

(1981) 03 GUJ CK 0010
In the Gujarat High Court
Case No : Second Appeal No. 444 of 1978

Doshi Mohanlal Durlabhji

APPELLANT

Vs

Savarkundla Municipality

RESPONDENT

Date of Decision : 26-03-1981

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 65, 66
Specific Relief Act, 1963 — Section 37, 38, 41

Citation : AIR 1982 Guj 6 : (1982) 1 GLR 290

Hon'ble Judges : V.V. Bedarkar, J

Bench : Single Bench

Advocate : D.U. Shah, for the Appellant; A.P. Ravani, for the Respondent

Judgement

1. This is an appeal against the judgment and decree passed by the learned District Judge, Bhavnagar in Regular Civil Appeal No. 23 of 1977, allowing the appeal of Savarkundla. Municipality and setting aside the Judgment and decree passed by the learned Civil Judge, Junior Division, Savarkundla in civil Suit No. 22 of 1973 in favour of the plaintiff (present appellant) restraining the defendant Municipality (present respondent) from reauctioning or reselling plots Nos. 1 and 8 hem the land of Krishna Oil Mills Savarkundla.

2. The case of the appellant-plaintiff is that the defendant-Municipality had published an advertisement for auction various plots of Krishna Oil Mill

*Only portions approved for reporting by High Court are reported here.

**Against decision of N. K. Desai. Dist J.,Bhavnaear, in Civil Appeal No. 23 of 1977.

land of Savarkundla, and according to the accepted Position, at the auction held On 25-4-1968 he was the highest bidder for plot Nos. 1 and 8 and his bid for Plot No. 1 was Rs. 10,325/-, and for plot NO. 8 was Rs. 11.501/-. According to the plaintiff, this auction was confirmed by the municipality and, therefore, as per the conditions, Plots were to be given to the highest bidder and the highest bidder had to pay one-half of the purchase price on acceptance of the bid, and second condition was that the balance of the purchase price was to be Paid within 15 days of the acceptance " on the information given by the municipality. According to the plaintiff. he was given notices by the municipality on 26-4-1968 to deposit half the Price for those two plots. Those notices are Exs. 44 and 45. According to the plaintiff, he went to pay the said amount but he was informed that as there was stay order from the Collector, the amount would not be accepted. It is therefore, his case that he did not receive any intimation thereafter to pay the amount.

3. As against this, it is the defendant-municipality that case of the plaintiff was sent intimation to pay Up the amounts, but as he did not pay the same, the auction in favour of the plaintiff was cancelled. and the municipality arranged to re-auction the plots. As the municipality attempted to re-auction the plots, the plaintiff filed the aforesaid suit for injunction restraining the municipality I from auctioning the said plots which were purchased by him as a highest bidder in the auction.

4. The trial Court, as stated earlier, granted the relief Prayed for by the plaintiff, but the appellate Court set aside the decree of the trial Court. Therefore, the plaintiff has come in appeal.

5.-7 x x x x

8. During the arguments, permission was sought from me also to argue whether this was a completed contract, and whether there was any scope for the plaintiff to ask for mere injunction restraining the municipality from not selling the said Plots without asking for possession. This argument was advanced by Mr. A. P. Ravani, learned Advocate for the respondent-defendant (municipality) mainly because the plaintiff has come with a suit in a very peculiar manner to restrain the municipality from selling the Plots for all time to come without asking for Possession by making a prayer to make payment of sale consideration or depositing that amount before the Court at anytime before, he wants to bold the municipality at ransom by adopting the doe in the manger, Policy by asking for an injunction simpliciter without asking, relief for possession.

9.10. x x x x

11. Before going into the details of this aspect, without entering into the minutest details of facts, it will be proper for me to narrate some facts. and one

of the facts is that according to the municipality, it had sent notices to the Plaintiff to Pay up the amounts. but the Plaintiff did not pay up the said amounts. and therefore, the municipality was required to sell the plots by holding the auction again.

12. In this background, now it has to be considered whether the plaintiff can get an injunction. Under the provisions of Sec 37 of the Specific Relief Act, 1963 (hereinafter referred to as "the Act"), the modes of granting temporary and perpetual injunctions "are given. Sub-section (1) of it shows the types of temporary injunctions to be those which will continue until a specified time, or until the further order of the Court, and, may be granted at any stage of a suit and are regulated by the CPC 1908. while sub-section (2) of 11 shows that .a. Perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act , which would be contrary to he rights of the plaintiff. It is the submission of Mr. D. U. Shah that in the instant case the plaintiff has a right to purchase the plots in question and, therefore, when the municipality wanted to commit an act which was contrary to the rights of the plaintiff, the Plaintiff has a right to obtain a perpetual injunction.

13. The question that is relevant for. consideration is whether the plaintiff has really obtained a right which can be considered to be a right in terms of law so that he can obtain the perpetual injunction? u/s 38(1) of the Act, perpetual injunction may be granted to the plaintiff to Prevent the breach of obligation existing in his favour whether expressly or by implication. Sub-section (2) Of it provides that when any such obligation arises from contract, the Court shall be guide by the rules and provisions contained in Chapter II of the Act refers to Specific Performance of Contracts. Question that has been posed before me is whether there was a contract. it is submitted that in order that this auction can be complete. and the municipality would be liable to sell the lands to the Plaintiff. it should be necessary for the Plaintiff to prove that he had paid the amount to the municipality according to the conditions Of the auction. The conditions of auction are produced at Mark - 13/1. Those conditions are as stated earlier, that one-half of the amount shall be deposited immediately on the acceptance of the auction, and the remaining one half of the amount shall be paid after the person is informed of the approval of the General Board of the municipality. and that amount should be paid within 15 days of that information, and if there will be a default. then there will be re-auction. Clause 5 of the said conditions is that possession of the plots will be handed over after the sanction by the General Board of the Municipality and- after an application "is made after the entire amount of the 15lats is paid. The defendant-municipality has come out with a case that so far as the plaintiff was concerned, the municipality did not pass any resolution to grant the plots to him

14. xxxxx

15. Now..what is the effect of the municipality not having passed the resolution?

This has become material because u/s 41(e) of the Act, an injunction cannot be granted to prevent the breach of a performance of which would not be specifically enforced: So far as specific performance of contracts is concerned there is already Chapter 11 about which reference is made in Section 38 of the Act. This Chapter II refers to the contracts which are complete in themselves. while under Sections 65 and 66 of the Gujarat Municipalities Act. 1963, there are some formalities which are required to be completed before the contract with the municipality can be said to have been entered into. If from those Provisions it can be shown that the contract was not complete, then specific performance cannot be ordered and if so, u/s 41(e) of the Act an, injunction cannot be granted.

16 u/s 65(3) of the Gujarat municipalities Act, in the Case of a lease for a period exceeding one year or of a sale or other transfer of immovable property the market value of, which does not exceed one lakh of rupees or contract for the purchase of any Immovable property. the sanction of the municipality by a resolution passed at a general meeting is required. As rightly observed by the learned appellate Judge, there is no evidence to, show that such a resolution was Passed by the municipality, and if that is so, the contract was not complete. u/s 65(5) of the Gujarat Municipalities Act No contract -shall be binding on a municipality unless the requirements of this section have been complied with, and if there was to be a completed contract then, the provisions of Section 66 of the Gujarat, Municipalities Act would come into operation. wherein there would be a contract entered into under the common seal of the municipality. So this was not a perfect and completed contract and. therefore, without the resolution of the municipality the plaintiff Could not get any vested right so far as the plots in question were concerned.

17. There is a decision of the Supreme Court in Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, . pertaining to the tenancy of a municipal Shop Under the Delhi and Ajmer Rent Control Act, 1952. it has been specifically observed therein (at p. 562) :

"Where the statute thus makes it obligatory that there should be a. contract In writing and duly executed by the persons authorised by the Act to do so, the absence of such a Contract cannot be cured by mere receipt of rent from the Occupiers of the shops owned by the municipality. There being thus no relationship of landlord and tenant between the Municipal Committee and the occupiers Of shops in Municipal market, the occupiers having been allotted shops on the acceptance of their -tenders. The Delhi and Ajmer rent Control Act, 1952, does not apply and the application of the said occupiers u/s 8 of the said rent Control Act for the fixation of the standard rent is incompetent."

Under Section 18 of the Punjab Municipal Act 1911, the municipality is authorised to enter into contract , and to transfer property belonging to it. But that Provision is subject to other provisions of that Act, and the contract to transfer property has to satisfy the conditions laid down in Section 46(2) if the value or amount thereof exceeds Rupees 500/-. It was Provided under that Act that in order that

the transfer of the property should be binding on the municipal Committee it is essential that it should have, as required by Section 47. been made by an instrument in writing executed by the President or the vice-President, and at least two other members of the Committee, and the execution by them should have been attested by the Secretary. It was therefore observed by the Supreme Court that if those two conditions are not fulfilled, the contract of transfer shall not be binding on the Committee and it was held that the provisions of Section 47

(3) of the said, Puniah Municipal Act are mandatory and are not merely directory. Therefore, in view of those provisions the Supreme Court held that those persons who had occupied as tenants and we actually paying rent as tenants cannot get the tenant of tenancy because the contract of tenancy was not entered into with them legally. Provisions of Sections 65 and 66 of the Gujarat Municipalities Act. to which I have made some reliance above are of the like nature. and if that is so, it can well be said that there was no contract which would bind the municipality and, there tore, there was no contract which. Could be specifically enforced and therefore no injunction could be available.

18. Further an equitable grounds also, the claim Of the Plaintiff was such that he merely wanted an injunction keeping a Perpetual sword of uncertainty hanging on the municipality so far as the Plots In question were concerned without asking for possession.

19. Considering all these aspects. I do not find any substance in this second appeal and. therefore the same is dismissed. Looking to the nature of dispute. There shall be no order as to costs all throughout.

20. Appeal dismissed.