is lying with the GIDC since more than 10 years, it is difficult to appreciate the stand of the GIDC in not giving necessary adjustment, as prayed for by the petitioner from time to time. In any case, considering the aforesaid aspect of the matter, in my view, there is absolutely no justification on the part of the Corporation not to adjust the amount paid by the petitioner as per the order of this Court, i.e. Rs.11,87,407/- towards the principal dues of the petitioner.

9. It is argued by Mr.Joshi that the petitioner has cleared up the entire dues much in advance because as per the schedule of payment, the petitioner was required to make the last instalment by June, 2002, as per the table at page 10. As against that, the entire principal amount, with interest, which was agreed between the petitioner and the Corporation is paid by the petitioner by July, 2000. So far as the aforesaid factual aspect is concerned, that is not in dispute. Therefore, as such, the petitioner has cleared up the principal amount prior in time. Not only that, even as per the agreed rate of interest also, they have cleared up the dues. Under these circumstances, in my view, this is not a case in which the Corporation should have asked the petitioner to pay penal interest as the petitioner was asked to pay amount payable to the Electricity Company, even though the GIDC has accepted that it was not their liability to pay the same. Secondly, the issue about payment of Municipality Tax was at a liquid stage at least for some time till the petitioner was informed that it is not the duty of the

petitioner to pay the said dues and, therefore, if the petitioner waited for some time in order to get the said clarification, by withholding some instalments, it cannot be said that the said action of the petitioner was deliberate in any manner. The Corporation, though a public body, withheld the just amount of the petitioner to the tune of Rs.71,815/- and, admittedly, the Corporation failed to hand over the possession to the petitioner and, instead, advised the petitioner to negotiate with it for the said payment. Under the circumstances, it is absolutely reasonable on the part of the petitioner to request the GIDC to adjust the same towards the purchase of the existing plot. Even the interest accrued on the said amount is also required to be adjusted towards the aforesaid dues of the petitioner towards the purchase of the present plot. In fact, considering the aforesaid factual aspect, the stand of the Corporation is absolutely unjustified in not adjusting Rs.11,87,407/in view of the order of this Court (Coram : M.S. Shah, J.). Not only that, the initial payment of Rs.5,50,000/was also required to be adjusted towards the principal dues of the petitioner and that the aforesaid issues were not finalised at the end of the GIDC. Therefore, I find considerable force in the said argument of Mr.Joshi, that as a prudent purchaser, there was nothing wrong on the part of the petitioner to be doubly sure of the said aspect before investing large amount. It was expected from the Corporation to repay the amount of the petitioner, which was lying with them, as they failed to hand over the possession of a plot, which was purchased by the petitioner and, instead, retained the amount for all these years by advising the petitioner to try to settle the dispute by mutual negotiations. The said stand is exhibited by the Corporation in its reply in paragraph 5.5.

Considering the aforesaid conduct on the part of the petitioner, this is not a case in which the Corporation should have penalised the petitioner by way of charging penal interest from them. Considering the said factual aspect of the matter, I direct the GIDC to adjust the payment made by the petitioner, as indicated above, towards the principal amount, especially when the said amount also covers the contractual rate of interest entered into between the parties. It is also required to be noted that even though this Court has passed a specific order in Civil Application No.10050 of 2001, by which the GIDC was directed to file its affidavit, explaining why the calculation made by the petitioner as per Annexure ''R'' to the petition is not accepted by them, no such affidavit-in-reply is filed. It gives an impression as if the GIDC has accepted the said calculation by not filing any reply or objection to the same and the said Annexure ''R'' is not seriously disputed by the respondent, either by way of appropriate reply or even while defending their action at the time of hearing of this petition.

10. Under the aforesaid circumstances, in my view, the petition deserves to be allowed. The Corporation is directed to give necessary adjustment to the petitioner towards payment of electricity dues and adjusting the amount paid by the petitioner towards purchase of another plot and the said payment should be taken into consideration at the time of adjusting the principal dues of the petitioner. It is also directed that in the facts and circumstances of the case, the

payment made by the petitioner, as stated above, to the tune of Rs.11,87,407/-, may be adjusted towards the principal dues of the petitioner. Further, considering the prayer of the petitioner, Rs.5,00,000/- was required to be adjusted towards the principal dues. The Corporation is, therefore, directed to consider the request to adjust Rs.5,00,000/-, which they have paid in 1996, towards principal amount. I am sure that the Corporation will now take appropriate decision in this connection in the matter of adjustment of the aforesaid amount and as observed earlier, since the petitioner has already paid the contractual rate of interest with the principal dues, this Court is of the opinion that this is not a case in which the Corporation should have charged penal interest from the petitioner, looking to the chequered history and facts of the case and the Corporation is contributorily responsible for creating a situation by not removing the clouds over the title of the property.

11. The Corporation is directed to give necessary adjustment as observed by this Court in this order and, thereafter, may take appropriate decision in this connection and, ultimately, if it is found that now, nothing further is required to be paid by the petitioner, appropriate certificate, in the nature of "No Due Certificate", as per Rules, may be given to the petitioner. While taking such decision, the Corporation shall consider the aspect, as indicated above, and appropriate decision in the light of this order may be taken within a period of two months from the date of receipt of the writ of this court.

12. Before parting with this order, it is clarified that this Court has not considered the question about the amount payable to the Municipal Corporation since the aforesaid matter is a sub judice matter before this Court and the question whether the petitioner is liable to pay the aforesaid amount or not or whether they can seek for reimbursement of the said payment is also not considered by this Court as this order is passed considering the factual aspect about the justification of certain amounts which the petitioner is entitled to as well as the justification on the part of the petitioner in the matter of some delay in making payment of instalments on cogent grounds, as has been exhibited by the petitioner in this petition and whether the Corporation was justified in charging penal interest in the facts of the present case.

13. The petition is accordingly allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs. Interim relief, if any, shall stand vacated subject to the aforesaid directions.

In view of the disposal of the main Special Civil Application, Civil Application No.10050 of 2001 is also disposed of. Rule is discharged. Ad interim relief is vacated, with no order as to costs.

