
(2011) 09 GUJ CK 0120

In the Gujarat High Court

Case No : Special Civil Application No. 9431 of 2002

Malek (Bhatti) Anwarkhan Nassebkhan

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 09 GUJ CK 0120

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Nasir Saiyed, for E.E. Saiyed, for Petitioners 1, for the Appellant; J.K. Shah, Asst. Government Pleader for Respondents 1 - 2 and M.P. Prajapati, for Respondents 3 - 4, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—This petition under Article 226 of the Constitution of India has been preferred, inter-alia, with a prayer to direct the Respondents to award compensation for the house of the Petitioner that has been demolished in the earthquake that took place on 26.01.2001.

2. Briefly stated, case of the Petitioner is that he is the owner of House No. 2/111 situated at Village Padla, Taluka Sami, District Patan, and was residing in the said premises with his family members. The house of the Petitioner was totally demolished in the earthquake, that took place on 26.01.2001, and the petitioner and his family were forced to live in the house of his father-in-law. The Government of Gujarat, through the Revenue Department, issued a Resolution dated 23.02.2001, containing a rehabilitation programme, with the object of alleviating the hardship of these affected people, whose houses and property had been demolished by the earthquake, and to enable them to reconstruct their houses. The rehabilitation programme was not by way of compensation for the losses undergone, but an effort to provide succour and assistance to the affected persons. The Petitioner made an application for grant of relief to the Relief

Commissioner on 21.06.2002, annexing therewith necessary documents relating to the proof of residence. According to the petitioner, his name was included in the list of persons for grant of assistance, at Serial No. 21, and it was mentioned that a sum of Rs. 71,400/- was intended to be paid to him. A copy of the said list has been annexed as Annexure "RJ-IV colly.", and the name of the Petitioner is to be found at running Page No. 51 of that Annexure. The grievance of the petitioner is that nothing further has transpired and the Petitioner has not been awarded any amount towards aid for reconstruction of his house, in accordance with Government Resolution dated 23.02.2001.

3. Earlier, the Petitioner had filed a petition, which came to be rejected by order dated 18.02.2010. Aggrieved thereby, the Petitioner filed Letters Patent Appeal No. 496 of 2010. By order dated 14.05.2010, the matter has been remitted to this Court for decision. Accordingly, the parties have been heard and the petition is being finally decided.

4. Mr. Nasir Saiyed, learned advocate for Mr. E.E. Saiyed, learned Counsel for the Petitioner, has submitted that the case of the Petitioner falls squarely within the parameters of Government Resolution dated 23.02.2001. The area of the house of the Petitioner was 35 Sq. Mts. As the house was totally destroyed, as per Package No. 2 mentioned in the Government Resolution, an amount of Rs. 70,000/- as assistance, ought to have been granted to the petitioner. It is further submitted that the name of the Petitioner was included in the list of the persons who were to receive assistance, however, nothing further has been done by the Authorities and the Petitioner has not been granted any amount for reconstruction, even though his house has been totally demolished.

5. Mr. J.K. Shah, learned Assistant Government Pleader appearing for Respondents Nos. 1 and 2 has drawn the attention of this Court to the affidavit-in-reply filed by Respondent No. 1, wherein it is stated that, as per the policy of the State Government, the petitioner is not entitled to get compensation as prayed for, as he was residing in Ahmedabad and discharging his duties in the Ahmedabad Electricity Company. It is stated therein that if a person is occupying more than one house, he is entitled to compensation for the house in which he was residing, and not for any other house. There is another house bearing No. 1/1, in the name of the mother of the petitioner, which was partly damaged, and his mother has already been awarded Rs. 1300/- on 02.05.2001, therefore, the Petitioner cannot claim any further amount. On the basis of the affidavit-in-reply, it is contended by the learned Assistant Government Pleader, that as the Petitioner was residing at Ahmedabad and not in the house that has been destroyed in the earthquake, he is not entitled for the grant of any assistance.

6. Mr. M.P. Prajapati, learned advocate for Respondents Nos. 3 and 4 submits that the said Respondents are the implementing Authorities, therefore, have no say on the merits of the matter, which may be decided by passing an appropriate order.

7. I have heard learned advocates for the respective parties and perused the averments made in the petition, as well as the documents annexed thereto.

8. From the material on record, it is not disputed that the Petitioner is the owner of House No. 2/111 situated at Village Padla, Taluka Sami, District Patan. It is also not in dispute that the said house was totally demolished in the earthquake that occurred on 26.01.2001. A perusal of the copy of the list of earthquake affected persons, who were to receive assistance, prepared by the Office of respondent No. 3, indicates that the name of the petitioner is mentioned at Serial No. 21, and the amount of assistance intended to be awarded is mentioned against his name, as Rs. 71,400/- . Nothing further appears to have happened in the case of the petitioner, who has neither received any amount as assistance, and whose case does not appear to have been rejected by any order of the Competent Authority. No order of rejection has been placed on record by Respondent No. 1.

9. The Government Resolution dated 23.02.2001 makes it clear that the State Government had taken upon itself the task of rehabilitation of the earthquake affected persons by offering assistance, in order to alleviate their miseries and difficulties and enable them to reconstruct their houses. The intention behind passing the Resolution is to resettle the affected persons and to grant assistance by way of a rehabilitation programme, to help them in repairing/reconstructing their houses. However, it is clarified in the Resolution itself, that any amount that may be granted, will not be by way of compensation, but would be an effort to provide succour and assistance. Four different packages have been evolved for rehabilitation, in the said Resolution. The case of the Petitioner falls under Package No. 2, which relates to Zone-4 and 5, where assistance for totally destroyed houses/huts has been worked out, category wise. A table indicating the different categories and the assistance to be rendered, as mentioned in the Resolution, is reproduced herein below:

PACKAGE No. 2 Assistance in the Zone 4 & 5 and severely affected area for in situ reconstruction:

Totally Destroyed Houses/ Huts.

(Totally collapsed house and severely damaged house pulled down for safety reason fall in this category.)

Sr. No.

Category

Assistance

1

Completely destroyed hut

Rs. 40,000/- per unit.

Completely destroyed house:

(a) the built up area is upto 25 sq.mt.

Upto Rs. 50,000/

(b) the existing built up area is upto 35 sq.mt.

Upto Rs. 70,000/

(c) the existing built up area is upto 45 sq.mt.

Upto Rs. 90,000/-

CLARIFICATION:

(A) Built up area means the area enclosed by the four walls of the house (including ground area occupied by such walls) excluding the Varandah and other such peripheral structures.

(B) The assistance is provided at the rate of Rs. 2000/- per sq.mt. and as per the measurement of the built up area of existing damaged house, disbursement of assistance will be made.

10. The built-up area of the house of the Petitioner, as mentioned in the list at running Page No. 51, has been shown as 35.70 Sq. Mts. and the amount mentioned is Rs. 71,000/- , therefore, the case of the Petitioner would fall under the category, mentioned at 2(b) in the table, reproduced hereinabove.

11. It is significant to note that no order has been passed by the concerned Authority, rejecting the case of the Petitioner for grant of assistance, till date. This aspect has not denied by the learned Assistant Government Pleader, as well. It, therefore, is rather surprising, that in spite of the fact that the case of the Petitioner has not been rejected, a stand has been taken in the affidavit-in-reply filed on behalf of Respondent No. 1 (affirmed by Mr. A.V. Mehta, Deputy District Development Officer, Earth Quake, Sami, on 19.10.2002), that the Petitioner is not entitled for grant of assistance, for the reason that he is residing at Ahmedabad, where he is discharging his duties. Another ground for not granting assistance, as stated in the said affidavit, is that, as the petitioner was not residing in the house in question, it means that the said premises were being used for non-residential purposes. Yet another ground for refusal of assistance, as stated in the affidavit, is that House No. 1/1 which was partly-damaged, is in the name of the Petitioner's mother, who has already received an amount of Rs. 1300/- as assistance, on 02.05.2001, therefore, the Petitioner cannot be granted any amount.

12. The reasons for refusal of assistance to the petitioner, as stated in the affidavit-in-reply, do not appear to be based upon any cogent material on record and do not appear to be in consonance with the Government Resolution.

Respondent No. 1 has not put on record any order stating that the case of the petitioner has been rejected by the Competent Authority. Neither has it been so stated, therein. This Court, therefore, fails to understand how the deponent of the affidavit could have stated the grounds for not granting assistance to the petitioner, when no order of rejection has been passed. The Government Resolution dated 23.02.2001 provides that assistance will be rendered to the owner/actual possessor, of the property. The Resolution further provides for grant of assistance in cases where the house is occupied by tenants, subject to the condition that tenant will be put back in possession, after reconstruction of the house. It is not disputed that the Petitioner is the owner of the house in question. It is stated in the affidavit in-reply that, the Petitioner was using premises for "on-residential" purposes; however, there is no material on record to substantiate this statement, and neither it has been stated what that "nonresidential" purpose was. Only because the Petitioner attended his duties at Ahmedabad each day, it cannot be concluded that the Petitioner was using the premises for non-residential purposes, in the absence of any material to support this conclusion. The mother of the Petitioner owns another house, which has nothing to do with the house of the Petitioner. Just because an amount of Rs. 1300/- has been given to her as assistance, does not mean that the case of the petitioner, whose own house has been totally demolished, cannot be considered in accordance with the provisions of Government Resolution dated 23.02.2001, as has been done in the cases of other earthquake-affected persons.

13. It ought to be noted that the earthquake took place on 26.01.2001, and a period of over ten years has now elapsed. Other similarly situated persons may have received assistance under the rehabilitation Scheme formulated by the State Government, but the petitioner has been deprived of this benefit, in spite of his name being included in the list of persons for award of assistance. No valid or cogent reasons have been put forth by Respondent No. 1, for refusal of assistance. In fact, a stand is being taken without there being any order of rejection of the case of the Petitioner on record. Such a stand, unsupported by any order of the Competent Authority cannot be said to be just or proper. Respondent No. 1 ought to have taken into consideration the aim and object of the State Government, in issuing the said Resolution, which is to rehabilitate the persons whose houses have been destroyed or damaged in the earthquake, and to give them assistance, on the basis of norms mentioned in the Resolution for reconstruction of their houses. The case of the petitioner is covered by the Government Resolution and ought to have been contained fairly and in proper perspective.

14. For the a fore stated reasons, the petition deserves to be partly-allowed. It is, therefore, partly-allowed. Respondents Nos. 1 and 2 are directed to consider the case of the Petitioner, in light of the Government Resolution dated 23.02.2001, as expeditiously as possible, considering the fact that the house of the Petitioner was destroyed in the year 2001. In case the Petitioner is desirous of making afresh application, along with the supporting documents, he may do

so, within a period of three weeks from today. The concerned Authority shall consider the case of the Petitioner as expeditiously as possible, but, not later than four months from the date of receipt of a copy of this order.

15. Rule is made absolute, to the aforesaid extent. There shall be no orders as to costs.

Direct Service is permitted.