
(2014) 11 GAU CK 0037
In the Gauhati High Court
Case No : PIL No. 71 of 2007

Jamini Kumar Baishya and Others

APPELLANT

Vs

Government of Assam and Others

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 1 GLT 261

Hon'ble Judges : K. Sreedhar Rao, Acting C.J.;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : S.N. Sarma, Sr. Advocate, A. Sarma, N. Sarma and A. Zahid, Advocates for the Appellant; B.J. Ghosh, GA, S.K. Medhi, K. Paul and S.K. Singh, Advocates for the Respondent

Judgement

Ujjal Bhuyan, J.—By way of this petition under Article 226 of the Constitution of India filed as a Public Interest Litigation (PIL), petitioners have assailed the legality and validity of resolution Nos. 12 and 13 adopted in the general meeting of the Tezpur Municipal Board dated 12.04.2007 (Annexure-2 to the petition) as well as the consequential lease deed No. 614 of 2007 registered on 17.04.2007 between respondent No. 11 and Tezpur Municipal Board and lease deed No. 615 of 2007 registered on 17.04.2007 between respondent No. 10 and Tezpur Municipal Board. Case of the petitioners may be briefly noted.

2. The three petitioners claim to be public spirited citizens of Tezpur concerned with the activities of Tezpur Municipal Board and welfare of the public. Petitioner Nos. 1 and 3 are lawyers being members of Tezpur Bar Association, the former being a member of the Bar Council. Petitioner No. 2 is a retired professor of Tezpur College and after retirement, is connected with various public activities.

3. Tezpur town in the State of Assam has a Municipality known as Tezpur Municipal Board (Board hereafter) which was established in the year 1894. The impugned resolutions were adopted by the Board which was constituted on 27.01.2004.

4. Office of the Board issued a notice on 07.04.2007 inviting its members for a general meeting on 12.04.2007. In the general meeting held on 12.04.2007 the two impugned resolutions were adopted. The resolutions read as under :--

"Resolution No. 12: The meeting held a discussion on the prayer for 99 years lease made by Badan Ch. Lahkar on 03.12.2005 in respect of lease of Room Nos. 291(Ka) on the bank of Dhubi Pukhuri. Member Prabin Patowari suggested that the matter should be discussed with a lawyer and sent to the sub-committee once again. Member Tapan Ganguly agreed in favour of allotment in view of gains to be achieved by the municipality. Chairperson Kusum Mech, Vice-Chairman Allaiddin Ahmed, members Sohrabuddin Hazarika, Sarat Das, Prashanta Das, Bhairab Das and Smti. Pushpa Barthakur endorsed Tapan Ganguly's views. Vice-Chairman Alaiddin Ahmed informed the meeting that after the lease settlement, any adjustment of the cost of construction of the rooms or the cost being borne by the Municipality shall render the furniture be treated as Municipal properties. The members unanimously endorsed that view.

Following detailed deliberation on the matter, the one-time lease premium was fixed at Rs. 1,25,000/- while the annual rent was fixed at Rs. 11,000/-. It was also resolved that the rent would be raised @ 10% in each block of ten years.

Member Pratul Mahanta reiterated his objection to the leasing out of municipal land. Member Prabin Patowary, Gama Saikia, Smti. Shubha Bhattacharya and Smt. Puspa Deka supported him. Supported by the majority members, the meeting decided to lease out the said land to Badan Ch. Lahkar for 99 years.

Resolution No. 13: The Chairperson intimated the members of the lease petition by Dipak Tibrewalla in respect of the land in front of Anowar Cinema Hall for the purpose of development Member Gama Saikia regretted the fact that such proposals should be received by the Municipality and that the Municipality failed miserably to take up a developmental project on its own land. Members Prabin Patowary and Pratul Mahanta suggested that the Municipality should set up some project on the said land on its own so as to augment its revenue collection. On the other hand, Chairperson Kusum Mech, Vice-Chairman Alaiddin Ahmed, members Tapan Ganguly, Sahrabuddin Hazarika, Bhaskar Jyoti Lahkar, Sarat Das, Prashanta Das, Bhairab Das and Smti. Puspa Borthakur all suggested that the prayer of Dipak Tibrewalla should be accepted for the development of the space. The meeting also discussed the petition of Raj Baishya, an Ex-ULFA man requesting lease of the cycle stand area for business purpose. Members Prabin Patowary and Gama Saikia condemned the chaos created by these petitioners in the Municipality Office and suggested that such petitioners should be given lease of land if necessary. After consideration of the Municipality Workers Union's prayer for allotment of the said land in their favour for construction of the Union building thereon, it was decided that room situated on the Bank of Dhobi Pukhuri would be allotted.

Keeping in view the developmental aspects of the land as well as the earnings of

the municipality, the meeting accepted the proposal of Dipak Tibrewalla and proposed to lease the said land to him for 99 years. The one-time lease premium was fixed at Rs. 3,00,000/- while the annual rent was fixed at Rs. 16,250/- with the provision that the rent would be increased by 10% every ten years. It was also decided that legal experts' guidance would be taken while executing the lease deeds in respect of the plots of land/rooms etc. the lease in respect of which has been granted."

5. It is stated that the above two resolutions were beyond the agenda fixed for the meeting and were suddenly introduced to lease out two separate plots of land belonging to the Board as mentioned in the impugned resolutions in favour of two private individuals i.e. respondent Nos. 11 and 10. According to the petitioners, without confirmation of the proceedings of the said general meeting in the following general meeting of the Board, the two impugned lease deeds were registered in favour of respondent Nos. 11 and 10 on 17.04.2007 in extreme-haste.

6. Some of the Ward Commissioners had opposed the impugned resolutions as being against public interest but they were clearly out numbered. There was also public outcry against leasing out of two prime plots of land to private individuals at throw away price. Representations were submitted against the aforesaid action of the Board before the District Administration as well as before the Government of Assam. Intervention of the Government of Assam was sought for as the lands were leased out without approval of the Government which is a mandatory requirement under section 63(2) of the Assam Municipal Act, 1956.

7. Since no decision was taken, petitioners have approached this Court by filing the present writ petition in the form of PIL.

8. While admitting the PIL, this Court after taking note of the challenge made, passed an interim order directing respondent Nos. 10 and 11 to maintain status-quo as on that date until further orders.

9. An affidavit has been filed by the Deputy Secretary to the Government of Assam, Urban Development Department on behalf of the Government of Assam. Stand taken in the said affidavit is that under section 62 of the Assam Municipal Act, 1956 (the Act hereafter), subject to any reservation made by the State Government, all properties of the nature mentioned therein situated within a municipality shall vest and belong to the municipality and shall be under its direction, management and control. Such properties include water bodies, public streams, channels etc. and also any adjacent land, not being private property, appertaining to such public tanks etc. Under section 63(2) of the Act, the municipality cannot sell, let out, exchange or otherwise dispose of any land vested in it under section 62 without the sanction of the State Government. In the instant case, the Board had referred the matter to the Director of Municipal Administration, Assam on 18.02.2007 for approval. The Director of Municipal Administration in turn forwarded the matter to the Government of Assam in the

Urban Development Department on 19.04.2007. Government sought for certain clarifications from the Board which was replied to by the Board. No decision has been taken thereafter. It is stated that no sanction of the Government was granted when the lease deeds were registered by the Board.

10. Affidavits have been filed by both respondent Nos. 10 and 11 contesting the contentions of the petitioners. In his affidavit, respondent No. 10 has stated that the Board had adopted similar resolutions to lease out municipal land to 24 (twenty four) other lessees. If there is any infirmity in alienation of municipal land to respondent No. 10, similar infirmity also afflicts other land transactions of the Board. But the other beneficiaries have a particular political affiliation similar to that of the petitioners because of which those have not been challenged by the petitioners. All the petitioners have affiliation to Asom Gana Parishad (AGP) political party. Respondent Nos. 10 and 11 have been singled out because they do not subscribe to the political views of the petitioners. PEL is thus politically motivated. On merit it is stated that in respect of land being leased out to respondent No. 10, premium was fixed at Rs. 3 lakhs with annual rent of Rs. 16,250,00.00 having provision of enhancement. Therefore, it cannot be said that the land in question has been leased out to respondent No. 10 at a throw away price. Registration of the lease deed has been done by following the due procedure. Allegation of violation of the provisions of the Act has been denied. It is contended that the Board stands to benefit by leasing out the land to respondent No. 10.

11. In his affidavit, respondent No. 11 has stated that he has a long standing relationship with the Board dating back to 1967 when he had taken one house belonging to the Board on rent. Thereafter he has constructed buildings and taken on rent buildings belonging to the Board. On 03.12.2005, respondent No. 11 submitted a proposal before the Board for development of land already under his possession by constructing a commercial complex thereon. The proposal was discussed by the Board and after detailed discussion at various levels, the Board adopted the impugned resolution No. 12 to lease out land belonging to the Board to the respondent No. 11 on lease for 99 years at one time premium of Rs. 1,25,000.00 with annual rental of Rs. 11,000.00 with provision for enhancement of rent by 10% after every 10 years. Thereafter, on deposit of lease premium amount, the lease deed was executed by following the due procedure. Respondent No. 11 has also alleged that the instant PIL is politically motivated as the petitioners are affiliated to AGP party whereas respondent Nos. 10 and 11 are well wishers of a different political party. Respondent No. 11 had taken municipal land belonging to the Board on lease way back in the year 1967 and thereafter constructed two adjacent buildings, one in 1967 and the other in 1972. It is not a case of granting land lease to the respondent Nos. 10 and 11 all of a sudden at the cost of the public. Violation of any provisions of the Act has been denied. He has also stated that out of 24 (twenty four) numbers of leases which were similarly executed by the Board, barring the two relating to respondent Nos. 10 and 11, the rest of the leases numbering 22 have not been

questioned by the petitioners which indicates lack of bonafides.

12. Respondent No. 9 who was the Chairman of the Board at the relevant point of time has also filed an affidavit. She has stated that while discharging her duties as Chairperson she was basically dependent on respondent Nos. 7 and 8 and used to act as per their guidance. She has stated that resolution Nos. 12 and 13 were not there in the agenda of the general meeting held on 12.04.2007. On 13.04.2007 when the proceedings were brought to her, she had signed the same. She has stated that she was not conversant about the provisions of the Act. She has further stated that she was advised by respondent Nos. 7 and 8 that if the commercial properties were leased out, it would be beneficial to the Board as well as to the public at large. She had discharged her duty bonafide and without any motive.

13. Heard Mr. S.N. Sarma, learned Senior Counsel for the petitioners and Mr. B.J. Ghosh, learned Government Advocate, Assam. Also heard Mr. S.K. Medhi, learned Counsel for respondent Nos. 10 and 11.

14. Mr. Sarma, learned Senior Counsel for the petitioners submits that it is a well settled proposition that public property must be utilised for the benefit of the public. It cannot be doled out in the manner done by the Board. There has to be public auction or tender preceding such alienation. No such public auction or tender was called for by the Board. In the process, the Board has suffered substantial revenue loss by leasing out prime properties belonging to the Board to respondent Nos. 10 and 11 for 99 years at paltry amounts. The procedure adopted by the Board was not proper. No approval or sanction of the Government was obtained for grant of lease of both properties to respondent Nos. 10 and 11 which was in violation of section 63(2) of the Act. Everything was done in extreme haste not for the benefit of the public but for the benefit of two individuals i.e., respondent Nos. 10 and 11. Terming the leasing out of municipal land to the above respondents as illegal and against public interest, learned Senior Counsel for the petitioners seeks quashing of the impugned resolutions and the consequential lease deeds.

15. Mr. Ghosh, learned Government Advocate submits that the State Government has not granted any approval or sanction to leasing out of land belonging to the Board to respondent Nos. 10 and 11.

16. Mr. Medhi, learned Counsel for respondent Nos. 10 and 11 has questioned the bonafides of the petitioners. He has submitted that there is no loss to the Board as because respondent Nos. 10 and 11 are required to pay premium amount and annual rent with provision for enhancement. He further submits that if the transfer of land to respondents 10 and 11 is considered untenable, than the other resolutions providing for similar transfer of land belonging to the Board to other persons would also have to be interfered with.

17. Submissions made have been considered.

18. Before proceeding further, it would be apposite to refer to the relevant provisions of the Act. Section 43 of the Act deals with ordinary and special meetings of Municipal Boards. Section 47 provides for entering of the minutes of the proceedings of all meetings of Municipal Boards in a book to be kept for the purpose and open to inspection of the tax payers. Sub-section (2) of section 47 requires forwarding of the minutes of the proceedings of all meetings of the Board to the Deputy Commissioner, Commissioner of Division and to the State Government. Under sub-section (3), the minutes of the proceedings of a meeting of the Board shall be laid before the next meeting of the Board for confirmation. Section 62 of the Act deals with municipal property i.e. those properties which are vested in the Board. Section 63 deals with power of Board to purchase, lease and sell land. Under sub-section (1), a Board may at a meeting decide to purchase or take on lease or gift any land for the purposes of the Act with the approval of the State Government. Sub-section (2) is more specific in that it prohibits a Board from selling, exchanging or otherwise disposing of any land vested in it under section 62 except with the sanction of the State Government.

19. A careful reading of the above provisions of the Act shows that resolutions adopted in a meeting of the Board are required to be confirmed in the next meeting of the Board. Secondly, the Board is not empowered to alienate land vested in it except with the sanction of the State Government.

20. Having noticed the relevant provisions of the Act, we may now turn to the facts of the present case. As we have seen, the impugned resolutions were adopted on 12.04.2007. The then Chairman of the Board in her affidavit has stated that the two resolutions were not listed as agenda items of the general meeting of the Board held on 12.04.2007. By resolution No. 12, respondent No. 11 was granted lease of a room belonging to the Board situated on the bank of Dhobi Phukhuri for 99 years on payment of one-time premium of Rs. 1,25,000.00 and at an annual rent of Rs. 11,000.00 to be increased @ 10% every ten years. Likewise, by resolution No. 13, respondent No. 10 was granted lease of a plot of land situated in front of Anowar Cinema Hall belonging to the Board for 99 years on payment of one-time premium of Rs. 3,00,000.00 and at an annual rent of Rs. 16,250.00 to be increased by 10% every 10 years. A perusal of the resolutions would show that respondent Nos. 10 and 11 had submitted proposals before the Board for giving them room/land belonging to the Board on lease for commercial use. On the basis of the proposals submitted, the impugned resolutions were adopted.

21. As already noticed, the lease deeds were registered immediately thereafter on 17.04.2007 without waiting for confirmation of the impugned resolutions dated 12.04.2007 in the next meeting of the Board. Not only that, the lease deeds were registered before obtaining sanction of the State Government. In fact, State Government has not granted sanction to the proposal of the Board for leasing out land belonging to the Board to respondent Nos. 10 and 11. This indicates undue haste on the part of the Board in alienating its land in favour of

respondent Nos. 10 and 11. The Apex Court has held in *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others*, that when a thing is done in a post haste manner, mala fide would be presumed.

22. Not only this, under section 63(2) of the Act it is expressly provided that no Board shall sell, exchange or otherwise dispose of any land vested in it under section 62 except with the sanction of the State Government. There is no dispute that the lands sought to be alienated vide the impugned resolutions dated 12.04.2007 are lands vested in the Board. The State Government in its affidavit has clearly stated that the impugned resolutions dated 12.04.2007 did not have the sanction of the State Government. The language of 63(2) of the Act particularly the use of the word "shall" is clearly suggestive of the mandatory nature of the requirement. In the absence of sanction of the State Government, such alienation of land belonging to the Board would have no legal sanctity and would be a nullity.

23. There is one more aspect which requires to be gone into. There would be a large number of people who may want land in urban or municipal areas belonging to Boards because of commercial or other requirements. Question is how can one be selected or preferred over another in matters of land allotment? Can the State Government or its instrumentalities allot land to any one it pleases in any manner it chooses? In a society governed by the rule of law, it certainly cannot. A transparent non-discriminatory procedure has to be adopted and followed. Coming to the present case, the manner in which land was allotted to respondent Nos. 10 and 11 by the Board was neither transparent nor reasonable. Respondent Nos. 10 and 11 had submitted applications for land on the basis of which the Board granted them room/land on long term lease. This is not permissible. The State Government or its instrumentalities cannot grant largesse by way of land settlement etc. to any individual or entity according to its sweet will and by following such arbitrary and non-transparent procedure. The State has no such unfettered discretion. In matters of distribution of State largesse, such as, allotment of land, grant of quotas etc., State action must be non-arbitrary and non-discriminatory. Procedure adopted must be transparent. State action cannot be influenced by favouritism. Such discretion must be exercised on sound principles in public interest which are consistent with the mandate of Article 14 of the Constitution of India.

24. In the case of *Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others*, , the Hon'ble Supreme Court held that there cannot be any policy of allotting land on the basis of applications made by individuals dehors an invitation or advertisement by the State. By entertaining applications made by individuals for allotment of land, the State cannot exclude other eligible persons from lodging competing claims. Any allotment of land by the State by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism violating Article 14 of the Constitution of India This is what the Hon'ble Apex Court held in that case:--

"65. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organizations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

67. This, however, does not mean that the State can never allot land to the institutions/organizations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organizations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organizations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.

68. The allotment of land by the State or its agencies/instrumentalities to a body/organization/institution which carry the tag of caste, community or religion is not only contrary to the idea of secular democratic republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/organizations/institutions on political considerations or by

way of favouritism and/or nepotism or with a view to nurture the vote bank for future is constitutionally impermissible."

25. By applying the above test, the impugned resolutions and the consequential lease deeds cannot stand the test of judicial scrutiny and are clearly untenable being violative of section 63(2) of the Act and Article 14 of the Constitution.

26. On the contention of respondent Nos. 10 and 11 about grant of land by the Board to other lessees in similar manner as granted to them, in the absence of any challenge to such alleged alienation, this Court is not inclined to entertain such contention.

27. Accordingly and in the light of the discussions made above, impugned resolution Nos. 12 and 13 dated 12.04.2007 of the Tezpur Municipal Board as well as the consequential lease deed Nos. 614/2007 and 615/2007, both dated 17.04.2007, are set aside and quashed. PIL is allowed. No cost.