

(2012) 02 GUJ CK 0016

In the Gujarat High Court

Case No : Special Civil Application No. 13153 of 2011

Laxminarayan Salt Works

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 197
Gujarat Land Revenue Code, 1879 — Section 211

Citation : (2012) 02 GUJ CK 0016

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Y.N. Ravani, for the Appellant; Pranav S. Dave, learned Asst. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Smt. Justice Abhilasha Kumari

1. Rule. Mr.Pranav S.Dave, learned Assistant Government Pleader, waives service of notice of Rule, for the respondents.

2. This petition under Articles 226 and 227 of the Constitution of India lays challenge to the order dated 16/03/2007 passed by the District Collector,Amreli (respondent No. 1), whereby the lease granted to the petitioner has been cancelled, and to the order of the Secretary, Revenue(Appeals), (respondentNo. 2) dated 25/05/2011, whereby the aforementioned order of the Collector has been confirmed in exercise of revisional jurisdiction u/s 211 of the Gujarat Land Revenue Code,1879.

3. The relevant facts can briefly be summarised as below:

3.1 Land bearing Survey No. 91/2, admeasuring 405Acres and 00 Gunthas situated at Village Nigala-I,was allotted to one Harishanker Bhatt as leaseholder, in the name and style of Ratnakar Salt Works, for a period of 20 years w.e.f.

28-11-1972. The lease was granted for the purpose of manufacture of salt, as per conditions mentioned in the lease deed. On the death of the original leaseholder, the lease was transferred to his widow, Smt. Shivkunvarben by order dated 16/03/1998. The term of the lease was extended by ten years w.e.f. 28/11/1992 to 27/11/2002. Smt. Shivkunvarben made an application for transfer of the lease in favour of Laxminarayan Salt works (the petitioner herein), which was granted by order dated 24/02/1999. Upon expiry of the lease period on 27/11/2002, a partner of the petitioner Partnership Firm made an application for extension of the period of lease, for another 10 years. This application was rejected by the Collector vide order dated 11/06/2004, which in turn came to be set aside by order dated 25/01/2005 of the Secretary, Revenue (Appeals) by remanding it to the Collector for fresh decision, after granting an opportunity of hearing to all the partners. The District Collector, after hearing the parties and considering the material on record, recorded a finding that Royalty amounting to Rs. 7,85,080/- with interest, had not been paid by the petitioner, in addition to other revenue dues. It was also found that there has been no salt manufacturing activity on the leasehold land from the year 2003-04. The above findings are recorded in order dated 16/03/2007 passed by respondent No. 1, which is impugned in the petition. The petitioner carried the aforesaid order in revision before respondent No. 2, who confirmed the same, vide order dated 25/05/2011. Being aggrieved by both the above mentioned orders, the petitioner is before this Court.

4. Mr. Yogesh Ravani, learned advocate for the petitioner has submitted that for the period that the petitioner was holding the lease, there has been no proper verification of production of salt by the respondents. The petitioner was manufacturing salt during this period and supplying it to Companies such as Nirma. After 27/11/2002, when the lease was not extended by respondent No. 1, the petitioner was not in a position to manufacture salt due to non-renewal of the lease, which cannot be held against it. Non-renewal of the lease is not in accordance with the Government Policy, as stated in Government Resolution dated 10/10/2000. The respondents are discriminating against the petitioner by not renewing the lease, when the leases of others are being renewed. It is further urged by Mr. Ravani, that the petitioner suffered a huge loss during the earthquake that took place on 26/01/2001 and in the cyclone. Against the claim of Rs. 32,00,000/- made by the petitioner, only an amount of Rs. 1,12,000/- was sanctioned by the State Government. The dues were of the original leaseholder and the petitioner was not aware of the same and no notice was given to it regarding payment of the said dues. The petitioner was in a weak financial condition and could not pay the amount of Royalty in one go, and the respondents did not respond to requests for permission to make the payment in instalments. It is further contended that the petitioner is ready and willing to pay the amount of Rs. 7,85,080/- in one go, therefore, the respondents may be directed to accept the amount and renew the lease in favour of the petitioner.

4.1 Lastly, it is contended that the impugned decision of the Collector has been

taken on the basis of directions issued by the Revenue Department of the State Government dated 06/11/2006, as mentioned in order dated 16/03/2007. That, the Collector ought to have decided as an independent Authority. There should have been an independent application of mind by the Collector, without being influenced by the instructions of the State Government, especially when he was deciding the issue in remand proceedings. In support of this submission, the learned counsel for the petitioner has relied upon the following judgments:

1. State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others,

2. Mansukhlal Vithaldas Chauhan Vs. State of Gujarat,

5. The petition is strongly opposed by Mr. Pranav S. Dave, learned Assistant Government Pleader, on behalf of the respondents. It is submitted by the learned Assistant Government Pleader that the lease has expired on 27/11/2002, and over nine years have elapsed. There are outstanding dues for payment of Royalty against the petitioner, which amounted to Rs.7,85,080/-with interest, in the year 2007, and have increased by now. The petitioner has not come forward to pay these dues at any point of time. Whatever inclination he has shown to make payment has only been conditional. The learned Assistant Government Pleader has referred to the undated additional affidavit filed by the petitioner in September 2011, more specifically to the letter dated 24/07/2006 of the petitioner, wherein it is stated that the petitioner is willing to pay the amount of Royalty, if his claim for grant of relief to the tune of Rs.32,00,000/-on account of the cyclone, is granted by the State Government. It is contended by the learned Assistant Government Pleader that there exists no legal or fundamental right in favour of the petitioner for renewal of the lease. It is further submitted that a writ of mandamus would lie only when there is a legal right that has been breached, which is not the case in the present petition. In support of this submission, reliance has been placed on a decision of the Supreme Court in Union of India (UOI) and Another Vs. Arulmozhi Iniarasu and Others, .

5.1 The learned Assistant Government Pleader has further contended that the Collector has decided the matter independently, on the basis of the material on record, and with due application of mind. The order dated 16/03/2007 is a detailed and reasoned one, taking into consideration all aspects of the matter. The mention of the communication dated 06/11/2006 in the impugned order is being misinterpreted by the petitioner. It is submitted that insofar as breach of conditions of the lease are concerned, the power lies with the Collector. However, the Collector is bound to send a report regarding extension of the lease to the State Government, as it is only State Government that is empowered to extend it. The report has been sent by the Collector to the State Government, in response to which the State Government has declined to extend the lease as the amount of Royalty has not been paid, and as the term of the lease has expired, which is the factual position on record.

6. On the strength of the above submissions it is prayed that the petition may be rejected.

7. Having heard learned counsel for the parties and upon perusal of the material on record it emerges that the lease in respect of the land in question was transferred to the petitioner on 24/02/1999, upon an application made by the widow of the original leaseholder. The term of the lease has, admittedly, expired on 27/11/2002. The application made by the petitioner for further extension for 10 years was initially rejected by the Collector on 11/06/2004. Thereafter, litigation commenced, as described hereinabove. Ultimately, the Collector, upon remand of the matter, passed the impugned order dated 16/03/2007 cancelling the lease and directing the petitioner to pay an amount of Rs.7,85,080/- towards arrears of Royalty and all other Government dues, which order has been confirmed by the Secretary, Revenue (Appeals) vide his impugned order dated 25/05/2011. The undisputed facts emerging from the material on record are that the term of the lease has expired on 27/11/2002 and has not been extended thereafter. As on 16/03/2007, there were outstanding dues towards Royalty, payable by the petitioner, to the tune of Rs.7,85,080/- in addition to unspecified Government dues, that have not been paid till date. The reason advanced by the learned counsel for the petitioner is that there was a cyclone and an earthquake, due to which the petitioner suffered heavy losses, rendering him unable to make the payment. The earthquake took place in January 2001 but it has not been stated in the petition, nor does it emerge from the material on record, when the cyclone referred to, took place. The lease was transferred in the name of the petitioner on 24/02/1999 and it had the opportunity of working the lease up to 27/01/2002. It has also been submitted on behalf of the petitioner that the dues were of the original owner and the petitioner was unaware of the same. The application of the petitioner dated 24/07/2006, that is on record as Annexure R-3, with undated additional affidavit of the petitioner affirmed in September 2011, reveals that the petitioner had offered to pay the amount of Royalty out of the amount of the claim for Rs.32,00,000/-, for financial losses suffered due to the earthquake and cyclone. Thus, the petitioner made a conditional commitment to pay the dues, but has not actually paid even a single rupee till date. The amount of claim received by the petitioner is stated to be Rs.1,12,000/-. Whether the outstanding dues toward Royalty were of the original leaseholder or of the petitioner is immaterial as the petitioner has stepped into the shoes of the original owner upon transfer of lease, with full knowledge of the conditions of the lease, including that of payment of Royalty. It does not lie in the mouth of the petitioner to now say that it was unaware of the dues of the original leaseholder. As the lease was transferred to the petitioner subject to the conditions of the lease, no notice was required to be given by the respondents for payment of Royalty or any other amount. Besides, the petitioner was aware of its liability to pay the outstanding amounts towards Royalty and other dues as is evident from the application dated 24/07/2006. The Government Resolution dated 10/10/2000 contains the policy of the Government regarding

allotment of leases for salt production, and lays down the procedure to be followed. No deviation from the same by the respondents could be pointed out by the learned advocate for the petitioner, and none is noticed by this Court. The fact remains, that as of 16/03/2007 there were outstanding dues of Rs.7,85,080/- towards Royalty and other unspecified Government dues against the petitioner which have not been paid since the term of lease expired on 27/11/2002. It appears from the record that the petitioner made an attempt to convince the authorities to permit payment by instalments, but there was no response. Letter dated 11/10/2011, reminders dated 28/11/2011 and 12/12/2011 to this effect have been placed on record by the petitioner along with another additional affidavit dated 20/12/2011. The said letters have been written after filing of the petition and are hardly of much consequence.

8. The petitioner is a leaseholder and in that capacity is governed by the conditions of the lease. There has been a breach of the conditions of lease on the part of the petitioner by not paying the amount of Royalty and other dues. The respondents are, therefore, under no legal obligation to renew the lease, and the petitioner has no absolute legal right to claim that the lease should be extended, even when the amount of Royalty and other Government dues remain unpaid.

9. The learned counsel for the petitioner has relied upon *State of U.P. v. Maharaja Dharmender Prasad Singh* (Supra) to submit that discretion ought to have been exercised by the Collector, uninfluenced by the opinion of the State Government. The principles of law enunciated by the Supreme Court in the above-mentioned judgment cannot be disputed in the context of the facts that were before the Apex Court in that case, but would not be applicable to the facts of the present case.

10. As is seen from the impugned order in the present case, the Collector, has exercised discretion on the basis of the factual material on record, while considering the opinion of the State Government to the report submitted by him, by directing payment of the amount of Royalty and taking over the land. Considering the fact that the lease has not been extended after 27/11/2002 and a huge amount of Royalty is outstanding, the decision of the Collector cannot be said to have been taken contrary to the material on record or without application of mind.

11. The second judgment relied upon by the learned counsel for the petitioner is *Mansukhlal Vithaldas Chauhan v. State of Gujarat* (Supra) - that is regarding grant of sanction for prosecution u/s 197 of the Criminal Procedure Code. The Supreme Court has held on the facts of that case that sanction issued by an authority under the directions of the High Court was invalid because there was no independent application of mind. This judgment would also not carry the case of the petitioner much further, as in the present case, the order of the Collector, being a reasoned one, and does reveal due application of mind.

12. The mention of communication dated 16/11/2006 in the impugned order of

the Collector is a matter of record. The Collector has noted in the impugned order that he has sent a report to the State Government on 16/11/2006 regarding the aspect that there was no salt production on the leasehold land and the Royalty had not been paid, in response to which there is a reference of a letter dated 06/01/07 of the State Government specifying that the lease has ended on 27/11/2002 and there is a breach of conditions of the lease by the petitioner. From this it cannot be said that there is no application of mind by the Collector. Neither can it be said from perusal of the impugned order of the Collector that he has not independently decided the matter. The order of the Collector is a reasoned one and does not suffer from any legal infirmity so as to warrant interference from this Court.

13. In *Union Of India v. Arulmozhi Iniarasu* (Supra), relied upon by the learned Assistant Government Pleader, the Supreme Court has held that a writ of mandamus can be issued by the High Court only when there exists a legal right vested in the writ petitioner and corresponding legal obligation on the State and only because an illegality has been committed, it cannot be directed to be perpetuated. The principles of law laid down in the above-mentioned judgment would apply in the factual scenario of the present case. The lease of the petitioner has long expired on 27/11/2002 and has not been renewed since. Admittedly, the conditions of the lease have been violated and the amount of Royalty due has not been paid to the State Government. As such, the petitioner has no legal or enforceable right for renewal of the lease, in the face of this default. In such a case, in the view of this court, the prayer for issuance of a writ of mandamus cannot be granted.

14. During the course of hearing, Mr. Pranav S. Dave, learned Assistant Government Pleader, has submitted, upon instructions, that in the event that the petitioner pays the entire outstanding amount as it stands now, and makes an application, the same will be considered in accordance with law.

15. In view of the discussion as above, and as the petitioner has no indefeasible legal right for renewal of the lease, and as the Royalty and other Government dues are pending against the petitioner, the prayers made in the petition cannot be granted. The petition is, therefore, rejected.

16. It is, however, clarified that the rejection of the petition will not come in the way of the petitioner if, after payment of the entire outstanding amount towards Royalty and any other dues including interest, the petitioner approaches the competent authority by making a fresh application for renewal/grant of lease. In that eventuality, it is open to the concerned authority to consider the same and take a decision thereupon, in accordance with law.

17. Rule is discharged. There shall be no orders, as to costs.