(2006) 11 GUJ CK 0089

In the Gujarat High Court

Case No : Special Civil application No. 8246 of 2006

Hasmukh K. Bhatt APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 14-11-2006

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 65
Constitution of India, 1950 — Article 226
Gujarat Gram and Nagar Panchayats (Taxes and Fees) Rules, 1964 — Rule 7(2d)
Gujarat Land Revenue Rules, 1972 — Rule 35

Citation : (2006) 11 GUJ CK 0089

Hon'ble Judges : J.M. Panchal, J;Abhilasha Kumari, J

Bench : Division Bench

Advocate : B.K. Raj, for the Appellant; L.R. Poojari, AGP for Respondent 1-2 and H.S. Munshaw, for Respondent 3-4, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Panchal, J.—By filing the instant petition under Article 226 of the Constitution, the petitioner has prayed to issue a Writ of Mandamus or any other appropriate Writ to quash the order dated March 17, 2006, passed by the Collector, Vadodara, by which, the prayer made by the petitioner to grant exemption to Shree Kelavani Mandal (Bil) from payment of land revenue is rejected and the petitioner is called upon to make payment of arrears of the land revenue immediately. The petitioner has further prayed to quash the order dated January 9, 2006, by which the Talati-cum-Mantri of Bil Gram Panchayat has called upon the President of the said Trust to make payment of arrears of land revenue to the tune of Rs. 1,92,025/- within seven days from the date of receipt of the said order.

2. The petitioner, i.e. Mr. Hasmukh Kantilal Bhatt, is the trustee and Secretary of Shree Kelavani Mandal (Bil), which is a Trust registered under the provisions of the Bombay Public Trusts Act, 1950. In the year 2004, the Talati-cum-Mantri of Bil Gram Panchayat issued a notice demanding arrears of land revenue from the

Trust on the footing that the land belonging to the Trust was used for commercial purposes. Thereupon, the petitioner made representation to the Collector seeking exemption from payment of tax under Rule 35 of the Gujarat Land Revenue Rules, 1972, and Rule 7(2-d) of the Gujarat Gram and Nagar Panchayat Taxes and Fees Rules, 1964. The said request has been rejected by the Collector vide order dated March 17, 2006, which is produced by the petitioner at Annexure-A to the petition. The case of the petitioner is that the demand notice issued by the Talati-cum-Mantri of Bil Gram Panchayat for recovery of taxes is illegal as the Trust in question is already exempt under Sub-rule (2-d) of Rule 7 of the Gujarat Gram and Nagar Panchayat Taxes and Fees Rules, 1964. The petitioner has pleaded that the order of the Collector refusing to grant exemption is illegal as well as arbitrary and therefore, deserves to be set aside. What is maintained by the petitioner is that it was the duty of the Collector to grant exemption under Sub-rule 1 of Rule 35 of the Bombay Land Revenue Code for the development and growth of village as well as education in the village and therefore, the order impugned in the petition should be set aside. According to the petitioner, the Trust is running a school known as Saraswati Vidhya Mandir which imparts education to 200 students, who are prosecuting studies in the 8th, 9th and 10th standards, by charging negligible fee of Rs. 50/- for the whole year and therefore, the Collector was not justified in refusing to grant exemption as prayed for by the petitioner. After emphasizing that it is the duty of the State and its officers to promote and encourage such Trusts which have dedicated and / or engaged themselves for the welfare of the society, it is mentioned by the petitioner that in view of the activities being carried out by the petitioner for promotion of poor people of the village, exemption as prayed for should have been granted. What is stated in the petition is that the Chief Minister, the Ministers and the Collectors are always ready and eager to grant exemption and/ or relaxations to big corporate houses in the State which carry on their activities only for the purpose of profit while the institutions like the petitioner are not granted necessary exemption and therefore the prayers made in the petition should be granted. It is averred in the petition that the bank balance of the Trust indicates that it is only having balance of Rs. 12,119/- whereas the Trust is called upon to make payment of amount of Rs. 1,92,025/- towards arrears of land revenue which is unreasonable and therefore, the orders impugned in the petition should be set aside. Under the circumstances, the petitioner has filed the instant petition and claimed reliefs to which reference is made earlier.

3. On service of notice, Mr. M.Thenarson, District Development Officer, Vadodara District Panchayat, Vadodara, has filed affidavit-in-reply controverting the averments made in the petition. In the reply, it is stated that Block No. 780 (Old Revenue Survey No. 1125) of village Bil was purchased by Shree Kelavani Mandal from its original owners i.e. Mrs.Punjiben Ishwarbhai and others after which the Trust had constructed a school building without obtaining non-agricultural usage permission, and therefore, the petitioner is not entitled to the reliefs claimed in the petition. It is averred in the reply that on learning the fact that the petitioner

had constructed school building without obtaining non-agricultural usage permission, the respondent No. 3 had issued notice dated November 13, 2000, to the original land owners i.e. Mrs.Punjiben Ishwarbhai and others asking them to show cause as to why penalty should not be imposed and other action should not be taken for constructing the school building in the year 1991-92 on the land admeasuring 11129 sq.mts. What is mentioned in the reply is that after ascertaining the correct facts, necessary Panchnama was drawn and Resolution No. 77 dated July 3, 2001, was passed by the Executive Committee of Vadodara District Panchayat imposing penalty for unauthorized non-agricultural use of the land whereas consequential order imposing penalty was passed on July 31, 2001. The deponent of the affidavit-in-reply has produced a copy of the said order at Annexure-A to the reply. The District Development Officer has further mentioned in his reply that after imposing penalty for unauthorized agricultural use of the land, a notice was issued on July 6, 2001, by the respondent No. 2 calling upon the petitioner to make payment of the said amount which was ultimately paid by the land owners. The respondent No. 3 has stated that at the relevant point of time, the revenue was assessed at the rate of Re. 0.16 ps. per sq.mt. for non-agricultural use of land and accordingly a tax bill was issued by the Talati-cum-Mantri of village Bil calling upon the land owners and the petitioner to make payment of the same but thereafter, the rate was revised to Re. 1/- per sq.mt. by the Government of Gujarat with effect from August 1, 2003, and therefore, necessary bills were issued by the Talati-cum-Mantri to the petitioner calling upon him to make the payment of the amount due. What is highlighted in the reply is that the petitioner is using the land for non-agricultural purpose and not only the petitioner is liable to pay the land revenue as per the existing provisions of law but the petitioner is running a grant-in-aid school within a distance of 8 kms. from Vadodara as well as urban agglomeration of city of Vadodara and therefore, the petitioner is not entitled to exemption from payment of land revenue as claimed in the petition. It is further asserted in the reply that the petitioner is not a charitable institution and as it is charging fees from the students though it is getting grant from the Government of Gujarat, the prayers made in the petition should not be granted. The deponent of the affidavit-in-reply has explained that as far as the prayer for exemption from payment of land revenue is concerned, he has no power to grant exemption and as the said power is to be exercised by the District Collector of Vadodara or the state Government, as provided under the provisions of Rule 35 of the Bombay Land Revenue Rules, 1972, no case is made out by the petitioner for grant of any relief against the respondent No. 3. It is mentioned in the reply that the Government of Gujarat has issued a Resolution dated December 26, 2003, through its Revenue Department laying down certain norms for grant of certain benefits to public Trusts which carry on their activities on ''no profit no loss'' basis and as the petitioner-Trust is running school for profit, it is not entitled to exemption. It is further mentioned in the reply that under the guise of financial crunch, the petitioner is not making the payment of the land revenue due since three years which has accumulated to Rs. 1,92,025/- and in view of unauthorized non-agricultural use of the land by the petitioner, the instant petition should be rejected.

4. This Court has heard Mr. B.K. Raj, learned cousnel for the petitioner and Mr. L.R. Poojari, learned Assistant Government Pleader for the State. This Court has also taken into consideration the documents forming part of the petition. It may be mentioned that the averments made in the affidavit-in-reply filed by the respondent No. 3 are not controverted by the petitioner by filing rejoinder-affidavit.

5. From the record of the case, it is evident that without obtaining non-agricultural usage permission, the petitioner had constructed building in which the Trust is running the school. The record would indicate that what was purchased by the petitioner was an agricultural land from its original owners. Section 65 of the Bombay Land Revenue Code contemplates that before using any agricultural land for non-agricultural use, necessary permission must be obtained from the competent authority. Admittedly, the petitioner has not obtained any such permission. One who violates the provision of law is not entitled to discretionary relief under Article 226 of the Constitution. The claim made by the petitioner in paragraph 4.1 of the petition is that the order of the Collector refusing to grant exemption from payment of land revenue as well as notice demanding arrears of land revenue are liable to be set aside because the Trust is already exempted under Sub-rule (2-d) of Rule 7 of the Gujarat Gram and Nagar Panchayat Taxes and Fees Rules, 1964. However, no document is produced by the petitioner on record to substantiate its claim that the Trust is already exempted by Sub-rule (2-d) of Rule 7 of the Rules of 1964. Thus, there is no manner of doubt that the petitioner has made a false statement on oath in order to claim certain reliefs from this Court. What is relevant to notice is that the petitioner is getting grant from the Government on one hand and is charging fees from 200 students at the rate of Rs. 50/- per year on the other, which is quite contrary to the claim made by the petitioner that the Trust is established exclusively for educational use. On being asked to do so, the learned Counsel for the petitioner has produced a xerox copy of Deed of Trust of Shree Kelavani Mandal (Bil) for perusal of the Court. It is ordered to be taken on record of the petition. Clause 12 of the Deed enables the Trust to undertake any new activity whereas Clause 13 of the Trust Deed enables the Trust to purchase the properties, sell the properties, mortgage the properties, rent the properties or to construct buildings etc. Clause 14 of the Deed enables the Trust to incur debts and/or to invest money in deposits. Having regard to the different clauses of the Deed and the facts of the case, it is difficult for this Court to come to the conclusion that the Trust is solely created for educational purposes and was therefore entitled to exemption under the Rules. The order passed by the Collector refusing to grant exemption cannot be termed either arbitrary or illegal so as to warrant interference with the same by this Court while exercising powers under Article 226 of the Constitution. The reasons for refusal to grant exemption are produced by the District Development Officer along with his affidavit-in-reply

which are found on the running page 50 of the compilation. A perusal of the same indicates that cogent reasons have been recorded by the authority concerned while rejecting the application submitted by the Trust for exemption from payment of land revenue. On overall view of the matter, this Court is of the opinion that no case is made out by the petitioner for grant of the reliefs claimed in the petition, and therefore, the petition, which lacks merits, deserves to be dismissed.

6. For the foregoing reasons, the petition fails and is dismissed. Notice is discharged. There shall be no orders as to costs.