

(2005) 03 GUJ CK 0062

In the Gujarat High Court

Case No : Special Civil Application No. 4645 of 1996

Kalubhai Samjibhai Nakum

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-03-2005

Acts Referred:

Citation : (2005) 03 GUJ CK 0062

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Deepak M. Shah, for Petitioner No. 1-2 and Rajan D. Shah, for Petitioner No. 1-2, for the Appellant; Nanavaty Advocates for Respondent No. 4 and Shaktisinh Gohil, for the Respondent

Judgement

Jayant Patel, J.—The short facts of the case are that the petitioners together with other persons are claiming the status as Scheduled Caste belonging to Satvara Community. It is the case of the petitioners that they have applied for allotment of the plot of the land of 100 sq. yards each as per the policy of the Government. Since no action was taken the petitioner preferred Special Civil Application No.13335/1993 which came up before this Court (Coram: B.S.Kapadia, J.) on 6.9.1994 and this Court was pleased to observe that the Collector is directed to look into the matter and shall sympathetically consider the matter for allotment of the land from Survey No.1415 and if the land is not available, the matter may be considered for allotment of the nearby land. In view of the said observations made by this Court and direction to decide the application, the petitioner withdrew the petition. It appears that thereafter as per the case of the petitioner the applications were made. However, no actions were taken and as per the information of the petitioner, the land of Survey No.1415 was converted into 25 sq. mtrs plots for allotment to urban poor people and it is the case of the petitioner that they are belonging to rural area and the land is situated under rural area and, therefore, the land ought to have been allotted to them as per the observations made in the order dated 6.9.1994 in SCA No.13335/1993 and as the land was not allotted, the petitioners have preferred the present petition

for the directions to the respondents to grant the land to the petitioner from Survey No.1415 of Village Madhapar-Vajepur on priority basis to the petitioners.

2. It appears that in this petition on 4.7.1996, when the petition was admitted, the ad-interim relief was granted directing the respondent to maintain status-quo with respect to the subject matter of this petition. It further appears that thereafter on 30.8.1996, this Court passed the following order:

"Rule. Notice to interim relief returnable on 19.7.1996. By way of ad-interim relief, status-quo with respect to the subject-matter of this petition is ordered to be maintained. Direct service is permitted."

3. It also appears that after the order dated 30.8.1996 was passed as referred to hereinabove, since some submission was made at later point of time, subsequently on the same date the order was passed, whereby the Court found that the Officers of the State Government have committed act of contempt of Court by recording the statement of the concerned petitioner that they are not desirous to get any other land from Survey No.1415. Since no record for allotment of the land was available and as the file could not be produced before the Court, it was also observed that in spite of the directions given as per the order dated 6.9.1994, the land appears to have been allotted and, therefore, the Court drew adverse inference and for such purpose also issued notice for contempt. Mr.Mengdey, learned AGP has stated during the course of the hearing that the said contempt proceedings are disposed of as per the order dated 29.10.1996 with the observations that the decision as to allotment will be taken in accordance with the directions already issued and also in accordance with the provisions of the scheme within a period of four weeks from today. It has been stated by Mr.Mengdey that after the order dated 29.10.1996 passed by the Division Bench of this Court in the contempt proceedings only four persons submitted applications for allotment of the land and the authority have allotted four plots from the land bearing Survey No.774, but thereafter as the four persons have not deposited the amount the possession of the land is not handed over.

4. The present petition had come up for final hearing before this Court on 17.3.2005 and the learned AGP was directed to verify as to whether the land is available for allotment to the poor and needy class as per the policy of the Government as in existing on today and to report to this Court.

5. Today when the matter is further taken up for hearing, Mr.Mengdey, learned AGP has made available the file and record of the case to the Court for perusal of the Court and it appears that from the record that the State Government had formulated policy as per the resolution dated 25.2.1993 to allot the plots to the urban poor having no residential house in 62 Municipalities of the State. The plots as per the policy were to be allotted admeasure 25 sq. mtrs at the rate of Rs.10/= per sq. mtrs. and the policy was to allot 500 plots. There was no income limit provided, but it was provided in the policy that if the land is available within

the limits of the Municipality, the same may be utilised by Municipality and in case if the land is falling short, the other waste land can also be made available. It appears that the applicants of CA No.9603/2004 in SCA No.4645/1996, which is being heard simultaneously, together with the other applicants applied for allotment of the plot as per the aforesaid policy. The original file of the Government shows that vide Ref. 2593 dated 20.7.93, the District Collector, Rajkot has passed the order for approving the list of 972 persons for allotment of the plot admeasuring 25 sq. mtrs., each. The map for marking of the plot is also made available to the Court for the perusal and it shows that various internal plottings are provided and there is also provision made for common plot.

6. However, it appears that though there was a policy of the Government to allot only 500 plots, the allotment made is of 972 plots. Therefore, it prima facie appears that the action of the District Collector for allotment of the plot exceeding 500 is not in conformity with the policy of the Government. However, the fact remains that the allotment was already made on 20th July, 1993 i.e. even much prior to the order dated 6th September, 1994 when the matter came to be considered by this Court for issuing directions in Special Civil Application No.1335/1993. It appears that when the order was passed on 6.9.1994, possibly the aforesaid aspect of allotment already made could not be brought to the notice of the Court. The petitioner also did draw the attention of the Court possibly, because they might not be knowing regarding allotment of the plot already made from the land bearing Survey No.1415 to the other persons as referred to hereinabove. Under these circumstances, it cannot be said that the allotment made by the respondent authority from the land bearing Survey No.1415 to certain persons by making plottings of 25 sq. mtrs. each plot, is in contravention to the order dated 6.9.1994 passed by this Court in Special Civil Application No.1335/1993.

7. In any case, in view of the above referred order passed by the Division Bench of this Court in the contempt proceedings, it cannot be said that the allotment already made prior to the order dated 6.9.1994, is in contravention to the earlier order dated 4.7.1996 passed by this Court in this petition and, therefore, the said contention as sought to be canvassed on behalf of the petitioners by Mr.Shah cannot be accepted and the said contention is rejected.

8. Incidentally the question may be required to be considered regarding the action of allotment of the plot made by respondent authority from the land bearing Survey No.1415, because one of the challenges made by the petitioner is that the allotment could not have been made and that the petitioners are entitled for allotment of the plot from the land bearing Survey No.1415. In this regard, Mr.Shah, learned Counsel appearing for the petitioners submitted that the land is not part of urban area and is a waste land of the Village and, therefore, situated in the rural area and he, therefore, submitted that the land bearing Survey No.1415 could not have been considered for the purpose of allotment to urban poors, even as per the policy of the Government.

9. In this regard the record of the case which is made available by the learned AGP shows that as per the Government Resolution dated 25.2.1993 it has been provided that the allotment of 500 plots can be made to the urban poor at the rate of Rs.10/= per sq. mtr. for each plot of 25 sq. mtrs., but the land should have been situated within the Municipal limits. If the land is so vested to the Municipality and it is situated within the limits of Municipality the said land is to be utilised for the allotment and in the event if the sufficient land is not available belonging to the Municipality or vested to the Municipality, the additional land, may be government waste land, can be made use for the purpose of allotment of the plots, but the requirement even in the latter case would be that the land should have been situated within the limits of Municipality. In the policy of the government it has not been provided that if the land is outside the limits of the Municipality, may be government waste land or otherwise, can be made use for the purpose of allotment of the plot as per the policy of the Government. The perusal of the order dated 20.7.1993 passed by the District Collector, Rajkot shows that the land allotted is situated within the revenue limits of the Village Vajepur and not within the limits of Morbi Municipality. Mr.Mengdey, learned AGP attempted to submit that now the area in question is included within the limits of Morbi Municipality, but it appears that there is no dispute on the point that when the order of allotment came to be passed on 20.7.1993, the land was not situated within the limits of Municipality. Therefore, it can be said that the allotment of the plot from the land situated outside the limits of Morbi Municipality cannot be said to be in accordance with the policy of the Government dated 25.2.1993 and as per the resolution.

10. Mr. Shah, learned Counsel for the petitioner submitted that the petitioners are landless persons residing in the rural area and they are belonging to Village Vajepur and the land is situated within the revenue limits of Village Vajepur, which is also a rural area and, therefore, it should have been made available to the petitioners for allotment as per the policy of the Government to allot 100 sq. mtr. plot. No such policy is produced by the petitioner and no record of the proceeding showing that the State Government have formulated any policy for allotment of 100 sq. mtrs plot to the residents of the concerned Village or otherwise is produced. Therefore, in absence of such policy, no right can be read with the petitioner as sought to be canvassed by Mr.Shah, learned Counsel appearing for the petitioner that the allotment must be made from the land bearing Survey No.1415. Apart from the above, it was also submitted by Mr.Shah that as the observations were made by this Court in this order dated 6.9.1994 for considering the case sympathetically and to allot the plot from the land bearing Survey No.1415 of the Village Madhapar - Vajepur, the authorities are duty bound to allot the plot from the land bearing Survey No.1415. I am afraid such contention can be accepted. What is observed by the Court in the order dt. 6.9.1994 is for allotment of the plot from land bearing Survey No.1415, but the order is not with a view to convey that the allotment is to be made dehors the policy of the State Government, nor it is with a view to create any additional

rights in favour of the petitioners if otherwise not in existence. Therefore, the order can be read as giving directions to the State Authorities for allotment of the plot as per the policy prevailing from time to time of the State Government. In absence of any policy produced on record, no right can be read as sought to be canvassed by the learned Counsel appearing for the petitioner.

11. Mr.Gohil, learned Counsel appearing for the applicant in Civil Application No.9601/2004, who is newly added respondent No.7 in the main petition submitted that the lands for public purpose which are situated in the periphery of 5 kms from the Municipality are included for the purpose of allotment by the Government and, therefore, he submitted that as the land in question is situated within the periphery of about 2-3 kms from the outer limit of Morbi Municipality, it was rightly considered by the District Collector for the purpose of allotment as per the policy of the Government. No such meaning can be gathered from the policy of the Government as per the Resolution dated 25.2.1993 and, therefore, such contention of Mr.Gohil cannot be accepted.

12. It is also required to be considered and it has come on record that the land of survey No.1415 is situated nearby water stream and water bodies. It is true that the allotment order came to be passed on 20.7.1993 by the District Collector, Rajkot to urban poors from the land bearing Survey No.1415. However, the fact remains that up till now the actual allotment has not taken place by handing over the possession of the land and, therefore, even if the land is to be considered for allotment to eligible persons as per the policy of the Government, the authority will be required to take into consideration the judgement of this Court in case of "Shailesh R. Shah v. State of Gujarat", reported at 2002 (3) GLR 2295 for preservation of water bodies, streams and others and the policy of the Government issued thereafter for prohibiting the allotment of the land and construction within the periphery of the particular area from the said water bodies. It appears that the matter will have to be reconsidered by the authority even on the said aspects and thereafter if any land is available of Survey No.1415 or in other land, the same can be considered for allotment in accordance with the policy prevailing of the Government from time to time.

13. In view of the above, respondent No.2 District Collector, Rajkot is directed to consider the matter once again in respect to the allotment already made from Survey No.1415 and for the allotment of the land to the petitioners as well as the urban poors who applied and who were considered in pursuance of the policy of the Government dated 25.2.1993 read with the order of allotment dated 20.7.1993 and shall render appropriate decision as per the policy of the Government prevailing from time to time as early as possible, preferably within a period of six months from the date of receipt of the writ of this Court. It is made clear that while considering the matter the respondent District Collector shall take into consideration the observation made hereinabove in this judgement and also the policy of the Government and in accordance with law and the relevant statutory provisions for allotment of the land.

14. Subject to the aforesaid observations and the directions, Rule is discharged. There shall be no order as to costs.