

(2020) 01 GUJ CK 0039

In the Gujarat High Court

Case No : Misc. Civil Application (For Recall) No. 1 Of 2019 In R/Special Civil Application No. 6444 Of 2008

Hansaben

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Citation : (2020) 01 GUJ CK 0039

Hon'ble Judges : J.B.Pardiwala, J

Bench : Single Bench

Advocate : GM Joshi, Da Bambhania, Hs Munshaw, S N Thakkar, Disha N Nanavaty

Final Decision : Disposed Of

Judgement

J.B.Pardiwala, J

1. By way of this office submission, it is brought to my notice by the Registry that the Misc. Civil Application No.1 of 2009 in the Special Civil Application No.6444 of 2008 was notified on board on 27.12.2019, and this Court passed the following order in the same;

"1. The matter has been notified today pursuant to the order passed by this Court dated 21st August, 2019. It needs to be noted that the MCA No.1 of 2019 has already been rejected long time back. Therefore, this is no point in notifying the MCA along with the main matter. Registry to take notice of this fact.

2. Vide judgment dated 21st August, 2019, this Court observed in para-16 as under;

"16. In view of the aforesaid, I propose to pass the following directions:

(i) A Special Investigation Team, consisting of '(1) Secretary, Revenue Department, State of Gujarat, Gandhinagar; (2) Secretary, Town Planning and Urban Development Authority, State of Gujarat, Gandhinagar (3) Collector,

Surat; (4) Commissioner of Police, Surat and (5) An officer of the rank of Superintendent of Police from the State CID Crime, State of Gujarat needs to be constituted to probe into the matter. I order the constitution of such Special Investigation Team accordingly.

(ii) The Special Investigation Team shall look into the following aspects;

(a) The legality and validity of the auction proceedings conducted by the Gujarat Slum Clearance Board;

(b) The various illegalities and irregularities alleged to have been committed by the Board in auctioning the plots;

(c) The persons involved in the alleged fraud;

(d) The issue of the payments made from the same account for the benefits of the purported allottees and whether the said allottees were genuinely belonging to the EWS/LIG category and qualified for the allotment of the plots in question or there were dummy names put forward by others for securing the allotment in an illegal manner;

(e) The Special Investigation Team shall also examine as to how the construction was permitted by merger of the plots in breach of the terms and conditions of allotment and the persons responsible for granting such permission;

(f) Whether any criminal offence is made out in the alleged fraud or not?;

(g) Whether the occupants of the bungalows and other houses standing on the land in question are paying the property tax and other taxes to the Municipal Corporation or any other authority and, if yes, in what capacity such tax is being accepted by the Surat Municipal Corporation or any other authority. "

2. As directed by this Court, a Special Investigation Team, consisting of (i) Secretary, Revenue Department, State of Gujarat, Gandhinagar; (ii) Secretary, Town Planning & Urban Development Authority, State of Gujarat, Gandhinagar; (iii) Collector, Surat; (iv) Commissioner of Police, Surat and (v) An Officer of the Rank of Superintendent of Police from the State CID Crime has been constituted to probe into the matter.

3. Ms. Jirga Jhaveri, the learned AGP, makes a statement that the SIT has completed the entire inquiry as directed by this Court and is on the verge of finalizing its report. Ms. Jhaveri, the learned AGP, seeks some time to place the report of the SIT on record.

4. Before the report of the SIT is placed on record, Ms. Jhaveri, the learned AGP, shall go through the same and ensure that the findings recorded by the SIT are in accordance with the questions which have been framed by this Court for the purpose of appropriate inquiry.

5. This Court expects the SIT to finalize its report and place the same before this Court on or before 9th January, 2020.

6. We also take notice of the fact that against the order passed by this Court dated 21st August, 2019, two appeals came to be filed being the Letters Patent Appeal No.1722 of 2019 and the Letters Patent Appeal No.35147 of 2019. These two appeals were filed by the occupants of the land in question. Both the appeals came to be dismissed by judgment and order passed by the Appeal Court dated 20th December, 2019. While dismissing both the appeals, the Appeal Court observed as under;

"16. We have seen from the order that the learned Single Judge has examined the material at length, has given painstaking hearing to the learned counsel and after thorough analysis of record, it has been categorically found that huge malfunctioning has taken place which needs to be investigated.

17. Initially, the learned Single Judge did examine the issue and after considering at length the written submissions, found expedient to inquire further the issue raised in the present proceedings at length. Hence, pending the petition, issued certain directions and the matter is kept pending to come up for further hearing on 20.12.2019.

18. Considering the magnitude of the irregularities which have been examined by the learned Single Judge prima facie and in view of the fact that at this stage, the SIT is to look into the issues which have been referred to and directed to prepare and exhaustive report to be placed before the Court within a period of 4 months, we are not inclined to disturb such process in any manner, particularly when serious allegations are levelled in respect of allotment of plots; in respect of alleged unauthorized construction which are going on or have been put up and in respect of an attempt to frustrate the very object for which the land was acquired.

19. Since the learned Single Judge has directed to investigate the matter in the context of directions which are contained in the order, we refrain ourselves from expressing any opinion on merit. As a result of this, the judgments which have been pressed into service, have not been gone into at great length. But having perused the same, we see no reason to apply the same as a straitjacket formula, as this background of case is altogether distinct from what has been visible from other judgments which are cited before us.

20. The decision taken by the learned Single Judge is after examination of record and as such, at this stage of the proceedings, we are not inclined to intercept the process which is directed to be undertaken by the authorities, as contained in the impugned order. Moment the SIT submits the exhaustive report before the Court, it is always open for the affected persons to ventilate their grievances and the submissions which are sought to be made. Accordingly, we see no reason to interfere with the order impugned in both the Letters Patent Appeals. Resultantly, both the

Letters Patent Appeals are dismissed. "

7. Place this matter for further hearing at 2:30 p.m. on 10th January, 2020 along with the report of the SIT.

2. However, it is also brought to my notice that, inadvertently, in the cause title, the number of the MCA is wrongly shown as MCA No.1 of 2009 instead of MCA No.1 of 2019.

3. Upon perusal of the note put up by the office, the following order is passed;

"The Registry is directed to rectify the error and treat the order passed in the MCA No.1 of 2009 in the Special Civil Application No.6444 of 2008 dated 27.12.2019 as passed in the MCA No.1 of 2019 in the Special Civil Application No.6444 of 2008. The Registry to carry out the necessary correction and issue a fresh writ of the order."

4. In view of the above, the note stands disposed of.