

(2016) 03 GUJ CK 0187

In the Gujarat High Court

Case No : Special Civil Application No. 12620 of 2012

Jayeshkumar Kishorchandra Patel and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 3, Section 3(f)

Constitution of India, 1950 — Article 226

Gujarat Housing Board Act, 1961 — Section 49

Land Acquisition Act, 1894 — Section 11, Section 17(1)(c), Section 4, Section 4(1),

Citation : (2016) 03 GUJ CK 0187

Hon'ble Judges : Anant S. Dave and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : Vishal B. Mehta, Advocate, for the Appellant; Vacha Desai, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Anant S. Dave, J.—1. This petition under Article 226 of the Constitution of India is preferred by the petitioners with a prayer to issue a writ of mandamus or any other appropriate writ or order by holding that action of the respondent State Government and other authorities who acquired the land of the petitioners under the guise of so called public purpose is mala fide, wrongful, arbitrary, unreasonable and unconstitutional as well as against the public policy and amounts to fraud on power. Inter alia, it is prayed that the respondent and the Government authorities be further directed to restore possession of the said land to the petitioners from respondent No. 6 and during pendency of the petition, to grant status quo qua the subject land till the petition is heard finally.

2. On 25.3.2013 while issuing Rule in this petition, by interim order, it was directed that status quo qua the land in question should be maintained inasmuch as construction already made and being utilized shall be continued to be utilized, however, no additional construction shall be made. While passing the above order, this Court noticed the decision of the Apex Court in the case of Royal

Orchid Hotels Limited Vs G. Jayarama Reddy, , (2011) 10 SCC 608.

3. The short facts giving rise to this petition are as under.

3.1 Initially, the Collector, Surat vide notification dated 30.9.1987 decided to acquire the land of the petitioners and others for public purpose and as there is no dispute about issuance of sections 4 and 6 notifications, procedure undertaken by the concerned authority of issuance of notice under section 9, passing the award under section 11 etc. on 12.4.1990 an award by declaring the land of the petitioners and others as acquired and to pay compensation came to be passed. The land in question was kept under reservation for Gujarat Housing Board, public housing (H-27) and the above fact is so stated in zoning certificate issued by the Deputy Town Planner, Surat Urban Development Authority dated 21.6.2001.

3.2 A bone of contention is about action taken by the Deputy Secretary, Urban Development vide letter dated 17.10.2000 permitting the Gujarat Housing Board to allot the land in favour of respondent No. 6, a registered trust and the said lease deed was registered on 11.6.2001. That for the purpose for which the subject land was acquired, according to the petitioners, was given go-bye and under the guise of public purpose after acquiring the land of the petitioners, it was handed over to respondent No. 6 for establishing medical college and hospital and this amounts to colourable exercise inasmuch as provisions of the Land Acquisition Act do not envisage acquisition of the land for public purpose, in turn, to be allotted in favour of the private persons.

4. However, certain facts which are not in dispute are as under.

4.1 Some of the land owners/petitioners earlier challenged the notification of acquiring land by filing Special Civil Application No. 1957 of 2001 and Special Civil Application No. 7226 of 2001 and the petitions came to be rejected. Against which, Special Leave to Appeal (Civil) No. 9039 of 2002 was preferred before the Apex Court which also came to be rejected. So far as Special Civil Application No. 1957 of 2001 is concerned, it came to be rejected on 19.3.2001 and Special Civil Application No. 7226 of 2001 on 28.12.2001 and Special Leave to Appeal (Civil) No. 9039 of 2002 came to be rejected on 6.5.2002.

4.2 In above two writ petitions, very contention was raised that the South Gujarat Medical Education Trust, Surat - respondent No. 6 who demanded the land for construction of medical college building on the subject land and guidance was to be obtained from the State Government and the letter was sent on 17.10.2000 to the Housing Commissioner of Gujarat Housing Board stating that after careful consideration, the State Government was of the opinion that the land in question should be given to the South Gujarat Education Trust by sale at the rate of Rs. 37/- per square meter. That another contention raised in Special Civil Application No. 1957 of 2001 was about divesting the land acquired for public purpose in favour of the trust for its private interest. Both the above contentions were considered by a Division Bench of this Court and the petition

came to be rejected.

4.3 Likewise in writ petition being Special Civil Application No. 7226 of 2001, once again, all the above contentions were raised and in paragraph 9 of the above judgment, this Court recorded the submissions made by learned counsel appearing for the petitioners i.e. purpose for which the land came to be acquired is lost, the Gujarat Housing Board has not passed any resolution, the resolution passed by the State stating that the Gujarat Housing Board has passed a resolution, therefore, is not correct, the amount of Rs. 37/- per square meter sanctioned by the State Government for the deal is low and there is a loss of public money and drain on the public exchequer, respondent No. 6 is a private trust and, therefore, transaction in favour of respondent No. 6 cannot be said to be for public purpose.

4.4 All the above contentions were considered and dealt with. Even, the order dated 19.3.2001 passed in Special Civil Application No. 1957 of 2001 was also referred to therein. After referring to section 48 of the Land Acquisition Act, it was held that in factual profile of the petition, section 48 would not come into operation and further section 49 of the Gujarat Housing Board Act 1961 and the Gujarat Housing Board Rules 1977 were also considered and it was held that the Gujarat Housing Board was empowered to dispose or transfer its interest in any land, building or any other property vesting in it and situated in the area comprised in any housing scheme sanctioned under the Act. A Division Bench also referred to other such sections of the Act 1961 and Rules 1977 and found that resolution by which request from the Commissioner of Surat Municipal Corporation was also made and respondent No. 5 board passed the resolution on 27.2.1999 and was sent for approval of the Government and after getting approval and sanction of the State Government, the decision was taken to enter into the lease with respondent No. 6.

4.5 It is to be noted that above petition came to be disposed of with costs quantified at Rs. 5000/-.

5. In addition to above two writ petitions and Special Leave to Appeal (Civil) preferred before the Apex Court, many of the petitioners filed civil suits before the competent Civil Court having jurisdiction and reference to which reveals that in all the above civil litigation, no relief was granted and the application for interim relief below Exh.5 came to be rejected.

6. In the above backdrop of the facts, Mr. Dhaval Dave, learned senior advocate appearing for the petitioners would contend that the case of the petitioners is almost identical to that of Royal Orchid Hotels Limited (supra) in which the land was acquired by the State Government at the instance of the Karnataka State Tourism Development Corporation for the specified purpose i.e. Golf-cum-Hotel Resort near Bangalore Airport, Bangalore could be transferred by the Corporation to a private individual and corporate entities and referring to factual aspect therein, certain observations, findings and conclusions in the above case before

the Apex Court were pressed into service and it is submitted that when acquisition of the land is actuated by mala fide though land is acquired for public purpose, but ultimate beneficiaries are private parties, litigation undertaken earlier would not deter the Court in exercising the jurisdiction under Article 226 of the Constitution of India in favour of the land owners who lost their land and further even the delay in approaching the Court would also not be fatal and on the ground of delay only, the petitioners are not to be nonsuited. It is further submitted that in a given case, even the Court will be justified in directing restoration of the land to the land owners and the power of eminent domain by which the State may compulsorily acquire the land of the private persons, but that proposition cannot be over-stretched to legitimize patently illegal and fraudulent exercise undertaken for depriving the land owners of their constitutional right to property with a view to favour private persons. Thus, according to learned senior counsel, in the facts of this case also, though some petitioners approached this Court invoking the writ jurisdiction of this Court twice, in view of the above decision in *Royal Orchid Hotels Limited (supra)* when the subject land is divested by the Gujarat Housing Board in favour of the private trust, such acquisition and divesting deserve to be quashed and set aside and the land be restored to the petitioners.

6.1 It is further contended that even after executing the lease deed as early as on 11.6.2001 no medical college or hospital is established and the facts reveal that some activities are carried out by the Physiotherapy Center and, therefore, it cannot be said that even the purpose i.e. medical services to be provided to the residents of Surat is also not served. It is emphasized that in the present case though respondent No. 6 is a registered trust, but again is a private party and as on date, no permission or approval is available of the competent authority for establishing or running medical college and 11 years have passed, subject land deserves to be handed over to the petitioners. Learned senior counsel for the petitioners has also referred to certain resolutions passed by respondent No. 6 trust to convey that the trust is not performing its duty or its intention as to deviate from the real purpose for which the trust was established and the lease deed was entered into. It is, therefore, submitted that the petition deserves to be allowed with prayers made therein.

7. Shri Prasant Desai, learned senior counsel appearing for respondent No. 6 vehemently contended that this petition is barred by *res judicata* inasmuch as identical questions of law as well as facts were raised in earlier two writ petitions which were considered on merits and came to be rejected by a reasoned order and even Special Leave to Appeal (Civil) also came to be rejected by the Apex Court. The present proceedings being abuse of the process of law and initiated at the behest of the power of attorney on behalf of petitioner Nos. 1 to 12 is, in fact, the process undertaken to harass respondent No. 6 and delay the process of establishing medical college and hospital and that by following the procedure as established under the law and upon receiving the approval and sanction of the State Government, the Gujarat Housing Board divested the part of the land, of

course, to the trust, but for public purpose. It is submitted that possession of the land bearing block Nos. 47, 48 paiki 55 to 74, 76 and 77 of village Jahangirabad, Taluka - City Surat, District Surat was handed over to respondent No. 6 on 13.6.2001 by the Gujarat Housing Board. Necessary plan came to be sanctioned for the medical college and hospital on 9.12.2005. The above procedure has taken some time in view of submitting the revised plan also. The use and occupancy certificate was granted by the Surat Municipal Corporation for building No.B/3 paiki "B" block i.e. ground, first and second floors for the medical college and later on use and occupancy certificate by order dated 31.1.2008. No objection certificate was, however, granted by the Health and Family Welfare Department of the State of Gujarat for Physiotherapy College in the building constructed over and affiliation and recognition of the above college was granted by the Veer Narmad South Gujarat University by sanctioning 30 seats for Physiotherapy which came to be increased to 60 seats. For establishment of Dental College, the application was made on 25.9.2007 and 100 admissions for the academic year 2008-2009 was approved. In view of elaborate plan to have 100 seats for the medical college, the procedure was undertaken and even the applications were made seeking permission to establish 300 beds for the hospital for which the decision was awaited. Reference is made to the recruitment of teaching and non-teaching staff and admission of the students in Physiotherapy and Dental college, grant of scholarship to deserving students and it is submitted that after 2013 as status quo is granted, no expansion could be carried out.

7.1 With regard to the provisions pertaining to the Land Acquisition Act, learned senior counsel has referred to sections 48, 17-A and the decision of the Apex Court about acquiring the land for public purpose which may be used for another public purpose on account of change or surplus thereof and further denying any mala fide or oblique motive in purchasing the land from the Gujarat Housing Board which was part of the acquired land as early as in the year 1987.

7.2 Reference is made to certain pleadings in the form of additional and rejoinder affidavits filed in these proceedings and submitted that the petitioners herein not only failed before this Court and the Apex Court, but no relief was granted even by the Civil Court and, therefore, the petition deserves to be rejected.

8. We have also heard learned counsel for the respective parties.

9. Having heard learned counsel appearing for the parties, on perusal of the record of the case, it is not in dispute that earlier two writ petitions were preferred by some of the petitioners and came to be rejected and attained finality upto the Apex Court.

10. It is profitable to refer to the findings, reasonings and conclusion of the order dated 20.12.2001 passed in Special Civil Application No. 7226 of 2001 of this Court in which almost all the contentions raised on law as well as on facts were considered and answered by this Court. Paragraphs 19 to 25 read as under.

"19. Learned counsel for the petitioners contended that the purpose of

construction of medical college and hospital by respondent No. 6 Trust cannot be said to be a public purpose as it is not a public body. This submission is also without any substance. The respondent No. 6 is a public trust registered under the Bombay Public Trust Act. The respondent No. 6 Trust has also paid the full consideration premium amount of Rs. 63,93,711/- to the respondent Board at the time of execution of the lease deed which has been executed and duly registered on 11.6.2001 between respondent No. 5 Board and respondent No. 6 Trust. The respondent No. 6 has already been put into possession.

20. It is also noticed from the record that the Board of Trustees of the respondent No. 6 Trust includes Vice-Chancellor of South Gujarat University, Mayor of Surat Municipal Corporation, the Collector of Surat and Dean of Government Medical College, Surat, who are Ex-Officio Trustees of respondent No. 6. It has been categorically stated in the affidavit in reply filed on behalf of the respondent No. 6 Trust that it seeks to construct a charitable hospital upon the subject lands and it will be run purely on "no profit no loss basis", it will have 750 beds in phases and that the medical college will also be attached to this hospital. It is also specifically stated on behalf of the respondent No. 6 Trust that the hospital will be open for the treatment to the general public. Of course, whether the medical college will be on the self-financing scheme or not is not specifically stated, but assuming that even if the hospital is proposed on the basis of self financing scheme, it does not necessarily mean that the public purpose is frustrated. When four aforesaid Ex-Officio persons are in the Board of Trustees in absence of any other further supporting material, the mere allegation of the petitioners that the basis of self financing scheme would only lead to commercial profit interest and not the public interest, is meritless and without any substance.

21. Again it may be noted that what is public purpose is statutorily stated in clause (f) of section 3 of the Act. It cannot be contended that the construction of medical college and hospital by the public trust would cease to be a public purpose because it is proposed by the trust and not the statutory body. Respondent No. 6 Trust is a registered public trust under the Bombay Public Trust Act and the public purpose can be augmented, accelerated or proliferated through public trust in pursuance of any scheme of policy of the Government. The contention that it is not covered by clause (f) of section 3 of the Act is without any merits. Again it may be noted that section 3(f) of the Act defines "public purpose" and it is inclusive definition enumerative and not exhaustive. The contention that the public purpose in pursuance of the policy of the scheme of the Government cannot be advanced through the media or the agency of public trust is not accepted by this Court in a reported Division Bench decision rendered in Special Civil Application No. 9251/97 and others, decided on 11.11.1998. We do not find any substance or material on record to make a departure from the said view.

22. In view of the aforesaid discussion, the contentions advanced by the learned

advocate for the petitioners are without any substance. The petition is misconceived in view of the provisions of section 17-A of the Act referred to hereinabove and settled proposition of law.

23. In the case of Union of India and others Vs. Jaswantraï Kochhar and others, reported in (1996) SCC 491, it has been held that change of user from one public purpose to another public purpose will not invalidate the acquisition of land. In this case the land was acquired for public purpose of housing scheme, but the lands were sought to be utilised for commercial purpose viz. The District Centre. Therefore notification under section 4(1) of the Act was questioned. It has been held in the said decision that the construction of District Centre for commercial purpose itself is a public purpose. It is well settled that the land sought to be used acquired for public purpose may be used for another purpose and therefore when notification has mentioned that the land is sought to be acquired for housing scheme, but it is sought to be used for construction of a hospital, the public purpose does not cease to be public purpose. Such a view was also taken by the Apex Court in the case of The Collector of 24 Parganas and others Vs. Lalit Mohan Mullick and others, reported in , AIR 1986 SC 622.

24. In the case of C. Padma and others Vs. Dy. Secretary to the Government of Tamilnadu and others, reported in , (1997) 2 SCC 627, the Hon"ble Supreme Court has laid down the proposition that the claimants-original owners of the acquired land are not entitled to restitution of possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for any other purpose. As held in the case of Shri Chandragauda Ramgonda Patil Vs. The State of Maharashtra, reported in , JT 1996 (9) SC 258, even the land remaining unutilised for any public purpose is not required to be restituted to the erstwhile owner to whom adequate compensation was paid according to market value as on the date of notification.

25. In our opinion, this petition at the instance of erstwhile owners of the acquired lands is totally misconceived and after having taken into consideration the overall factual landscape and the relevant legal aspects, the petitioners have totally failed to establish their right to return or realLOT the lands acquired for public purpose. In fact the petition is filed without any entitlement and basis. The petition is, therefore, required to be dismissed. Accordingly the petition is dismissed with costs quantified at Rs. 5000/-. Rule is discharged. Obviously when the petition is rejected on merits, interim relief would not assume any survival value."

10.1 Likewise, Special Civil Application No. 1957 of 2001 filed by some of the petitioners was also rejected by the Division Bench of this Court on 19.3.2001 negativating acquisition of the land under the Land Acquisition Act and acquiring agriculture lands of the petitioners and all other adjacent villagers by the Gujarat Housing Board, parting with the above land in favour of the trust i.e. South Gujarat Medical Education Trust, Surat and even approval was granted by the Town Planning and Urban Development Department, Government of Gujarat. The

question about sale of the land in question at the rate of Rs. 37/- per square meter was also gone into by a Division Bench and whether land acquired for public purpose can be utilized for another public purpose i.e. construction of medical college and hospital by a private trust, the Division Bench had not found substance and in absence of merit, the writ petition came to be rejected.

10.2 As fairly conceded by learned senior counsel appearing for the petitioners but for the judgment in the case of Royal Orchid Hotels Limited (supra) delivered by the Apex Court and so recorded while admitting this petition by this Court, petitioners would not have ventured to invoke extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

10.3 Thus, apart from certain factual aspects of law, all the contentions which are raised in this petition fell into consideration of two Division Benches of this Court in two different writ petitions to which reference is made in earlier paragraph of this judgment and again there is no need for us to repeat or reiterate and we are bound to follow the decisions rendered therein. So far as the case of Royal Orchid Hotels Limited (supra) is concerned, the Apex Court considered the acquisition of the land by framing the question "Whether land acquired by the State Government at the instance of the Karnataka State Tourism Development Corporation for the specified purpose i.e. Gold-cum-Hotel Resort near Bangalore Airport, Bangalore could be transferred by the Corporation to a private individual and corporate entities" and Division Bench of the Karnataka High Court upon deliberation quashed acquisition of land of the subject appeal before the Apex Court.

10.4 In the above case, real estate developer had entered into agreements with the land owners for purchase of land comprised of certain survey numbers for putting up a group housing scheme and obtained approval from the Bangalore Development Authority and the very person was behind move made by the corporation for acquisition of land for execution of tourism related projects. That Managing Director of Tourism Corporation of Karnataka State had given in writing about financial inability of the corporation to proceed with the project and thereafter, negotiation had taken place even before taking possession of land. Then, other corporate entity also joined hands with the real estate developer for commercial purpose qua acquired land and after detailed scrutiny, the High Court of Karnataka found that acquisition was actuated by mala fide, where object of providing land to private individual surfaced on record. The Apex Court had also taken note of Fifty-Second Report submitted by the committee of Karnataka Legislature on Public Undertakings about the manner of acquisition and considering totality of the circumstances though challenge was made after a delay of many years, the Apex Court upheld the decision of the High Court of Karnataka directing restoration of land to the original land owners.

10.5 In the facts of this case, the following facts are not in dispute.

10.6 Issuance of notification by the District Collector dated 30.9.1987 declaring

intention to acquire subject land for public purpose and publishing award on 12.4.1990 by the Special Land Acquisition Officer i.e. under section 11 of the Act. No-doubt, land in question was kept under reservation for the Gujarat Housing Board for public housing and even zoning certificate was issued by the Deputy Town Planner, Surat Urban Development Authority on 21.6.2001. Only upon requisition made by the Gujarat Housing Board after following the procedure, the State of Gujarat through the Deputy Secretary, Urban Development granted permission to allot land on 17.10.2000 to respondent No. 6 trust for public purpose of construction of medical college and hospital. This fact reveals that after 13 years of acquisition of land for the Gujarat Housing Board, the Government of Gujarat allotted land to respondent No. 6 trust. No ill-intention or any oblique motive appears with ill-design in the mind of authorities to deprive petitioners of their land who received fair and adequate compensation in accordance with law.

10.7 Further, initially, 45 hectares approximately of land was acquired, while respondent No. 6 trust is given only 17 hectares viz., (172801 square meters) of land which shows that land was not fully divested in favour of respondent No. 6 trust.

10.8 We have perused objects of the trust deed and statement of facts about status of infrastructure set up by respondent No. 6 trust on the land allotted reveals that initially, subject land remains in dispute in view of filing of the civil suit in the Civil Court of Surat in the year 2003 and continued till temporary injunction application came to be rejected in the year 2007. Finally, Regular Civil Suit No. 245 of 2003 was dismissed on 18.11.2009. Then, stay granted in this writ petition remained in operation. After commencement of development of land and performing ceremony, procedure was followed to get the plan submitted to the competent authority sanctioned and in view of requirement for getting recognition and approval from the Medical Council of India, further expansion was needed to have minimum requirement of bed in the hospital, revised plans were also submitted. During the interregnum, even the writ petitions were preferred to which reference is already made hereinabove and respondent No. 6 trust could not raise infrastructure as expected. Even though, from the years 2007-08 to 2012-13 number of patients were treated on payment of nominal charges and number of such patients in total comes to 17000 for OPD. For Physiotherapy OPD for the years 2006-07 to 2012-13 more than 25000 patients were treated, while for Dental OPD, treatment was given to more than 27000 patients. Respondent No. 6 trust also employed teaching and non-teaching staff and it is declared on oath that respondent No. 6 trust would be in a position to complete construction of hospital of 700 beds within ensuing period of two years and would commence medical college immediately. It will not be out of place to mention providing scholarship to number of students in various faculties and thus, it cannot be said that land divested by the Gujarat Housing Board and so permitted by the State of Gujarat is for the purpose other than public purpose.

10.9 We have also perused the affidavit filed by the Deputy Town Planner, Surat Urban Development Authority about exercise of powers for preparing revised draft plan and sanction given by the State Government under the provisions of section 17(1)(c) of the Act, do not reveal any exercise of powers contrary to law.

11. Reference is made by Shri Dhaval Dave, learned senior counsel appearing for the petitioners to the resolution of respondent No. 6 trust of modifying or altering objects in the trust deed. Again, the above attempt on the part of learned senior counsel for the petitioners will not deter us from holding that respondent No. 6 trust has not deviated from its object of providing better medical facilities and medical education in consonance with the original objects. On the contrary, such modification in the trust deed includes research in the field of medical education. That issues of valuation of land etc. were already concluded in previous litigation.

12. Other aspect about intention on the part of the power of attorney not pursuing litigation who initially declared and supported the case of respondent No. 6 trust and even offered his own land subject to certain conditions i.e. to provide medical facility to the members of particular community and also to keep certain percentage of seats reserved for various courses of medical education establishes that the present petition is filed by the petitioners with certain oblique motive and being third round of litigation exposes for awarding costs which we refrain simply because the petitioners remain to be original land owners whose lands were taken away by following the provisions of the Land Acquisition Act.

13. Conjoint discussion above about law and facts do not persuade us to grant relief prayed. In absence of merit, the writ petition is rejected. No costs.