
(2013) 03 GUJ CK 0025

In the Gujarat High Court

Case No : Special Civil Application No. 999 of 2012

Kherani Sadruddin Pyarali

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : (2013) 03 GUJ CK 0025

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Judgement

Abhilasha Kumari, J.—Rule. Ms. Asmita Patel, learned Assistant Government Pleader, wavier service of notice of Rule on behalf of respondents. This petition under Articles 226 and 227 of the Constitution of India has been preferred, inter-alia, with a prayer to quash and set aside the order dated 03.10.2011, passed by respondent No. 2- Collector, Bhavnagar, whereby the Collector has fixed the premium for the land in question at Rs. 2,94,71,280/- plus Rs. 84,300/-.

2. Briefly stated, the facts of the case are that the petitioner is the owner of the land bearing Revenue Survey No. 1033 Paiki at Village Botad admeasuring 2810 sq. meters, which was allotted to him vide order dated 15.07.1980. The allotment order contained a condition that the petitioner could not use the land for any other purpose, other than for industrial purposes, without prior permission of the State Government, and that the Government could charge 50% as the amount of unearned profit, in case the land is transferred. The petitioner applied to respondent No. 2 for conversion of the land from industrial purposes to residential purposes. The Mamlatdar opined and informed respondent No. 2 that the market price of the land in question, for fixation of the premium, is Rs. 3,200/- per sq. meters. The Assistant Collector communicated to the Junior Town Planner regarding the market price of the land assessed by various authorities. The maximum market price was Rs. 4,000/- per sq. meters. However, vide the impugned order dated 03.10.2011, respondent No. 2 has assessed the premium for the land in question at Rs. 2,94,71,280/- plus Rs.

84,300/-. Aggrieved thereby, the petitioner has approached this Court by way of the present petition.

3. It is submitted by Mr. S.P. Majmudar, learned advocate for the petitioner that the amount of premium has been arrived at by respondent No. 2, without granting an opportunity of hearing to the petitioner. The District Valuation Committee has not come to any definite conclusion regarding the market value of the land, in spite of which the Collector has proceeded to fix the same, on his own. Learned advocate for the petitioner has submitted that to deprive the petitioner of an opportunity of hearing before passing the impugned order, is in violation of the principles of natural justice, as held by this Court in the case of *Bharatbhai Kantilal Jethwa Vs. State of Gujarat and Others*, therefore the impugned order be quashed and set aside and the matter be remanded.

4. Ms. Asmita Patel, learned Assistant Government Pleader, is not in a position to show the Court any document indicating that an opportunity of hearing has been granted to the petitioner, before passing the impugned order.

5. In the case of *Bharatbhai Kantilal Jethwa V/s. State of Gujarat and Ors.* (Supra), this Court, quoting from the case of *Jayantibhai Naranbhai Amin & Ors. V. State of Gujarat & Ors.* reported in AIR 2002 Gujarat 193, has held as below:

6. ...Therefore, determining the market price of such land prevailing at the time of passing of the order, apparently an injustice to the petitioners. It is also necessary to note that while fixing the market price, the respondent- Collector has not given any opportunity of hearing to the petitioners, otherwise, the petitioners would have drawn the attention of the respondent-authority toward actual market price prevailing at the relevant time in respect of the land in question. However, from the record of this case, it seems that the respondent-Collector has fixed the market price universally without giving an opportunity of hearing to the petitioners. Therefore, according to my opinion, when the authority has consumed unreasonable time in considering the application submitted by the petitioners for regularising the land in question and fixing the market price and if the respondent-Collector passed the order after the period of five to ten years fixing the market price prevailing at the time of passing of order, can be said to be clear injustice to the petitioners and such orders can be said to have passed in arbitrary manner. If the orders regularizing the land in question had passed at the time of first application submitted by the petitioners, then, naturally the market price would have been fixed at the rate prevailing at the relevant time....

(emphasis supplied)

Enough time has lapsed after the application and, therefore, if an opportunity would have been given to the petitioner, he would have brought to the notice of the Collector, Kutch the market price of the land in dispute at the relevant time and of land in the vicinity, would have avoided the payment of unreasonably excessive figure of premium fixed by the impugned order. As this Court is

remanding the matter to the Collector, Kutch, for afresh decision, there is no need to go into fine nicety of facts. Suffice it to say that for want of affording the opportunity of being heard to the petitioner, the order is arbitrary, illegal. It is also a non-speaking order and hence requires to be quashed and set aside.

6. In the present case, the District Valuation Committee does not appear to have arrived at a definite market value or fixed the amount of premium. The impugned order of the Collector has been passed without granting an opportunity of hearing to the petitioner, which is against the principles of law enunciated in the above-quoted judgments.

7. As it is clear from the material on record that the petitioner has not been granted an opportunity of hearing, the impugned order deserves to be quashed and set aside, being in violation of the principles of natural justice. Accordingly, it is quashed and set aside. The matter is remitted to the Collector for fresh hearing and decision, in accordance with law, as expeditiously as possible but not later than a period of four months from the date of the receipt of a copy of this order. Needless to state, an adequate opportunity of hearing shall be granted to the petitioner.

The petition is partly-allowed, in the above terms. Rule is made absolute, accordingly. There shall be no orders as to costs.

It is clarified that while passing this order, the Court has not entered into the merits of the case.

Direct Service of this order is permitted.