

(2016) 07 GUJ CK 0070

In the Gujarat High Court

Case No : Special Civil Application No. 3403 of 2013

Hides and Leather Products Pvt Ltd.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 79A
Constitution of India, 1950 — Article 226
Government Grants Act, 1895 — Section 2, Section 3

Citation : (2017) 1 GLR 388

Hon'ble Judges : Ms. Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Mr. R.S. Sanjanwala, Ld. Sr. Counsel With Mr. Manav A Mehta, Advocate, for the Petitioner No. 1; Ms. Manisha Lavkumar Shah, Government Pleader and Ms. Jyoti Bhatt, AGP, for the Respondent No. 1; Rule served, for the Respondent No. 2

Final Decision : Partly Allowed

Judgement

Ms. Bela M. Trivedi, J.—The present petition filed under Article 226 of the Constitution is directed against the order dated 23.11.2012 passed by the Gujarat Revenue Tribunal (hereinafter referred to as "the said Tribunal") in Appeal No.55/2002 preferred by the petitioner, confirming the order dated 19.10.2002 passed by the respondent No.1 Collector, whereby the respondent No.1 had cancelled the lease deed in respect of the land in question granted to the petitioner and further directed that the land shall vest in the Government.

2. The petitioner is the Company incorporated under the Indian Companies Act, 1956. According to the petitioner, the Navabsaheb of Palanpur, in order to promote the industry, had initially offered the land belonging to him to the petitioner for the purpose of setting up a factory for manufacturing Hide Products and leather goods, by executing the agreement on 9.2.1948 by way of lease for a period of 999 years on the terms and conditions mentioned therein. On the merger of Palanpur State with the State of Bombay a fresh lease deed came to

be executed by the Government of Bombay through the Collector, Banaskatha in favour of the petitioner through its Director Mr.C. N. Patel on 31.7.1956 (Annexure-E). As per the said lease deed, the petitioner was allotted the lands bearing Survey Nos.1051, 1054, 1055, 1053/1 and 1053/2, admeasuring about 10 acres and 2 gunthas situated in Palanpur for establishing a factory for manufacturing the Hides products and leather goods, on the terms and conditions mentioned therein for a period of 99 years to be commenced from 9.2.1948. As per the case of the petitioner, the petitioner had constructed the factory for manufacturing the Hides products and leather goods accordingly. It appears from the Entry No.1827 dated 8.11.1966 (Annexure-D) that the petitioner thereafter was granted additional land for constructing residential quarters for its employees subject to the conditions mentioned in the order dated 9.2.1966. It is further case of the petitioner that the respondent No.1 issued notice under Section 79A of the Bombay Land Revenue Code (hereinafter referred to as "the Revenue Code") on 20.8.2001, calling upon the petitioner to show cause as to why the lease deed dated 31.7.1956 and the grant of land dated 9.2.1966 should not be cancelled, as the petitioner had failed to pay the rent as per Condition No.1 and that there was no factory or residential units existing on the lands in question. The said show-cause notice was replied by the petitioner stating, inter alia, that the petitioner had not committed any breach of any of the conditions of the lease deed and the petitioner could not be summarily evicted from the land in question. However, the respondent No.1 Collector by his order dated 19.10.2002 cancelled the lease deed dated 31.7.1956 and directed the land to be vested in the Government (Annexure-G) The aggrieved petitioner had filed the Appeal before the said Tribunal, who vide the impugned order dated 23.11.2012 confirmed the order passed by the Collector and dismissed the Appeal of the petitioner.

3. It appears that pending the present petition, the petitioner had submitted an application to the respondent No.1 for granting benefits of the Circular dated 8.8.2001 to the petitioner, pursuant to the order dated 15.4.2014 passed by this Court, however, the said application also came to be rejected by the respondent No.1 vide the order dated 1.8.2014. The petitioner, therefore, with the permission of the Court, amended the memo of the petition for challenging the said order passed by the respondent No.1.

4. The petition has been resisted by the respondents by filing the reply mainly contending, inter alia, that the petitioner had failed to use the land for the purpose for which it was granted and, therefore, the respondent No.1 after giving opportunity of hearing and following the principles of natural justice had passed the impugned order dated 19.10.2002 for vesting the land in the Government. It has also been contended that the Circular dated 8.8.2001 was not applicable to the case of the petitioner, as there was breach of conditions committed by the petitioner by not utilizing the lands in question for a long time.

5. The learned Sr. Counsel Mr.R.S. Sanjanwala for the petitioner submitted that

the petitioner Company had utilized the lands in question for manufacturing Hides products and leather goods for quite a longtime and had also constructed the residential units for its employees, however, since it was not financially viable for the petitioner to run the factory, the business was closed and the factory building and the residential units were demolished since five-six years prior to the date of the order passed by the Collector, nonetheless, it could not be said that the petitioner had never utilized the land for the purpose for which it was granted. He further submitted that the respondent No.1 had failed to mention in the show-cause notice the provisions of law under which the said notice was issued, however, presuming that the same was issued under Section 79A of the Revenue Code, then also the said provision could not be made applicable to the lease deed executed on 31.7.1956. Placing heavy reliance on various judgements of the Supreme Court, more particularly in the case of Union of India and Anr. v. Mahajan Industries Limited and Anr. reported in (2005) 10 SCC 203 and in case of Tata Steel Limited v. State of Jharkhand and Ors., reported in 2015 SCC OnLine SC 1164 , as also various other judgements of this Court, he submitted that though the provisions contained in the Transfer of Properties Act would not be applicable to the facts of the present case, the respondent No.1 could not have terminated the lease and directed to vest the land in the Government, without following due process of law, which in the instant case, would mean filing of the suit for possession. He further submitted that the respondent No.2 had wrongly rejected the application of the petitioner for allotting the land as per the Circular dated 8.8.2001 of the Government on the extraneous ground that the petitioner had committed breach of the conditions of the lease deed. He also relied upon the decision of the Supreme Court in case of State of U.P. And Ors. v. Maharaja Dharmander Prasad Singh etc., reported in AIR 1989 SC 997, to submit that respondent No.1 could not have appropriated to itself an extra-judicial right of re-entry, without following the due process of law.

6. Per contra, the learned Government Pleader Ms.Manisha Shah, pressing into service the provisions contained in the Government Grants Act, 1895 (hereinafter referred to as "the Grants Act") submitted that the Transfer of Property Act would not apply to any grant or other transfer of land made by or on behalf of the Government, and such grant or transfer was governed by the terms and conditions mentioned therein. She has placed heavy reliance on the decision of the Supreme Court in case of Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. v. Government of Tamil Nadu, reported in (1997) 3 SCC 466, to submit that the terms of any grant or transfer of land made by the Government would stand insulated from the tentacles of any statutory law and that Section 3 of the Grants Act places the terms of such grant beyond the reach of any restrictive provision contained in any enacted law. According to her, the petitioner had failed to utilize the land for the purpose for which it was granted and had also not deposited the rent as per the Condition No.4(a) of the said lease deed and, therefore, the respondent had the power to reenter in the land as per the Condition mentioned therein, which has been rightly exercised by the respondent No.1.

7. In the instant case, according to the petitioner, it had started the factory for manufacturing the Hide Products and leather goods and had also constructed the residential units for its employees on the land in question, however since it was not found financially viable, the entire constructions of the factory building and the residential units were demolished. Hence, as such it is not disputed by the petitioner that the petitioner was not running any factory for manufacturing the Hides products and leather goods on the lands in question, since last more than 5 to 7 years prior to the issuance of the show-cause notice by the Collector. It is also not disputed that there were no residential quarters for its employees in existence when the said show-cause notice was given to the petitioner. Though it was sought to be submitted by the learned Government Pleader Ms. Shah that the petitioner had never utilized the land in question for the purpose for which it was granted, the said submission cannot be accepted, when the petitioner had specifically contended in the reply to the show-cause notice and in the instant petition that the said factory was closed and the building of the factory and the residential units of the employees were removed as the said business was not financially viable for the petitioner. It may be noted that in the show-cause notice as well as in the impugned order passed by the respondent No.1 Collector also, there was no such case alleged that the petitioner had never used the said land for the said purpose. What was alleged in the show-cause notice was that there was no factory building or residential units existing on the lands in question, and that the said lands were not being utilized for the purpose for which they were granted. Now, even if the contention of the petitioner that the petitioner had utilized the lands in question for running the factory for some years and also for the residential units of its employees is accepted, then also the undisputed facts remain that the said lands were not being utilized for the said purpose when the notice was issued by the Collector. Under the circumstances and from the said contention of the petitioner itself it was established that the petitioner had stopped utilizing the lands for the purpose for which they were granted and had committed breach of conditions mentioned in the lease deed dated 31.8.1956 as also the order of grant dated 9.02.1966. The submission of the learned Sr. Counsel Mr.Sanjanwala that merely because the petitioner had temporarily stopped utilizing the said lands for the purpose for which they were granted, it should not be construed as breach of condition, cannot be accepted. When the Government land is granted to the private party by way of lease or grant for specific purpose, and subject to the conditions, the same have to be strictly complied with, otherwise the consequences would follow. If the lessee or the grantee desired to utilize such land for any other purpose, he could do so only with the permission of the competent authority, and not otherwise.

8. This takes the Court to the next the contention raised by the learned Sr. Counsel Mr.Sanjanwala for the petitioner to the effect that the petitioner could not be evicted from the lands in question without following due process of law, and in the instant case without filing the suit. In this regard, it would be necessary to refer to some of the provisions of the Grants Act. Sections 2 and 3

of the said Act read as under:-

"2. Transfer of Property Act, 1882, not to apply to Government grants. Nothing in the Transfer of Property Act, 1882 (4 of 1882), contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made [be or on behalf of the Government] to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

3. Government grants to take effect according to their tenor. All provisions, restrictions, conditions, and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding."

9. From the bare reading of the said provisions, it clearly transpires that the provisions of the T. P. Act would not apply to any grant or transfer of land made by or on behalf of the Government, and that all provisions, restrictions, conditions, etc., contained in such grant or transfer shall take effect according to their tenor. The Supreme Court in case of *Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. v. Government of Tamil Nadu* (supra), after considering the said provisions of the Grants Act has held as under:-

"10. The combined effect of the above two sections of the Grants Act is that terms of any grant of terms of any transfer of land made by a government would stand insulated from the tentacles of any statutory law. Section 3 places the terms of such grant beyond the reach of any restrictive provision contained in any enacted law or even the equitable principles of justice equity and good conscience adumbrated by common law if such principles are inconsistent with such terms. The provisions are so framed as to confer unfettered discretion on the government to enforce any condition or limitation or restriction in all types of grants made by the government to any person. In other words, the rights, privileges and obligations of any grantee of the government would be completely regulated by the terms of the grant, even if such terms are inconsistent with the provisions of any other law.

11. The above legal position was recognised by the courts in India before the Constitution of India came into being. (*Surja Kanta Roy Choudhury and others v. Secretary of State*, Air 1938 Cal. 229, and *Raza Husain Khan & ors. v. Sayid Mohd. & ors.*, AIR 1938 Oudh 178). The position continued to be so even after the Constitution came into force [*State of U.P. v. Zahoor Ahmad*, 1974 (1) SCR 344]."

10. It was also specifically observed in paragraph 12 thereof that even the lease made by the Government would be covered by the protection envisaged in Section 2 and 3 of the said Act. In case of *Azim Ahmad Kazmi and Ors. v. State of Uttar Pradesh and Anr.*, reported in (2012) 7 SCC 278, the Supreme Court,

relying upon the said provisions contained in the Grants Act held, inter alia, that when the special procedure for resumption of the land was prescribed under the lease deed, the State was not required to follow any other procedure or law.

11. Though much reliance has been placed by Mr.Sanjanwala on the decision in case of Tata Steel Limited v. State of Jharkhand and Ors. (supra), it is pertinent to note that in the said case also the Supreme Court after considering the provisions of the Grants Act as also the ratio of decision in case of Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. v. Government of Tamil Nadu (supra), held as under in paragraph 19.

"19. ...section 2 of the Government Grants Act declares that "nothing contained in the Transfer of Property Act, 1882 applies to any grant or other transfer of land or any interest therein" made by or on behalf of the Government either prior to or after the commencement of the said Act. In other words, when Government transfers land or any interest therein to any person, such a transfer is not governed by the Transfer of Property Act, 1882. The rights and obligations flowing from the transfer of either a piece of land or an interest therein by the Government cannot be determined on the basis of the rights and obligations specified under the Transfer of Property Act, 1882. They are to be ascertained only from the tenor of the document made by the Government evidencing such a transfer. ..."

12. Now if the undisputed facts of this case are appreciated in light of the afore-stated legal position, it appears that the lands in question were granted to the petitioner by way of lease for establishing the factory for manufacturing the Hides products and leather goods, as per the lease deed dated 31.7.1956, and thereafter an additional land was granted for constructing residential units for its employees on the terms and conditions mentioned in the order dated 9.2.1966. Since the petitioner was found to be not utilizing the said lands for the purposes for which they were allotted, and was found to have committed the breach of conditions as mentioned in the lease deed dated 31.7.1956 and the order dated 9.2.1966, the respondent No.1 had issued the show-cause notice and passed the impugned order. At this juncture, it is necessary to reproduce the condition No.4(a) of the lease deed dated 31.7.1956 which reads as under:-

"(4) It is hereby agreed by and between the parties hereto as follows:

(a) If the said rent hereby reserved shall be in arrear for the space of 30 days whether the same shall have been legally demanded or not or if and whenever the lessee shall cease to use the demised land for the primary and main purpose for which this lease have been granted or if and whenever there shall be a breach of any of the covenants herein contained the lessor may enter upon any part of the demised land in the name of the whole and thereupon the term hereby granted shall cease and determine that except for nonpayment of the rent as aforesaid the powers of reentry herein before contained shall not be exercised unless and until the lessor or the Collector on behalf of the lessor shall

have given to the lessee or left ...demised land a notice in writing of the intention to enter and of the specific breaches of the covenant in respect of which the reentry is intended to be made and default shall have been made by the lessee in remedying such breach or breaches within a reasonable time after giving or leaving such notice."

13. From the said condition it clearly emerges that the said condition empowered the respondent Collector to reenter the lands in question, if the petitioner failed to pay the rent or if the petitioner ceased to use the demised land for the primary and main purpose for which the lease was granted or if the petitioner committed breach of any of the conditions. Such term and condition would completely govern and regulate the rights and obligations of the parties, as per the settled legal position stated herein above and as per the provisions contained in the Grants Act. Therefore, the respondent Collector was perfectly justified in issuing the show-cause notice and in passing the impugned order in respect of the lands covered under the lease deed, more particularly when admittedly the petitioner had ceased to utilize the lands mainly and primarily for the purpose for which the lease was granted. The petitioner was also found to be not utilizing the lands covered under the order dated 9.2.1966, for the residential units of its employees for last many years, and thereby had committed the breach of the conditions mentioned in the said order, entitling the respondent Collector to cancel the said grant and to direct to vest the lands in the Government. The Court, therefore, does not find any legal or factual infirmity in the impugned order dated 19.10.2002 passed by the respondent No.1 Collector. The petitioner was also granted full opportunity of hearing by issuing show-cause notice and, therefore also, it could not be said that the impugned order passed by the respondent Collector was violative of principles of natural justice. The respondent No.2 Tribunal has also rightly appreciated the said order and confirmed the same, vide the impugned order dated 23.11.2012 which does not call for any interference of this Court exercising limited jurisdiction under Article 227 of the Constitution of India.

14. So far as the reliance placed by Mr.Sanjanwala, on the circular dated 8.8.2001 is concerned, it appears that as per the said Circular any lease holder of the land having legal possession thereof for more than fifteen years, was eligible to get the land maximum up to five acres as old tenure land on payment prevailing market price. For getting the land more than five acres, he had to make out a special case. The petitioner, pending the petition, had submitted an application for giving it the benefit of the said circular, however, the same has been rejected by the respondent No.1 on the ground that the petitioner had failed to utilize the said lands for the purpose for which they were granted and thereby had committed breach of the conditions of the lease deed, and that the lands had already vested in the Government. In the opinion of the Court, the said stand taken by the respondent No.1 in the order dated 1.8.2014 does not appear to be correct. Earlier the petitioner in the reply to the show-cause notice itself had requested the respondent No.1 to grant the benefit of the said circular,

as transpiring from its reply dated 19.9.2001 (Annexure-F). The respondent No.1, therefore, was required to consider the case of the petitioner as it stood prior to the passing of the impugned order, when the lease was not terminated. The petitioner being in legal possession of the lands in question at least for 40 years prior to the issuance of the show-cause notice in the year 2001 and since the petitioner in its reply had specifically requested to grant the benefit of the said Circular dated 8.8.2001, the respondent No.1 was expected to consider the case of the petitioner from that perspective. It could not be gainsaid that the petitioner was in legal possession of the lands in question, till the impugned order was passed by the respondent Collector. Since the petitioner had also shown its readiness to pay the prevailing market price as per the Circular dated 8.8.2001, the respondent Collector is required to be directed to reconsider the case of the petitioner for granting the benefit of the said Circular, afresh and in accordance with law.

15. In that view of the matter the impugned order dated 23.11.2012 passed by the respondent No.2 and the order dated 19.10.2002 passed by the respondent No.1 are hereby confirmed, however, the order dated 1.8.2014 passed by the respondent No.1 pending the petition is quashed and set aside. The respondent No.1 is directed to reconsider and decide the application of the petitioner for granting the benefit of the Circular dated 8.8.2001, afresh and in accordance with law, within eight weeks from the date of the receipt of this order. It is further directed that till the said decision is taken, the parties shall maintain status quo as regards the possession of the lands in question.

16. The petition stands partly allowed accordingly. Rule is made absolute to the aforesaid extent.