

(2016) 08 GUJ CK 0078

In the Gujarat High Court

Case No : Special Civil Application No. 5982 of 1996

Jamnagar Properties Private Limited

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 79A
Government Grants Act, 1895 — Section 2, Section 3

Citation : (2017) AIRCC 673

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

Bench : Single Bench

Advocate : Ms Megha Jani, Advocate, for the Petitioner No. 1; Ms Jyoti Bhatt, AGP, for the Respondent Nos. 1-3

Final Decision : Dismissed

Judgement

Ms. Bela M. Trivedi, J.—The petition was originally filed by the petitioner Brook Bond Lipton India Limited, challenging the show-cause notice for breach of condition dated 6/1995-96 issued by the Deputy Collector, Jamnagar - respondent No.2 (Annexure-A-1) under Section 79A of the Bombay Land Revenue Code (hereinafter referred to as "the said Code"). It appears that thereafter name of the petitioner was permitted to be substituted as Hindustan Lever Limited, as per the order dated 17.12.2007 passed in Civil Application No.13866 of 2006. Again the name of the petitioner was permitted to be changed and Hindustan Unilever Limited was substituted as the petitioner, as per the order dated 22.6.2010 passed in Civil Application No.925 of 2010. Again the name of the petitioner was permitted to be substituted as Jamnagar Properties Private Limited as per the order dated 12.8.2015 passed in Civil Application No.8836 of 2015. It is pertinent to note that there was no amendment sought in the memo of the petition, despite change of names of the petitioner made in the cause-title from time to time.

2. The short facts are that the original petitioner M/s. Brook Bond Lipton (India)

Limited was a public limited company incorporated under the Indian Companies Act. On 19.9.1956 the Government had executed a lease-deed in favour of the said original petitioner (Annexure-B-1 and B-2) granting the lands in question bearing Survey Nos.218 paiki, 219, 229/2, 230, and 231 situated at Jamnagar and Survey No.80 situated at Bedi for industrial purpose on the terms and conditions mentioned therein. It appears that in 1977 the Deputy Collector had issued a notice, calling upon the said petitioner to show cause as to why the lease-deed should not be cancelled as per the Condition No.8, the said petitioner having not used the land for industrial purpose, however, considering the reply filed by the said petitioner, the Deputy Collector had not proceeded further with the said notice. Thereafter the respondent No.2 Deputy Collector initiated the proceedings under Section 79A of the Code by issuing the impugned notice dated 25.6.1996 (Annexure-A-1), calling upon the said petitioner to show cause as to why the lease-deed should not be cancelled and the land should not be directed to be vested in Government as the petitioner had not used the land for industrial purpose for more than two years. The said notice was challenged by the said petitioner by way of present petition on the ground that the same was issued without jurisdiction and authority of law.

3. The petition was resisted by the respondent No.2 by filing reply contending inter alia that the petition was premature as the respondent No.2 had only issued the show-cause notice. It was also contended that the Deputy Collector was authorised to take action in case of breach of conditions of the lease-deed and that the respondent No.2 had not passed any order under Section 79A of the said Code and even otherwise an appeal could be filed under Section 203 of the said Code against the order, if any, passed under Section 79A of the said Code. It was also contended that the petitioner Company was not using the land for the purpose for which it was granted and therefore, the show-cause notice was issued for breach of the conditions No.4 and 7 contained in the lease-deed. It appears that another affidavit-in-reply was also filed on behalf of the respondent by the Pranth Officer, Jamnagar contending inter alia that the Circle Inspector, Jamnagar City, Mamlatdar Office had made a panchnama on 17.10.1995 and latest on 21.6.2016 and it was found that the petitioner Company was not carrying on any manufacturing activities and it was closed since 1994.

4. An affidavit-in-rejoinder was sought to be filed on behalf of the petitioner stating inter alia that the large portion of the lands in question was acquired and possession thereof was taken over by various authorities from time to time and at present the petitioner was in possession of mere 7th of the lands originally leased out.

5. The learned Counsel Ms. Megha Jani for the petitioner submitted that the impugned show-cause notice issued by the respondent No.2 Deputy Collector being without any authority of law deserves to be set aside. She relied upon various decisions of the Supreme Court more particularly in case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8

SCC 1 and also in case of Union of India and Anr. v. Vicco Laboratories, reported in 2007 (13) SCC 270 to submit that when the notice is issued by the authority without jurisdiction, the same could be challenged by filing writ petition. She further submitted that the impugned notice has been issued invoking Section 79A of the said Code, which could not have been invoked looking to the nature and category of the circumstances mentioned in the said provision. According to her, the petitioner was neither unauthorisedly occupying the land, nor was in wrongful possession of the land in question, and that the allotment of the land by way of lease-deed was not under the provisions contained in the said Code. Placing heavy reliance on the decision of the Supreme Court in case of Tata Steel Ltd. v. State of Jharkhand & Ors., reported in 2015 SCC OnLine SC 1164, she submitted that the lessor i.e. the State Government could not dispossess the petitioner without following due process of law and in the instant case without filing suit before the competent Court under the provisions contained in the Transfer of Properties Act. Distinguishing the unreported judgement of this Court in case of Hides & Leather Products Pvt. Ltd. v. State of Gujarat passed in Special Civil Application No.3403 of 2013 decided on 19.7.2016, she submitted that in the said case, the provision of Section 79A was not mentioned in the notice, as has been mentioned in the instant case and that there was a right of re-entry reserved in the conditions of lease-deed in the said case, whereas no such condition reserving such right has been incorporated in the instant case. In short, according to her, the Deputy Collector could not have invoked Section 79A of the said Code for the alleged breach of conditions of the lease-deed.

6. However, Ms. Bhatt, learned AGP for the respondents submitted that there being alternative remedy available to the petitioner under the said Code itself and the petition having been filed at a premature stage, the same deserves to be dismissed. She relied upon the decision of this Court in SCA No.3403 of 2013 as well as the decision of the Supreme Court in case of Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. v. Government of T. N., reported in (1997) 3 SCC 466 to submit that the lease made by the Government would be covered by the protection envisaged under Sections 2 and 3 of the Grants Act and that the rights of the parties under the lease-deed are required to be ascertained from the tenor of the document itself.

7. At the outset, it is required to be mentioned that the original petitioner had challenged the legality of the impugned show-cause notice issued by the respondent No.2 Deputy Collector under Section 79A of the said Code in respect of the lands in question on the ground that the original petitioner had stopped the use of the said lands for the purpose for which they were granted. It is well settled proposition of law that abstinence from interference at the stage of issuance of show-cause notice and to relegate the parties to the proceedings before the authorities concerned, is the normal rule. The Supreme Court in the case of Union of India & Anr. v. Kunisetty Satyanarayana, reported in (2006) 12 SCC 28 has made very pertinent observations in this regard, which read as under:-

"14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

8. Similar view is also taken in case of *Union of India and Anr. v. Vicco Laboratories* (supra). In the instant case, the petitioner having challenged the show-cause notice, the writ petition being premature, deserved to be dismissed on that ground alone.

9. That apart, pending the petition, not only the interest of the original petitioner in the demised lands was determined, even according to the present petitioner, out of the total area of 90 acres 12 gunthas, which was the original subject matter of the lease-deed in question, area of only 38 acres has remained with the petitioner. Hence, the very nature of the rights of the original petitioner and the very nature of the lands in question have undergone substantial change pending the petition, however, except the substitution of petitioners from time to time in the cause-title, the memo of the petition has remained unchanged.

10. So far as the merits of the case are concerned, it is required to be noted that the lease-deed executed in favour of the original petitioner contained certain conditions, including the condition that the said petitioner had to use the lands for the purpose as mentioned in Condition No.4 and that the said lease-deed was liable to be cancelled by the Government in case of breach of any of the conditions contained therein. Since the show-cause notice was issued on the ground that the petitioner was not using the lands for the purpose for which they were granted, it was incumbent on the part of the petitioner to respond to the said notice and satisfy the concerned authority about the use of the land. That part, even in the petition, there is no averment made that the lands in question

were being used for the purpose for which they were allotted. Under the circumstances, the respondent No.2 was perfectly justified in initiating the action against the petitioner for committing breach of the conditions contained in the said lease-deed.

11. The submission made by the learned Counsel Ms. Jani for the petitioner that the respondents were required to file civil suit, has no merits. As per the settled legal position the provisions contained in the Transfer of Properties Act would not be applicable to the lands granted by the Government by way of lease. In this regard, it would be necessary to refer to the relevant provisions of the Grants Act. Sections 2 and 3 thereof 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."

12. 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 or 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 two 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]."

13. 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.

14. Though much reliance has been placed by Ms. Jani 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. ..."

15. In view of the afore stated legal position the Court has no hesitation in holding that the terms of any grant or transfer of land made by the Government would stand insulated from the tentacles of any statutory law. 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 provision of any other law. In the instant case also, the petitioner having been allotted the lands in question by the Government by executing the lease-deed, the rights, privileges and obligations of the parties would be governed by the conditions of the lease-deed only. The Court has also recently taken similar view in case of Hides & Leather Products Pvt. Ltd. v. State of Gujarat (SCA No. 3403 of 2013) (supra). Though the said judgement was sought to be distinguished by the learned Counsel Ms. Jani on the ground that there was no mention of the provisions of Section 79A in the said case, which has been mentioned in the instant case, the said submission cannot be accepted

in view of the aforesaid-stated settled legal position. There was no requirement of the respondent Collector or the Deputy Collector to file suit invoking the provisions of Transfer of Properties Act, in view of the provisions contained in the Grants Act, as have been interpreted by the Supreme Court in the afore stated decisions.

16. The petitioner having failed to use the land for the purpose for which it was granted to the petitioner, there was clear breach of condition incorporated in the lease deed, and therefore the Collector on behalf of the State Government had the authority to take necessary action against the petitioner. It cannot be gainsaid that the Collector has powers to grant permission to any person to occupy any unalienated unoccupied land for such period and on such conditions as he deems proper subject to rules made by the State Government in this behalf, and such occupancy is always subject to the conditions so prescribed as contemplated in Section 68 read with Section 37 of the Code. Any breach of conditions may entail action as per such conditions incorporated in the document of grant itself or under Section 79A or under such other provision of the Code, as may be applicable to the facts of the case. The Court therefore does not find any substance in the submission made by Ms. Jani that the impugned notice could not have been issued under Section 79A of the Code. Ms. Jani has failed to point out any jurisdictional error, warranting interference of this Court at the stage of issuance of show-cause notice by the Deputy Collector.

17. In that view of the matter, the Court does not find any substance in the present petition. The petition, therefore, is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

18. The request of Ms. Jani for continuing the interim relief to enable the petitioner to approach the higher forum is rejected for the reasons stated above.