
(2009) 05 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 12365 of 2008

Mangubhai Narayanbhai Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 05 GUJ CK 0022

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : R.K. Mishra, for the Appellant; Maithili Mehta, AGP. for Respondent 1, for the Respondent

Judgement

D.A. Mehta, J.

1 This petition has been preferred challenging order dated 29.08.2008 (Annexure-A) made by respondent No. 2, Collector, Valsad, rejecting the application made by the petitioner to lease out the land in question to the petitioner. A further prayer seeks direction to respondent No. 2, to reconsider the case of the petitioner by permitting the petitioner, to shift from the parcel of land occupied by the petitioner so as to leave margin of land which may be required to avoid congestion of traffic by allotting a fresh parcel of land, and permit the petitioner to develop such newly allotted land by granting lease at a specified amount for a specified duration. The petitioner has further prayed that the petitioner may be directed to furnish an undertaking before the Collector, that the petitioner shall vacate such land on a notice period of 24 hours, if the land in question is required by the State for expansion of road or for any other purpose.

2 The petitioner appears to have been granted land admeasuring 900 sq.ft. on lease on payment of rent fixed by the authority. It is the say of the petitioner that the said lease by the Collector continued from time to time. The last of such lease expiring on 31.5.2005.

3 It appears that in the meantime, vide Special Civil Application No. 6272 of 1991, the petitioner approached this Court challenging notice issued by Parnera Pardi Gram Panchayat to vacate the land. The said petition came to be disposed of by this Court vide order dated 5.10.2005 (Annexure-E). The petitioner thereupon filed an application for review being Misc. Civil Application No. 2012 of 2007, which came to be disposed of by the Court vide order 28.3.2008. In the said order, the Court recorded in paragraph No. 7 as under:

7. It is fairly conceded by the learned advocate appearing on behalf of the applicant that the applicant-original petitioner has no vested right in his favour to occupy the land in question. It also appears from the correspondence between the Collector, Valsad and the office of the Government Pleader dtd.17/7/2006 (Annexure-II to the present application) that the land in question is likely to be used in future for expansion of the road and therefore, the Collector, Valsad has also communicated to the Government Pleader, Gujarat High Court that it is not desirable to lease and/or permanently dispose of the land in question and it is appropriate that the land in question is retained by the Government.

4 Thereafter, the Court has stated in paragraph No. 8 that still, however, it will be open for the applicant-original petitioner to submit an appropriate application to Collector, Valsad, to obtain the land in question on lease and the same shall be considered by the said authority in accordance with law, considering communication dated 17.7.2006, and the order made by the Court on 5.10.2005, in the main petition being Special Civil Application No. 6272 of 1991. In paragraph No. 9, the Court categorically observed:

9. It is, however, made clear that this Court has not expressed any opinion on merits and the aforesaid directions may not be construed that this Court has directed the Collector, Valsad to grant the land in question on lease. It is ultimately for the Collector, Valsad to take appropriate decision as aforesaid.

5 Thereupon, the petitioner applied to respondent No. 2 authority on 10.4.2008, narrating the history and claiming allotment of land on lease for a period of 30 years. The said application came to be rejected by respondent No. 2 authority by order impugned dated 29.8.2008 (Annexure-A).

6 On 8.10.2008 the following order came to be made by the Court:

Heard Shri R.K.Mishra, learned advocate for the petitioner.

Learned advocate for the petitioner submits that petitioner is earning his livelihood through this small sugarcane juice center since last 29 years and he has already offered the concerned authority to give the small piece of land on lease or on any other ground and the price as may be determined by the authority. However, the same is not considered.

Hence, Rule. Mr. Hemant Mackwana, learned AGP waives service of rule on behalf of respondent-State. Ad interim relief in terms of para 19 till further order. Notice as to interim relief returnable on 27th November, 2008. Direct service is

permitted

7 Accordingly, for considering whether Ad-interim relief granted in terms of paragraph No. 19 is required to be confirmed or not, the matter was heard.

8 The principal prayers made in paragraph No. 18 read as under:

18. In the premises aforesaid, the petitioner, therefore, approaches this Hon''ble Court and prays Your Lordships to issue writ of Mandamus or a writ in the nature of Mandamus, or appropriate writ, order or direction by granting the following relief:

(A) Your Lordships may be pleased to hold and declare that the order of the learned Collector at Annexure-"A" dated 29.8.2008, being illegal, arbitrary, unconstitutional, it is institutional, the same is not based on the principle of natural justice, therefore, the same may be set aside.

(B) Your Lordships may be pleased to direct the learned Collector, Valsad to reconsider the case of the petitioner by taking into consideration the fact of leaving margin of land as much it may be needed to avoid congestion of traffic by allocating the place, developing 30X30 fts. of land at the cost of the petitioner and further be pleased to direct the respondent Collector to lease the land by specifying the amount for duration as may be deemed fit by the Collector, Valsad.

(C) Your Lordships may be pleased to pass appropriate orders of furnishing the undertaking by the petitioner to the learned Collector of vacating the land on 24 hours notice of requirement by the State authorities for expansion of the road or for any other purpose, which the petitioner will furnish with any such and other terms and conditions as may be needed by the learned Collector, Valsad.

(D) Your Lordships may be pleased to pass such other and further order/s as deemed fit, just and proper by this Hon''ble Court.

Paragraph No. 19 of the petition seeks interim relief in the following manner:

19. Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to restrain the respondent Collector from running the Kolu of sugarcane by the petitioner and further be pleased to restrain them from causing any interference from earning the livelihood of the petitioner.

9. Thus, it is apparent that even before the petition is finally heard, the petitioner has sought relief which tantamounts to allowing the petition. Hence, as the petition has already been admitted, the same is taken up for final hearing and disposal.

10. The aforesaid facts are required to be noted because at one stage, the learned Advocate for the petitioner submitted that the Court is required to hear the parties only as to whether, interim relief should be confirmed or not and cannot hear the matter finally today. The said submission has been rejected in light of what is stated hereinbefore.

11. The learned Advocate for the petitioner submitted that the petitioner is occupying land in question since 29 years, and is running the business of extracting juice from sugarcane and selling the same. That for the user of the land in question rent is paid regularly in Government Treasury. That the petitioner has no other source of livelihood. That the land is not being used, or is not required to be used by the respondent authorities for any other purpose, nor is the land required by any other person. That there is no complaint against the petitioner from any section of the society. That for the present, neither the Roads & Building Department has made any demand, nor formulated any policy for widening the road in question. That the petitioner has not committed any default, in so far as the terms of lease are concerned. The learned Advocate therefore submitted that the approach of respondent No. 2 authority was neither reasonable nor rational. That the approach was not tempered with equity and therefore, this Court in exercise of jurisdiction under Article 226 of the Constitution, should weigh the factors in balance by applying equity and hold that the petitioner was entitled to be allotted the land in question. The learned Advocate also referred to order dated 25.8.2004, made by respondent No. 2, whereunder the earlier lease was extended with retrospective effect from 1.6.2003 to 31.5.2005 for the limited purpose of referring to Government Resolution dated 5.4.2003 referred to in the said order to contend that there was a policy of the Government to lease the land. The learned Advocate therefore, submitted that the impugned order be quashed and set aside directing the authority to grant the land in question on lease for the duration and at the rent which the authority may decide.

12. Learned Assistant Government Pleader read extensively from the order impugned made by respondent No. 2 authority, to submit that the authority had given reasons and it was not shown as to how the reasons were either not germane or that the reasons were extraneous. It was further submitted that all the contentions raised on behalf of the petitioner before respondent No. 2 authority, have not only been summarised by the authority but have been duly considered. Learned Assistant Government Pleader therefore submitted that in the circumstances, there was no error so as to warrant interference.

13. For appreciating the contentions raised on behalf of the petitioner, it is necessary to consider the backdrop of the earlier round of litigation between the same parties. As recorded, by way of Special Civil Application No. 6272 of 1991, the petitioner challenged the legality and validity of order made by the Appellate Committee of Valsad District Panchayat dated 30.6.1990, as well as order made by Revisional Authority on 6.7.1991 directing Parnera Pardi Gram Panchayat to lease out the land in question by public auction only. The Court noted that even the petitioner had no objection if the land in question was either sold or leased out by public auction as submitted by Mr. J.B.Pardiwala, learned Advocate appearing on behalf of the petitioner. Thereafter, the following directions came to be made by the Court:

Even otherwise, the same decision has been taken by the Appeal Committee, District Panchayat, Valsad. Under the circumstances, the Parnera-Pardi Gram Panchayat is directed to lease the land in question by holding public auction and even it can be sold permanently with the prior approval of the Collector, Valsad and/or the competent authority by public auction. Therefore, the Parnera-Pardi Gram Panchayat is directed to send a proposal to the Collector, Valsad for disposing of the land in question on permanent basis and the Collector, Valsad is directed to consider the same and if the permission is granted to dispose of the land permanently then by Parnera-Pardi Gram Panchayat is directed to dispose of the said land only by public auction under the supervision of the Collector, Valsad. The Collector, Valsad is directed to monitor the same.

14. The petitioner thereupon preferred an Application for Review and made the following prayer in the Review Application:

(A) Your Lordships may be pleased to review the judgment and order dated 5.10.2005 by amending the orders and directions vide para 2 to the judgment and order by deleting the directions on the Pardiparnera Gram Panchayat by passing suitable directions on Collector, Valsad for grant of the land on lease to the applicant for the time duration by charging appropriate determined rent of the land admeasuring 30X30 sq.Fts.

15. It is in the aforesaid context that while making order dated 20.3.2008, the Court in Misc. Civil Application No. 2012 of 2007, has recorded the acceptance/concession of the learned Advocate Mr. R.K.Mishra, appearing for the applicant, who is petitioner herein.

16. Thus, it is apparent that the very same relief which is being claimed in the present petition, had been claimed by the petitioner by seeking suitable directions to Collector, Valsad, for grant of land on lease to the applicant for the time duration by charging appropriate rent as may be determined for the land admeasuring 30 X 30 sq.ft. At the cost of repetition, it is required to be noted that while disposing of the said application for review, the Court had recorded concession made on behalf of the applicant-petitioner by Mr. Mishra that the petitioner has no vested right in his favour to occupy the land in question. The Court has also noted, on the basis of the correspondence referred to in the said order dated 28.3.2008, that the land in question is likely to be used in future for expansion of the road and that it was not desirable to lease and/or permanently dispose of the land in question, but it was appropriate that the land in question is retained by the Government. After recording thus, the Court left it open for the petitioner to make an application with specific clarification in paragraph No. 9, that the authority should not construe the permission granted to the petitioner to make an application equivalent to a direction to grant the land in question on lease.

17. In the aforesaid circumstances, the impugned order made by the authority has to be appreciated. All the contentions raised by the petitioner today having

already been advanced by the petitioner in earlier round of proceedings, it is not necessary for the Court to deal with each of the contentions in detail.

18. In exercise of jurisdiction under Article 226 of the Constitution, the Court is not required to either undertake reappreciation of evidence, or record a different finding merely because it is possible to do so on the same set of facts and circumstances of the case, unless and until, the order impugned is vitiated by perversity. The Court is only to see whether the decision making process fulfills the required criteria. Applying the settled legal parameters in law, it is not possible to state that the impugned order suffers from any legal infirmity so as to warrant interference.

19. In the impugned order, respondent No. 2 has categorically recorded reasons in paragraph No. 5, as to why the land in question cannot be leased out to the petitioner. The land in question is situated on State Highway No. 6 and the authority finds that the parcel of land is located at such a distance from the centre line of Highway, that if the petitioner is permitted to continue to run the business of extracting juice from sugarcane and sell the same, it is likely to result in obstruction to the traffic on the State Highway leading to problems of safety of the users of the State Highway. It is also not possible to hold that the reason assigned by the authority that any exception made in case of the petitioner would be cited as a precedent by similar such claimants to the land adjacent to the Highway and even for the said purpose, the demand made by the petitioner is not required to be entertained. The contention that this is the only source of livelihood of the petitioner has also been dealt with by the authority in the subsequent paragraph.

20. The reliance on Government Resolution dated 5.4.2003, referred to in earlier order dated 25.8.2004, is also misplaced by misreading the sentence out of context. The said resolution only stipulates the mode or manner which is prescribed for working out the lease rent in case where Government land is leased out. It does not lay down any such policy of leasing out as is sought to be contended. Similarly the contention that the petitioner has already given an undertaking as appearing at Annexure-D and hence, should be granted the lease cannot carry the case of the petitioner any further. It is not, as if, any such undertaking was called for by the respondent authority and thereafter not considered by the authority. In support of the claim made by the petitioner, an averment is made by the petitioner which cannot be treated as binding on respondent authority. The said aspect of undertaking would come into play only at the point of time when the authority considers the application of the petitioner favourably. Once the application is rejected, the petitioner cannot claim as a matter of right, that merely because the petitioner is ready and willing to give an undertaking, the authority must be compelled to lease out the land in question. In this context, even at the cost of repetition, it is required to be noted as already recorded by the Court in its earlier order dated 28.3.2008, that learned Advocate had in no uncertain terms accepted that the petitioner had no vested

right to the land in question.

21. In the aforesaid facts and circumstances of the case, it is not possible to accept the submission that the impugned order suffers from any such error in law which would require this Court to intervene in exercise of jurisdiction under Article 226 of the Constitution. The petition is accordingly rejected. Rule discharged. Ad-interim relief stands vacated. There shall be no order as to costs.

22. At this stage, learned Advocate for the petitioner seeks continuation of Ad-interim relief granted earlier. For the reasons recorded in the body of the main judgment, the request is rejected.