

(1999) 12 GUJ CK 0057

In the Gujarat High Court

Case No : Special Civil Application No. 2468 of 1999

Devshibhai Bhimabhai Rabari

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-12-1999

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 211

Citation : (2001) 2 GLR 1097

Hon'ble Judges : Anil R. Dave, J

Bench : Single Bench

Advocate : Satyen B. Rawal, for the Appellant; U.A. Trivedi, A.G.P, for the Respondent

Final Decision : Partly Allowed

Judgement

A.R. Dave, J.—Rule. Learned A.G.P. Shri Umesh Trivedi waives service of rule for the respondents. At the request of the learned Advocates, the petition is taken up for final hearing today.

2. The facts, in a nutshell of the case are as under : By an order dated 8-4-1985, the Deputy Collector, Wadhwan Sub-division of Surendranagar district had granted 2 acres of land which was forming part of government land bearing Survey No. 714 situated at village Vadod. In the order, the Deputy Collector had stated that the land in question was a fragment and was having an irregular shape and as it was not possible to dispose of the said land independently, it was granted in favour of the petitioner who was having his land adjacent to the said land.

3. By another order dated 5-12-1992, the Deputy Collector, Wadhwan Subdivision of Surendranagar had granted 1 acre of government land forming part of Survey No. 714 situated at village Vadod, taluka Wadhwan to the petitioner on the ground that the said land was a fragment and it was not possible to dispose of the said land independently.

4. Before passing the above-referred two orders, the concerned Deputy Collector had made some inquiry and had enquired from the persons who were having lands in the vicinity whether they were interested in purchase of the lands which were to be granted to the petitioner. The owners of adjacent lands had not shown their inclination for purchase of the said lands. Even the concerned gram panchayat was not interested in using the lands in question for any public purpose, and therefore, ultimately the Deputy Collector had granted the said two pieces of lands to the petitioner by the orders referred to hereinabove.

5. The said two orders passed by the Deputy Collector were taken into revision by the Collector, Surendranagar. Show-cause notices dated 20-9-1993 were given to the petitioner stating the fact that the lands which were granted to him by the Deputy Collector were not fragments and it was possible to dispose of the said lands independently, and therefore, the said orders were not proper or legal. By the show-cause notices, the petitioner was called upon to show cause as to why the said two orders of the Deputy Collector should not be quashed and set aside.

6. In pursuance of the said show-cause notices, the petitioner was heard and ultimately, after hearing the petitioner, by the impugned order dated 12-6-1996, the two orders passed by the Deputy Collector referred to hereinabove, were quashed and set aside. Being aggrieved by the said order dated 12-6-1996 passed by the Collector, the petitioner had approached the State Government by way of a revision application under the provisions of Section 211 of the Bombay Land Revenue Code (hereinafter referred to as "the Code"). The said application was rejected by an order dated 7-11-1998. Being aggrieved by the order passed by the Collector, Surendranagar, and the order dated 7-11-1998 passed by the State Government, the petitioner has approached this Court.

7. Learned Advocate Shri Satyen Rawal appearing for the petitioner has submitted that the impugned orders passed by the Collector and the State Government are illegal and unjust. He has submitted that the orders passed by the Deputy Collector were taken into revision by the Collector, Surendranagar after more than one year, and therefore, the order dated 12-6-1996 is bad in law and is also against the principles laid down by the Hon"ble Supreme Court in the case of State of Gujarat v. Paid Raghav Natha & Ors. 1969 GLR 992.

8. Moreover, he has submitted that one piece of land was granted in 1985 whereas the Collector had considered a resolution which was passed by the Government in 1989 for the purpose of cancelling the grant. He has submitted that the policy of the government framed after the order of the grant could not have been considered by the Collector, Surendranagar while examining legality of the order whereby the land was granted to the petitioner.

9. Learned Advocate Shri Rawal has also submitted that the impugned order of the Collector refers to a report dated 27-7-1995. The said report was not shown to the petitioner and as the Collector had relied upon the report which was not

shown to the petitioner, the impugned order is violative of the principles of natural justice.

10. So far as the order dated 5-12-1992 passed by the Deputy Collector is concerned, it has been submitted by learned Advocate Shri Rawal appearing for the petitioner that the said order is unjust, illegal and improper as there was nothing on record to change the view of the Collector for cancellation of the said grant. It has been submitted by him that as the persons owning lands in the vicinity were not interested in purchase of the said land and as the concerned gram panchayat was also not interested in using the land in question, the Deputy Collector had rightly granted 1 acre land to the petitioner under his order dated 5-12-1992. It has been submitted by him that the land in question was not being used by anyone for agricultural purpose and as it was a fragment as observed by the Deputy Collector, the order of the Deputy Collector should not have been cancelled.

11. Learned Advocate Shri Rawal has shown a map giving details about the land in question and the land belonging to the petitioner to show that the land in question is adjacent to the land belonging to the petitioner and the said land could have been granted only to the petitioner. Learned A.G.P. Shri Trivedi has objected to placing the said map on record for the reason that the said map has not been prepared by any authorised person and the said map was not on record. Be that as it may, it is not in dispute that the land which was granted by the Deputy Collector by his order dated 5-12-1992 is 1 acre and that cannot be treated as a fragment, because it is forming part of land bearing survey No. 714 which admeasures approximately 1185 acres. In the circumstances, the submission made by the petitioner's Advocate is not at all well-founded.

12. On the other hand, learned A.G.P. Shri Trivedi appearing for the government authorities has submitted that as the illegality committed by the Deputy Collector had come to the notice of the Collector somewhere in 1992, the Collector had taken prompt action for taking the order of the Deputy Collector into revision. In the circumstances, he has submitted that as the Collector, Surendranagar had taken prompt action of issuing show-cause notices immediately after knowing the facts about the illegality and irregularity committed by the Dy. Collector, it cannot be said that there was delay in initiation of proceedings by him.

13. Learned A.G.P. Shri Trivedi has also submitted that the view of the Deputy Collector that the land admeasuring 1 acre can be treated as a fragment is absolutely incorrect. It has been submitted that the land which has been granted under the order dated 5-12-1992 is irrigated land and by no stretch of imagination, it can be said that the land is a fragment. He has submitted that it was possible to dispose of the said land independently and it is not a fragment.

14. In reply to the submission regarding violation of the principles of natural justice, learned A.G.P. Shri Trivedi appearing for the respondents has submitted that as relevant record was not forwarded to the Collector, Surendranagar, the

Collector had addressed a letter dated 30-5-1995 to the concerned Talati-cum-Mantri asking him to send the relevant papers and send his explanation as to why the relevant papers were not sent to the office of the Collector, Surendranagar. In response to the said letter dated 30-5-1995, a letter dated 27-7-1995 was written by the Mamlatdar, Wadhwan to the Collector, Surendranagar. Along with the said letter, relevant papers pertaining to the case were forwarded to the Collector. Upon perusal of the files, no report other than the above-referred letter dated 27-7-1995 could be traced. Thus, it is clear that the letter dated 27-7-1995 has been treated as a report of the Mamlatdar. Of course, the Mamlatdar has given certain facts giving rise to the revision application, but he has not submitted his report under the said letter. In view of the said facts, it was not at all necessary to give a copy of the said letter which was only a part of office correspondence. Moreover, it has also been submitted by learned Advocate Shri Trivedi that the point with regard to not showing the document dated 27-7-1995 ought to have been taken by the petitioner before the State Government in the Revision Application. Had the said point been raised there, the revisional authority could have dealt with the said point in an appropriate manner.

15. After hearing the concerned Advocates, I do not find any substance in the submission made by learned A.G.P. Shri Trivedi that there was no delay in initiation of proceedings u/s 211 of the Code by the Collector, Surendranagar. Looking to the facts of the case, in my opinion, much delay had been caused in taking the order dated 8-4-1985 into revision because show-cause notice was given to the petitioner on 20-9-1993, and therefore, the petitioner should succeed so far as the order of the Collector pertains to cancellation of the order dated 8-4-1985 passed by the Deputy Collector. Moreover, policy of the government which was framed after the land was granted to the petitioner could not have been considered by the Collector, Surendranagar, for the purpose of cancellation of the grant. Thus, on the grounds stated hereinabove, the order of the Collector, so far as it quashes and sets aside the order dated 8-4-1985 is concerned, cannot be sustained, and is therefore, quashed and set aside to that extent.

16. So far as the order of the Deputy Collector dated 5-12-1992 is concerned, I find substance in what has been submitted by learned A.G.P. Shri Trivedi as it cannot be said that the said order was taken into revision by the Collector at a belated stage because the show-cause notice was issued by the Collector, Surendranagar on 20-9-1993, and therefore, looking to the facts of the case, it can be said that the said order was taken into revision within reasonable time.

17. So far as the submission regarding violation of the principles of natural justice is concerned, in my opinion, it cannot be said that the Collector, Surendranagar has violated any of the principles of natural justice by not supplying a copy of the letter dated 27-7-1995 to the petitioner. The said letter is only a part of office correspondence and it has nothing to do with the merits of

the case. It is not necessary that copies of all documents should be given to the concerned party. If a document, on which no reliance is placed by the authority for the purpose of taking the decision, is not shown to the concerned party, by no stretch of imagination it can be said that non-supply of the copy of the document or not showing the document would amount to violation of any of the principles of natural justice.

18. It is a settled principle of natural justice that no material should be relied upon by the concerned authority unless the concerned party has been given an opportunity of explaining it. The material to be relied upon must be placed before the person, against whom it is to be used, for his information so as to enable him to offer his comment or criticism on the said material. Thus, as a general rule, the principles of natural justice are violated when the material not disclosed to the concerned party is used against him for the purpose of arriving at final conclusion against him. However, the said principle shall not be violated when the material not disclosed to the concerned party is not prejudicial to him or is not considered for the purpose of deciding the case.

19. Looking to the settled principle stated hereinabove, it cannot be said that in the instant case, principles of natural justice were violated. The letter which has been referred to in the order of the Collector, Surendranagar, is not a document which was relied upon by the Collector, Surendranagar for deciding the case or that letter was not used by the Collector, Surendranagar for arriving at any conclusion against the petitioner in the process of deciding the case against the petitioner. The said letter, as stated earlier, was only a part of office correspondence which was sent along with the record of the case from one office to another office. At the most it narrated the background in which the case had arisen for consideration of the Collector, Surendranagar, but in any case, it was not a document which was relied upon by the Collector, Surendranagar for deciding the case against the petitioner. In view of the facts of the case, in my opinion, not giving a copy of the said letter to the petitioner would not result into violation of the principles of natural justice, and therefore, I do not accept the submission of the learned Advocate for the petitioner.

20. Moreover, learned A.G.P. Shri Trivedi is also right in his submission that the petitioner ought to have raised the said contention before the State Government so that while deciding the said revision, the State Government, as a revisional authority could have dealt with the said contention and could have recorded its specific findings thereon.

21. Argument of learned Advocate Shri Rawal that there was nothing on the record for the Collector to change the view of the Dy. Collector cannot be accepted for the reason that the Collector, Surendranagar, has definitely come to a conclusion that two acres of land cannot be said to be a fragment. Moreover, Survey No. 714 is a huge piece of land admeasuring 1185 acres and 39 gunthas, and therefore, it cannot be said that it is a small piece of land which cannot be independently disposed of. Upon perusal of the order passed by the Collector,

Surendranagar, it is clear that the Deputy Collector, Wadhwan Sub-division had committed an error by treating the piece of land admeasuring 2 acres as a fragment though the said land is a part of Survey No. 714. Only upon perusal of the record of the case, the Collector, Surendranagar had arrived at the said conclusion. Had the Dy. Collector, Wadhwan applied his mind to the facts of the case before the grant of the land in question, he too could have found the facts which were found by the Collector, Surendranagar. It is thus clear that the grant was in violation of the government policy and the gross irregularities committed by the Dy. Collector, Wadhwan were patent on the record of the case. In view of the said fact, I do not find substance in the arguments of Shri Rawal.

22. There is no substance in the argument of the petitioner's Advocate that the orders of the Dy. Collector granting the lands to the petitioner were proper simply because the lands granted to the petitioner were not being used by anyone or they were not likely to be used for any public purposes by the concerned Gram Panchayat. The Collector, Surendranagar, has rightly observed that the lands granted to the petitioner were not fragments and the orders of grant were therefore not proper as the Dy. Collector had treated the said lands as fragments.

23. In the circumstances, the petition is partly allowed. Impugned orders passed by the Collector, Surendranagar and the State Government are quashed and set aside to the extent to which they have cancelled the order of the Deputy Collector dated 8-4-1985. In other words, grant of land in favour of the petitioner under order of the Deputy Collector, Wadhwa Sub-division of Surendranagar dated 8-4-1985 is upheld but the order dated 5-12-1992 passed by the Deputy Collector is held to be bad in law as found by the authorities below.

24. It has been submitted by learned Advocate Shri Rawal that in the event of disposal of the land which was covered by the order of the Deputy Collector dated 5-12-1992, the petitioner should be given some priority. In my opinion, no priority can be given to the petitioner but in the event of disposal of the said land, if the petitioner puts in any proposal or if the said land is put to auction and if the petitioner participates in the auction, I am sure that the case of the petitioner would be considered on merits by the concerned authority without being influenced by the fact that the earlier grant in favour of the petitioner had been cancelled.

25. The petition is thus disposed of as partly allowed. Rule is made absolute to the above extent with no order as to costs.

26. Application partly allowed.