

(2012) 02 GUJ CK 0119

In the Gujarat High Court

Case No : Special Civil Application No. 18012 of 2011 With Special Civil Application No. 18013 of 2011 to Special Civil Application No. 18014 of 2011

Divyant Thakorebhai Patel

APPELLANT

Vs

Commissioner of Geology and Mining and 2

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 02 GUJ CK 0119

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : P.S. Patel for Petitioner 1, for the Appellant; Asmita Patel AGP for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice S.R. Brahmbhatt

1. Rule. Ms. Patel, learned AGP waives services of notice of Rule on behalf of respondents in these petitions. By consent, rule is fixed forthwith.

2. In these three petitions, the facts are identical and impugned orders are also identical, hence, these petitions are being heard and disposed of by this common judgment and order.

3. The petitioner, by way of this petition under Article 226 of the Constitution of India, has approached this Court initially challenging only the inaction on the part of respondents in not handing over the possession of the lease area pursuant to the lease deed executed on 27.05.2011. The petitioner has filed petition on 30.11.2011. this Court (Coram: Smt. Abhilasha Kumari, J.) on 19.12.2011, passed the following order:

Heard Mr. P.S. Patel, learned advocate for the petitioner. Notice returnable on 28.12.2011. In addition to the normal mode of service, direct service is also

permitted.

The notice was thus made returnable on 28.12.2011. The concerned Collector - respondent no. 2, as could be seen from the record, appears to have been served or has received the notice of this Court on 21.12.2011. In other words, the respondent no. 2 was aware about the challenge contained in this petition, which was in respect of inertia on the part of concerned Collector in not handing over the possession of the lease area despite execution of lease deed on 27.5.2011. On 27.12.2011, the impugned order of cancelling the lease was passed for the reasons stated thereunder, which came to be challenged by way of appropriate amendment, which came to be granted by this Court on 24.01.2012.

4. Learned advocate appearing for the petitioner has contended that the order impugned is issued without any opportunity of being heard to the petitioner. Had there been an opportunity of being heard to the petitioner, the petitioner would have in a position to indicate the concerned Collector as to how and under circumstances the revocation was not permissible. Learned advocate for the petitioner has confined this petition to the one and only prayer that let there be a direction to the concerned collector to hear the present petitioner and an opportunity of being heard be given to the petitioner so that appropriate representation in respect of action proposed by the Collector could be taken. In case, if the Collector concerned is not proposing to have any action hereafter, then, there is no requirement of granting any opportunity of being heard be given. Learned advocate for the petitioner has further submitted that the facts narrated in the memo of petition would go to show that the respondent no.2 appears to have relied upon some guidelines or communication dated 15.05.2010 and 06.04.2011, which were admittedly communications prior to the execution of the lease deed dated 27.05.2011. Hence, despite there being existence of guidelines, the lease was executed and therefore, the Collector having executed lease, did not have any unilateral power to revoke the same by simple order of revocation of lease itself.

5. Learned AGP submitted that the concerned Collector has exercised this power in the public interest and as per the guidelines issued by the State, and said fact is also mentioned by the concerned Collector in its order. Learned AGP has submitted that the said guidelines dated 15.05.2010 and 06.04.2011 are not subject matter of challenge in this petition and also stated that as the action of the Collector is in consonance with the guidelines, then, the petitioner is not entitled to seek any relief from this Court. Learned AGP further stated that under allotment letter dated 06.04.2011 and execution of lease dated 27.05.2011, no possession had been passed in favour of the petitioner and hence, the petitioner was not justified in seeking any relief when the concerned Collector himself has no authority to grant lease under the guidelines pressed into service namely the guidelines dated 15.05.2010 and 06.04.2011. Learned AGP has also submitted that the petitioner has efficacious alternative remedy and therefore, the present petitions are not maintainable. To which, learned advocate Shri Patel appearing

for petitioner has submitted that the Collector has exercised the powers, which are not existing at all and hence the submission with regard to availing of alternative remedy cannot be pleaded at bar in maintaining these petitions.

6. This Court has heard the learned advocates for the parties and perused the impugned order.

7. The following indisputable facts that emerged therefrom deserve to be set out as under:

I. The guidelines, which have been sought to be pressed into service are guidelines dated 15.05.2010 and 06.04.2011.

II. Despite these two guidelines, fact remains to be noted that the lease came to be granted on 06.04.2011 and lease deed came to be executed on 27.05.2011. These acts dated 06.04.2011 and 27.05.2011 cannot be said to be an act perpetrated ignorance of the guidelines in question. Assuming for the sake of arguments without holding that these were the guidelines, which were not noticed by the concerned Collector, then also, the question arises as to whether, does he have any power after the lease deed is executed only on account of fact that possession was not given, to cancel the said lease deed unilaterally.

III. The facts remained to be noted that the petitioners were never heard before the impugned order dated 27.12.2011 came to be passed. this Court need to be mindful of the fact that the petition was filed by the petitioner for seeking possession of lease and court had issued notice on 19.12.2011 making it returnable on 28.12.2011 and impugned order of cancellation was passed on 27.12.2011. Thus, it remains enigma as to under what circumstances the concerned Collector felt himself compelled to pass the order, when the writ petition is at large before the Court and cancellation would have directly affect the pendency of the petition and the Collector himself was aware of the order dated 19.12.2011 i.e. the order on which the order notice is issued by this Court and that order is served upon the concerned respondent no.2, as could be seen from the record of the case, that said order was received by the concerned collector on 21.12.2011. Thus, when the writ petition is pending before the court, nothing prevented the concerned collector to place before the court appropriate facts and seek adjudication thereon. Inspite thereof, unfortunately, the respondent no. 2 - concerned Collector has evinced scan disregard for the process of law and acted highhandedly, which in my view, would not justify in passing the impugned order i.e. of course beside the merits.

IV. Even on merits, the court is of the view that the concerned collector was under absolute duty to issue show cause notice to the concerned petitioner before passing the impugned order of revoking. In the instant case, the concerned collector has not issued any notice of hearing to the concerned petitioner before passing the impugned order of revocation.

8. In view of the aforesaid indisputable aspect, this Court is left with no choice

but to quash and set aside the order impugned in these petition and observed that when this Court is seized with the matter, in which the citizen has agitated the issue with regard to not giving him possession, then, straightway taking action of revocation of lease without issuing show cause notice to the petitioner, would amount to an attempt to overreach the process of court, which in my view, cannot be continuance in any manner. However, the court does not delve elaborately much upon this aspect. Suffice it to say that the concerned Collector ought to have taken these factors in mind before passing the order impugned.

9. In view of the aforesaid discussion, the impugned order in each petition is quashed and set aside and the matters are remanded back to the concerned Collector for enabling him to decide the issue afresh after affording due opportunity of being heard to concerned petitioners. It goes without saying that in case, any adverse order is passed, then, it will be open for the petitioners to approach this Court afresh. The petitions are allowed. Rule is made absolute in each matter to the aforesaid extent. There shall be no order as to costs. Direct service permitted.

10. Registry is directed to keep copy of this order in each matter.