

**(2016) 06 GUJ CK 0075**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 17008 of 2005**

Nalanda Co-Operative Hosg. Society Ltd.

APPELLANT

Vs

Rajkot Municipal Corpn.

RESPONDENT

**Date of Decision : 23-06-2016**

**Acts Referred:**

Bombay Provincial Municipal Corporations Act, 1949 — Section 224  
Constitution of India, 1950 — Article 226

**Citation : (2017) 1 GLR 819**

**Hon'ble Judges : Mr. Mohinder Pal, J.**

**Bench : Single Bench**

**Advocate :** Mr. Divyesh Sejpai, Advocate, for the Petitioner No. 1; Mr. Hriday Buch, Advocate, Rule Served by D.S, for the Respondent No. 1; Urmi H. Raval, Advocate, for the Respondent No. 2; Mr. Harin P. Raval, Advocate, for the Respondent No. 3

**Final Decision : Allowed**

## **Judgement**

Mr. Mohinder Pal, J. (Oral) - Petitioner of this petition has approached this Court challenging the action of respondent No.1-Corporation in selling a piece of land to respondent No.2 i.e. 577.81 Sq. Mtrs. out of the total area of 1236.59 Sq. Mtrs. pertaining to the common plot belonging to the petitioner-Society with following prayers :

"(A) Your Lordships be pleased to issue the writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned action of the respondent No.1 Corporation in resolving to sell 577.81 sq.mtrs. of land out of the reserved land for public purpose belonging to the petitioner society to the respondent No.2 trust by way of resolution No.217 dated 16.7.2005, in the interest of justice;

(B) Your Lordships be pleased to issue the stay the implementation, operation and execution of resolution No.217 dated 16.7.2005 by which the respondent No.1 Corporation has resolved to sell 577.81 sq.mtrs. of land out of the reserved

land for public purpose belonging to the petitioner society to the respondent No.2 trust and be pleased to restrain the respondent No.1, its agents, servants or officers from parting with possession of the subject land belonging to the plot for public purpose of the petitioner society, pending the admission, hearing and final disposal of this petition;

(C) Your Lordships be pleased to grant such other and further relief and/or order as deemed fit in the facts and circumstances of the case and in the interest of justice".

2. Brief facts of this case are that the petitioner is a Society constituted under the provisions of Gujarat Cooperative Societies Act, 1961 and is registered as per Section 9 thereof on 16.3.1972 with District Registrar, Cooperative Societies, Rajkot. Respondent No.3 (original owner) purchased a part of Survey No.443 of the revenue limits of Rajkot city adjoining Kalavad Road and developed the same. He obtained non-agriculture permission from the competent authority and approved plotting of the land for residential purposes. On 5.5.1971, Collector, Rajkot approved the lay out plan as well as building arrangement lay out plan of the land. Survey No.443 was divided into two parts i.e. 443-A and 443-B. Both the plans approved by the competent authority are part of the petition. The N.A. permission was granted on 18.12.1970 by the competent authority and thereafter, certain conditions were imposed for using the land by order dated 25.2.1971 by the Collector, Rajkot. The plot reserved for public purposes was surrounded by various plots which were allotted to the members of the society. The subject matter of this petition pertains to the common plot/land reserved for public purposes having total area of 1236 Sq. Mtrs. The respondent No.3 sold 63 plots and out of this 63 plot holders, 47 came together and formed a society while remaining 16 plot holders remained as individuals. It is case of the petitioner that after formation of the Society in the year 1972, the society felt that because of the poor financial condition, it was not possible for them to manage the roads and developed the common plot reserved for that purpose. Therefore, Society resolved that the common plot falling in Survey No.443-A and 443-B be handed over to the Corporation - respondent No.1 for effective implementation of the object and conditions by which land was allotted to be developed. Since the land was vacant and remained un-utilized by respondent No.1 - Corporation for more than 20 years, petitioner-Society made a representation to the respondent No.1-Corporation to handover the possession of the reserved land back to the petitioner-Society. Various communications between the petitioner-Society and the Corporation are placed on record. It is further case of the petitioner that respondent No.2-Trust purchased the piece of land admeasuring 100 Sq. Mtrs. in part of Sub-Plot No.15 out of the approved plan. The said area was adjoining to the reserved land which was handed over to the Corporation for development. In the year 1999, the respondent No.2-Trust moved an application to the Corporation to grant some land out of the reserved land to utilize the same for public purpose. Thereafter, application moved by respondent-Trust was accepted by the Corporation and accordingly, piece of land

ad-measuring 300 Sq. Mtrs. vide resolution No.297 dated 1.12.2000 was granted to the Trust at the rate of Rs. 6000/- per sq.mtr. The petitioner raised objections regarding the said sale to respondent No.2, however, they were not able to get any relief. Thereafter, respondent No.2-Trust has once again applied to respondent No.1- Corporation for further grant of 577.81 sq.mtrs. of land out of the land reserved for common purposes. Aggrieved from this development, petitioner-Society has approached this Court by way of present petition. It is also brought to my notice that apart from this petition, petitioner has also approached the Civil Court seeking relief for declaration that the entire land be handed over back to the Society, however, the said suit is still pending.

3. Learned counsel for the petitioner has submitted that petitioner-Society was owner of the entire land which has been purchased by the individual plot holders and thereafter, formed the Society in the year 1972. The Society was having two common plots bearing Survey No.443-A and 443-B which were reserved for common purposes of the Society. As the Society was not in a position to develop this plot, these were handed over to the Corporation for development. It is submitted that Corporation was not within their right to sale the 300 Sq. Mtrs. of land to respondent No.2 out of the common plot. The proposed action of respondent No.1-Corporation in selling out another plot ad-measuring 577.81 Sq. Mtrs to respondent No.2 was against the law of land. It has been submitted that the stand of respondent-Corporation that they were owner of the plot in view of Section 224 of the Bombay Provincial Municipal Corporation Act, 1949 was in fact misleading as this Section deals with the streets and roads which Corporation can use for the purposes of putting lights and other amenities. He has relied upon a decision of the Apex Court in the case of Pt. Chet Ram Vashist (dead) by LRs v. Municipal Corporation of Delhi reported in (1995) 1 SCC 47.

4. On the other hand, learned counsel representing the Corporation as well as respondent No.2 has replied to this submission by arguing that Municipal Corporation was within their rights to have sold 300 Sq. Mtrs. of land to respondent No.2. Further, the Corporation has invited objections from various plot holders and after inviting objections, the Corporation has proposed to sell plot ad-measuring 577.81 sq.mtrs. out of the reserved land to respondent No.2 as respondent No.2 has undertaken to develop this land for common purposes. He has referred to Section 224 of the Bombay Provincial Municipal Corporation Act and has submitted that the Corporation has become owner of this land and was within their rights to use the same for other purposes beneficial to the residents of that area.

5. This Court has considered the submissions of both the sides. The facts are not in dispute. The individual plot holders have formed the Society in the year 1972 and common plot Nos.443-A and 443-B were kept reserved for common amenities. The society handed over this plot to the Corporation for the purpose of development. Rather than developing this plot for the residents of the society, the Corporation has preferred to sell it to third party i.e. respondent No.2 for

religious purposes. Though originally it was agreed that the land will be used for library but it is brought to my notice that none of the residents is allowed to enter that portion of the land which has been purchased by respondent No.2. This Court is in full agreement with the arguments of learned counsel for the petitioner that Section 224 of Bombay Provincial Municipal Corporation Act, 1949 will not be applicable to the facts of this case as it relates to the ownership of Corporation pertaining to streets and passages falling within the area of Corporation. Rather than the case of Pt. Chet Ram Vashist (dead) By LRs v. Municipal Corporation of Delhi (supra) is fully applicable to the facts of this case. In this case, it has been held that space reserved in the plan for the public purpose viz. Park, School, etc. cannot vest in the Corporation as it will amount to transfer of the ownership of society to the Corporation free of cost which is not permissible in law.

6. In view of the foregoing discussion, this petition is allowed. The action of the respondent No.1-Corporation in resolving to sell 577.81 sq.mtr. of land out of the land reserved for public purposes belonging to the petitioner-society to respondent No.2 Trust by way of resolution No.217 dated 16.7.2005 is quashed and set aside. Rule is made absolute.