

(2014) 03 GUJ CK 0136

In the Gujarat High Court

Case No : Letters Patent Appeal No. 980 of 2013 in Special Civil Application No. 10526 of 2012 and Civil Application No. 8611 of 2013 in Letters Patent Appeal No. 980 of 2013

Gujarat Industrial Development Co.

APPELLANT

Vs

Arihant Electrics

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Citation : (2014) 3 GLH 771

Hon'ble Judges : R.R. Tripathi, J; Mohinder Pal, J

Bench : Division Bench

Advocate : R.D. Dave, Advocates for the Appellant; Shalin Mehta, Senior Advocate and Pavan S. Godiawala, Advocates for the Respondent

Judgement

R.R. Tripathi, J.—The Gujarat Industrial Development Corporation Ltd. (GIDC) along with its Regional Manager, Mehsana, is before this Court being aggrieved by judgment and order dated 17.4.2013 of learned single Judge passed in SCA No. 10526 of 2012 allowing the petition and issuing the following directions:--

"9. Therefore, the present petition deserves to be allowed and accordingly stands allowed. The impugned decision/communication of the respondent Corporation dated 20.3.2012 at Annexure-N is hereby quashed and set aside. Prayer in terms of para 23(a) is granted regarding allotment of the plot subject to the clarification that instead of Plot No. 3518 as prayed in the relief, it should be Plot No. 3249 admeasuring 1500 sq.mtrs. which was originally allotted to the petitioner as clarified by learned Advocate Shri Gandhi. It is also clarified in the affidavit that it has not been so far auctioned and therefore it is available which could be allotted to the petitioner...."

(emphasis supplied)

Heard learned Advocate Mr. R.D. Dave for appellants/original respondent Nos. 1 & 2. The matter requires consideration. ADMIT.

2. On a request made by learned Advocate Mr. R.D. Dave for the appellants, the matter is taken up for final hearing today, to which learned senior Advocate Mr. Shalin Mehta, appearing with Mr. Pavan Godiawala for the opponent, has no objection.

3. Learned Advocate Mr. R.D. Dave for the appellants invited the attention of the Court to chequered history of this case and the chequered history starts from allotment of a plot in favour of the present opponent in the year 1988. It was plot No. 3249. As the allottee/present opponent did not pay the amount payable for allotment of the plot, possession of the plot was resumed by GIDC on 16.3.1991.

(emphasis supplied);

3.1 In normal circumstances, the chapter would have closed after possession was resumed but, for the reasons best known to the opponent/allottee of plot No. 3249, after 16 years, a request was made on 18.01.2008 for re-allotment and that request was rejected by GIDC on 20.12.2008.

(emphasis supplied)

2.2 The rejection of request for reallocation was challenged by filing a petition, being SCA No. 7886 of 2009. The said petition came up for consideration of this Court and the same was dismissed by order dated 07.08.2009. In that order dated 07.08.2009, detailed facts of allotment of plot No. 3249 and non-payment of the amount payable for the land are set out, the relevant part (para 2) of which this Court deems proper are reproduced below:--

"2. The facts are glaring. The petitioner was allotted plot No. 3249 in the year 1988. It is also the case of the petitioner that petitioner had paid a sum of Rs. 26,050/- being 20% of the amount payable to GIDC. The petitioner was handed over the possession and a receipt acknowledging the possession was given on 13.10.1988. Thereupon the petitioner started construction on the plot but due to the reasons beyond control of the petitioner the business could not gather any momentum.

2.1 The respondent - GIDC undertook the recovery proceedings on 16.3.1991 and ultimately an eviction order was passed on 26.2.1991 sic 23.6.1992. A copy of which is produced at Annexure "I" page 37. It is mentioned in the said letter that, "subsequently the possession of the said plot was resumed back by the Corporation on 16.3.1991 in the presence of panchas." The GIDC was to recover an amount of Rs. 32,437/- under the various heads. The details of which are set out in the said annexure.

(emphasis supplied).

[It appears that this amount which the GIDC was to recover under various heads is pleaded to be the only amount payable to GIDC for getting the plot re-allotted. The Court may not attribute any mala fides and leave that question wide open

that, why a reference is not made to the remaining 80% amount which was never paid to GIDC and today learned single Judge has passed an order allowing the prayers made in terms of para 23 (a) and has directed GIDC to allot Plot No. 3249 admeasuring 1500 sq. mtrs., whereas Plot No. 3518 is only admeasuring 1280 sq. mtrs.]

3.3 After considering all the relevant aspects of the matter in the aforesaid order dated 07.08.2009, following was the operative part:--

"8. Any attempt to get something indirectly which one cannot get directly is always a matter of condemnation. Accordingly, an act of the petitioner of misrepresenting the fact before the Court is condemned and the petition is dismissed with aforesaid observations.

9. At this juncture, learned Advocate for the petitioner requested that he may be permitted to withdraw the petition so as to make a fresh representation to the GIDC. The Court has declined this request. Least it is represented before the GIDC that the Court was inclined to entertain the petition but than thought that GIDC should look into affairs with due sympathy and in accordance with law."

(emphasis supplied)

3.4 As is expected, the opponent/original petitioner approached GIDC by filing a representation dated 28.9.2010 which was rejected on 26.4.2011. This rejection was challenged by filing a fresh petition, being SCA No. 14081 of 2011, which came up for consideration of this Court and the Court, after considering all the rival submissions, decided the same by judgment and order dated 22.12.2011 (Annexure-L at page 41). In this judgment and order also, the Court recorded that:--

"3. The brief facts of the case are that the petitioner is a Partnership Firm, and had earlier made an application for allotment of a plot in the Chhatral Industrial Estate, Mehsana. Plot bearing No. 3249 was allotted to the petitioner. The petitioner paid an amount of Rs. 26,050/-, equivalent to 20% of the amount of the value of the plot. However, the petitioner could not pay the full amount, due to financial difficulties. Eventually, the possession of the said plot came to be taken over by the GIDC, due to default in payment on the part of the petitioner. The said plot has now been re-auctioned, and is not the subject matter of the present petition. However, it is relevant to mention the same as the arrears arising from that allotment have some relevance in the matter. The petitioner, once again, made an application dated 10.08.2011, for allotment of a plot in the GIDC Industrial Estate at Chhatral, in order to carry on its business. As no positive response was received by the petitioner to the said application, the present petition came to be preferred."

(emphasis supplied)

3. An affidavit was filed in the said matter and the contents of facts are referred to by the Court in the said judgment and order in para 4. This Court is of the

opinion that the same are relevant and, therefore, para 4 is reproduced as under:--

"4. An affidavit-in-reply has been filed on behalf of the GIDC on 16.11.2011, stating that four plots are vacant at the Chhatral Industrial Estate, including plot No. 3518, admeasuring 1280 sq.mtrs, for which the petitioner has made a demand. It is stated that if the petitioner is interested in getting a plot, it may submit a fresh proposal to the Regional Manager of the GIDC and the allotment can be made at the prevalent price, after getting necessary approval, subject to the payment of Rs. 32,437/- which is the amount of outstanding arrears with interest towards the plot that had previously been allotted to it."

(emphasis supplied)

[Even here it is not made clear that the amount of Rs. 32,437/- included the unpaid 80% amount of the consideration for allotment of Plot No. 3249. Nothing is brought to the notice of this Court to dislodge the fact recorded by this Court in order dated 07.08.2008 that : "The GIDC was to recover an amount of Rs. 32,437/- under the various heads, the details of which are set out in the said annexure.

(emphasis supplied)."]

3.1 The Court was pleased to partly allow the petition and operative part of the order reads as under:--

"8. In view of the above, and as the respondent-GIDC has shown its willingness to consider the allotment of the plot in question to the petitioner subject to the above-mentioned terms and conditions, the following order is passed:--

"It is open for the petitioner to make a fresh application to the Regional Manager, GIDC accompanied with the Project Report, for allotment of plot No. 3518, admeasuring 1280 sq.mtrs., situated at Chhatral Industrial Estate, Mehsana. On receipt thereof, the respondent-GIDC, after following the necessary procedure, may consider the said application, in accordance with law and intimate the petitioner accordingly, after expiry of a period of 90 days from the receipt of the application."

(emphasis supplied)

4. It is thereafter that the present petition came to be filed in which learned single Judge is pleased to order as aforesaid directing the GIDC "to allot Plot No. 3249 admeasuring 1500 sq. mtrs. which was originally allotted to the petitioner as clarified by learned Advocate Shri Gandhi. It is also clarified in the affidavit that it has not been so far auctioned and, therefore, it is available which could be allotted to the petitioner."

5. Learned Advocate Mr. R.D. Dave invited the attention of the Court to a circular dated 31.01.2006, a copy of which is produced at Annexure-O page 50 in vernacular and translation is at pages 52-A to 52-E. Learned Advocate for GIDC

invited the attention of the Court to the main thrust of the said circular which is in the form of "Subject of the circular" which reads as under:--

"Allotment of plots, possession of which is resumed by the GIDC, without auction to the industry of the adjacent plot.

(emphasis supplied)

5.1 Learned Advocate for GIDC invited the attention of the Court to the contents of the said circular and emphasized that, "a decision was taken to allot the plot to the industry of adjacent plot without auction on conditions set out in the circular". Some of the important conditions are as under:--

"The adjacent plot holder, asking for allotment of the plot, must be engaged in manufacturing for the last three years. Similarly, use of the land in question should be only for the same industry which is carried on in the adjacent plot. It is specifically provided in Condition No. 3 that, "in cases of commercial and residential plots, this policy will not be applicable and it will not be open to the adjacent plot-holders to ask for allotment of adjacent plot". Beside that, in Condition No. 4, it is provided that, "the adjacent plot/shed-holder will have to give a detailed report/schedule for expansion of industry which he proposes to run in that plot". Not only that, the GIDC has specifically provided in Condition No. 5 that, "industrial unit, if use their plot for commercial purpose or if they have put up any construction which cannot be regularized, then they will not be entitled to allotment of adjacent plot". Condition No. 9 is very important and it says that, "in the event the adjacent plot/shed is surrounded by more than one industry and if those industrial units are interested in allotment of the adjacent plot/shed, an auction will be held for such industrial units."

6. The Court asked a pointed question to the learned senior Advocate for the opponent/original petitioner that, "how come the petitioner is entitled to get allotment of Plot No. 3518 under this policy?" Learned senior Advocate is not able to point out anything which in view of the facts which are not in dispute that, "the petitioner was originally allotted the plot in the year 1988. This plot was resumed by the GIDC in the year 1991 and, therefore, as on date, he is not holding any plot in GIDC Chhatral" will render him eligible to get the plot in question, more particularly without auction. That being so, there is no reason for him to get Plot No. 3518 without going for auction under the policy laid in circular dated 31.01.2006. That being so, the petition deserved to be dismissed in limine. Instead, learned single Judge has allowed the petition and has given direction to the GIDC to allot Plot No. 3249 to the petitioner.

7. Learned senior Advocate for the opponent/original petitioner relied upon certain averments made in the affidavit. This Court has no hesitation in putting on record that affidavits are always sworn/filed by an individual Officer/employee of the Corporation. Once the Court comes to the conclusion that the contents of the affidavit are contrary to the record of the case and the policy of the Corporation, the contents of that affidavit cannot be binding to the Corporation.

That being so, no order can be passed against the Corporation based on the contents of the affidavit/s.

8. In SCA No. 7886 of 2009, of which papers are called for from the Registry, in para 19 it is mentioned by this very petitioner, i.e. Arihant Electricals, a partnership firm, through its partner Mr. Ajit N. Shah, that:--

"4.19 The partner Mr. Ajit N/Shah upon being getting information from the web that, the name of the petitioner has been removed from the allottee name for the plot No. 3249 and arrears till date are not made available. A copy of the relevant list of inventory of industrial plots and sheds in various GIDC Estate, copy of relevant extract of the summary of available plots in Chhatral Estate which shows beyond reasonable doubt that, 3249 plot is available from 9.3.1993 and the said plot is not re-allotted to any party other than the petitioner and copy of arrears of dues on the said plot being Rs. 1,21,882/-. The said extracts are taken from web on 16.5.2009."

(emphasis supplied)

8.1 This petition was affirmed on 17.6.2009. As against that, there is a categorical statement made by learned Advocate Mr. R.D. Dave for the GIDC that Plot No. 3249 is already allotted to one Sudhir Plastic Industries on 04.06.2009, being an industrial unit running its industry in an adjacent plot.

8.2 Despite the admission on the part of the petitioner to the effect that there are arrears to the tune of Rs. 1,21,882/- on the said plot, where is the question of "allowing the petition" and directing the GIDC to allot Plot No. 3249 admeasuring 1500 sq. mtrs. when the specific prayer in this petition is for direction against the respondent GIDC to allot Plot No. 3518 admeasuring 1280 sq. mtrs. situated at Chhatral Industrial Estate, Mehsana to the petitioner at the prevalent price of GIDC.

9. So far as SCA No. 14081 of 2011 is concerned, the same was also filed by Arihant Electricals, a partnership firm through its partner Mr. Ajit N. Shah, and the relevant prayer was:--

"19 (a) This Hon'ble Court be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction in the nature of mandamus directing the respondent GIDC to allot the plot bearing No. 3518 admeasuring 1280 sq. mtrs. situated at Chhatral Industrial Estate, Mehsana, to the present petitioner at the prevalent price of the GIDC."

(emphasis supplied)

In view of the aforesaid facts, the LPA is allowed. Judgment and order of learned single Judge dated 17.4.2013 in SCA No. 10526 of 2012 is hereby quashed and set aside. Civil Application stands disposed of in view of the order made in the main LPA.