
(2010) 09 GUJ CK 0119

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1161 of 2010 in Special Civil Application No. 8475 of 2008 and Civil Application No. 5234 of 2010 in Letters Patent Appeal No. 1161 of 2010

Khastriya Thakor Seva Mandal

APPELLANT

Vs

Ahmedabad Urban Development Authority and Others

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226

Citation : (2010) 09 GUJ CK 0119

Hon'ble Judges : S.J. Mukhopadhaya, C.J.;K.M. Thaker, J

Bench : Division Bench

Advocate : M.C. Bhatt and Vikram J. Thakor, for the Appellant; Adil R. Mirza, for Respondent 1, Aspi M. Kapadia, for Respondent 3 and Krina P. Calla, AGP for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, C.J.—This appeal has been preferred by the Appellant - Petitioner against the order dated 17.12.2008 passed in Special Civil Application No. 8475 of 2008 whereby whereunder the learned Single Judge dismissed the writ petition on the ground that the Petitioner cannot undertake another round of litigation under the guise that the representation submitted is not properly considered.

2. The facts which are relevant for the purpose of determination of the issue are as follows:

The Petitioner earlier preferred the writ petition in Special Civil Application No. 10025 of 2006 for quashing and setting aside the action of the Respondent - Town Planning Authority to the allotment of Final Plot No. 136 for commercial purpose and then to sale the said land to the 3rd Respondent and to deduct excessive land from the original Survey No. 442 of the Petitioner - trust. It was also prayed to direct the Respondent authority to allot final plot of original area

of 6472 sq. mtrs. to the Petitioner - trust with further direction to declare the Vejalpur Town Planning Scheme No. 2, so far as it relates to the allotment of Final Plot No. 136 for commercial purpose, to be illegal. The learned Single Judge on hearing the parties, by detailed judgment dated 5.5.2006, held that the Petitioner was not entitled to any relief in the said writ petition.

In the said case, a submission was made on behalf of the Petitioner that some encroachment in Final Plot No. 52 has been made either by the order of the Town Planning Authority or by somebody else and the said area of the land should be handed over to the Petitioner from the land bearing Final Plot No. 136. In this regard, the learned Single Judge while dismissed the writ petition, made the following observations:

6. ...It appears that in the year 1992, the Petitioner was served with the notices u/s 68 r.w. Rule 33 of the Rules and was allotted/handed over the possession of Final Plot No. 52 in the year 1992 and therefore, in absence of any particulars with regard to the alleged encroachment and/or not handing over the possession of the entire final plot No. 52, no relief can be granted in favour of the Petitioner. However, it will be open for the Petitioner to make an appropriate representation for the same and the same may be considered by the authority in accordance with law and on merits. However, the same would be only qua final plot No. 52.

7. In view of the above and for the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly, dismissed.

3. The Petitioner, thereafter, preferred Letters Patent Appeal No. 1430 of 2006, but after some arguments, the learned Counsel sought permission to withdraw the appeal for making a representation in terms with the observations made by the learned Single Judge and therein the following order was passed on 28.9.1997 by the Division Bench:

Considering the submissions and the directions already given by the learned Single Judge, by which liberty was given to the Petitioner - Appellant to make a representation to the concerned authority, the prayer sought for withdrawal is allowed. However, if Petitioner - Appellant makes a representation to the concerned authority raising any ground or grounds, that representation shall be disposed of in accordance with law within a period of three months from the date of submission of the representation.

The appeal, as having been withdrawn, stands dismissed.

Notice stands discharged.

4. It appears that the Petitioner, thereafter, instead of raising grievance with regard to encroachment, made similar grievance as was made in the writ petition by its representation dated 11.12.2007. The Respondents by their order dated 28.2.2008 rejected the representation by a detailed reasoned order. The said order was challenged before the learned Single Judge wherein by the impugned

judgment dated 17.12.2008, the learned Single Judge made the following observations:

8. ...However the fact remains that the appeal was dismissed as withdrawn and notice was discharged. In the above scenario, if the Petitioner was permitted to raise any ground or grounds within parameters of the direction already given by the learned Single Judge with regard to Plot No. 52 qua alleged encroachment only and the same cannot be construed as the right given to the Petitioner to undertake another round of litigation under the guise that the representation submitted is not properly considered. Even otherwise on merit also the order dated 28th February, 2008 passed by the Chief Executive Officer, the highest executive authority of the AUDA after considering each and every ground of the representation submitted by the Petitioner and dealt with extensively and elaborately repelling all the contentions after affording reasonable opportunities to the Petitioner, do not appear to be in any manner unreasonable, arbitrary, discriminatory and violative of Articles 14 and 19(1)(g) of the Constitution of India.

5. The learned Counsel appearing on behalf of the Petitioner would submit that the Petitioner having asked to make a representation, any observation made by the learned Single Judge in the earlier petition cannot be raised as a bar to the Petitioner to agitate the same question in a subsequent petition. He relied on the Supreme Court decision in P.N. Subramanyam Reddy Vs. Andhra Pradesh State Road Transport Corporation and others, On merit also, the learned Counsel addressed the Court to show that the orders were issued illegally against the provisions of law.

6. We have heard the counsel for the Petitioner, Mr. Adil Mirza, the counsel for the AUDA and Mr. Apsi Kapadia, the counsel for the 3rd Respondent.

The counsel for the 3rd Respondent has informed that pursuant to an auction, the land in question has already been purchased by the 3rd Respondent and it has constructed a hotel on the said land.

7. From the facts as narrated above, it will be evident that the issue raised by the Petitioner in Special Civil Application No. 10025 of 2006 so far as the allotment of Final Plot No. 136 for commercial purpose and then to sell the said land to the 3rd Respondent and deduction of excessive land from original Survey No. 442 of the Petitioner - trust reached finality with regard to the issue except encroachment. The learned Single Judge by judgment dated 5.5.2006 having held that "...the Petitioner is not entitled to any relief in the present Special Civil Application", the Petitioner was only given liberty with regard to encroachment alleged to have been made on Final Plot No. 52 either by the authority or by somebody else which was another issue raised in the writ petition. The learned Single Judge by the aforesaid order dated 5.5.2006, therefore, gave liberty to the Petitioner to make an appropriate representation for the same with a direction to the authority that they may consider the same in accordance with

law and on merits.

8. So far as the Letters Patent Appeal is concerned, the Division Bench by its order dated 29.8.2007, having permitted the Petitioner to withdraw the appeal, and having dismissed the same as withdrawn, the judgment on the issue already decided by the learned Single Judge reached finality with regard to the issue except encroachment. The only liberty was given to make a representation in terms with the observations made by the learned Single Judge with regard to encroachment as was alleged to have been made, which was not the subject matter of the earlier petition.

9. In that background, if the learned Single Judge observed that the Petitioner cannot undertake another round of litigation under the guise of representation, no case is made out to interfere with such order. If the authorities have not properly decided the question of encroachment, the same could not have been decided by the writ Court under Article 226 of the Constitution as the case of the Petitioner is that the authority or somebody else has encroached the land.

10. In absence of any merit, the appeal and the Civil Application both are dismissed, but there shall be no order as to costs.