

(2016) 09 GUJ CK 0040
In the Gujarat High Court

Case No : Special Civil Application No. 16775, 17063 of 2012

Nanlal Shantilal Shah

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Bombay Land Revenue Code, 1860 — Section 211

Citation : (2017) 1 GujLH 10

Hon'ble Judges : Ms. Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Mr. Jyoti Bhatt, AGP, for the Respondents No. 1; Mr. Nishit Gandhi with Mr. P.P. Majmudar, Advocates, for the Respondents No. 3 - 5; Rule Served, for the Respondents No. 1 - 2, 5; Mr. Jitendra M. Patel, Advocate, for the Petitioners No. 1 - 3

Final Decision : Disposed off

Judgement

Ms. Bela M. Trivedi, J. - Both the petitions arise out of the common order dated 08.12.2012 passed by the respondent No. 1 ? S.S.R.D. in Revision Petition No. 11 of 2011 and 12 of 2011, whereby the respondent No.1 has confirmed the order dated 08.04.2011 passed by the respondent No.2 ? Collector, Banaskantha, forfeiting the lands in question along with the construction thereon in favour of the Government, on the ground that the petitioners had committed breach of conditions of the grant.

2. The undisputed facts which emerge from the record, may be summarised as under :

2.1. The lands bearing Sheet City No. 32, City Survey No. 263, 264, 265 and 266 totally admeasuring 3107.80 sq. mtrs. situated in the sim of village Nava Deesa were granted to the deceased Shantilal S. Shah, the father of the petitioners by the State Government, under the provisions contained in the Bombay Land Revenue Code (hereinafter referred to as "the said Code") for using the same as an open land as per the Sanad cum order dated 02.03.1965 (Annexure "C"). The

said Shantilal had also submitted an undertaking as required under Rule 37, 43 and 52 of the Bombay Land Revenue Rules (hereinafter referred to as "the said Rules"). In the year 1972, the petitioners had made an application to the Collector to change the use of the land, which was rejected by the Collector vide the order dated 06.05.1972. Against the said order, the petitioners had preferred a Revision Application being No. 330 of 1972, which also came to be dismissed by the State Government. The petitioners thereafter again applied to the State Government in the year 1979 to delete the condition for using the land as an open land, and to permit them to put up construction thereon. According to the petitioners, the said permission was granted by the Collector vide the order dated 16.07.1980 (Annexure "E") subject to payment of premium amount, and subject to the conditions mentioned therein including the condition that the construction was to be completed within two years and as per the plans sanctioned by the Nagar Panchayat and as per the Building Regulations and Bye Laws. The petitioners, thereafter, obtained necessary permissions from the Deesa Nagar Panchayat for putting up construction over the lands in question, and constructed shops thereon.

2.2. According to the petitioners, the said shops were given on leave and license basis to various persons, however, at the instance of some third party, the Collector issued the notice dated 06.02.1998 (Annexure "I") to the petitioners calling upon them to show cause as to why the permission granted on 16.07.1980 should not be cancelled, and the land along with the construction thereon should not be forfeited in favour of the Government, as the petitioners had transferred the lands which were of inalienable nature and had not put up any construction on Survey No. 263, though as per condition No. 4, the construction was to be completed within two years. The petitioners replied to the said show-cause notice contending therein inter alia that the petitioners had not committed any breach of conditions, and that the shops put up on part of lands in question were not transferred but were given on rent to various persons by executing rent notes. It appears that considering the reply of the petitioners, the Collector had sought clarification from the State Government, and the State Government vide resolution dated 08.06.1999 (Annexure "L") directed that the construction of shops on the land admeasuring 869.11.77 sq. mtrs. be regularized by charging 20 times NA assessment as fine from the petitioners, however, in the remaining area of 1019.52.12 sq. mtrs., the petitioners shall have to complete construction within two years. It was also stated therein that the petitioners shall have to pay 50 per cent of the profit that may be earned by them at the time of selling or transferring the shops, by way of premium. There being ambiguity in the said order of the State Government, the Collector again sought clarification from the State Government in respect of the said order dated 08.06.1999, to which the State Government communicated to the Collector vide the letter dated 24/28.09.1999 (Annexure "N") reiterating that the Collector had to proceed as per the order dated 08.06.1999.

2.3. The Collector, thereafter, made an inquiry from the Chief Officer, Deesa

Nagar Palika vide the letter dated 08.01.2001, as to whether the petitioners had obtained any permission for the construction of shops on the lands in question, to which the Deesa Nagar Palika vide the order dated 20.09.2001 informed the Collector that though the permissions to put up construction were granted by the Nagarpalika, the petitioners had not shown any parking place in the plans. Thereafter, it appears that one of the petitioners i.e. Nanalal Shantilal Shah had given an undertaking to the Collector on 10.01.2003 that since the construction was already completed on the lands bearing City Survey No. 264, 265 and 266, he would make provisions for parking in the Survey No. 263. It further appears that thereafter the Town Planner, Palanpur had sanctioned the layout plan in respect of the Survey No. 263 vide the letter dated 15.12.2004 (Annexure "Q") subject to the conditions mentioned therein. According to the petitioners, though there was no breach of conditions committed by the petitioners, the Collector wrote a letter dated 29.07.2004 to the State Government alleging breach of conditions. The State Government, therefore, directed the Collector vide the letter dated 14.09.2004 that the petitioners had continued to commit breach of the conditions of grant, and therefore, necessary action for forfeiting the land be undertaken as per the prevailing Rules (Annexure "R").

2.4. It appears that thereafter in response to the request made by the petitioners to extend the time limit to complete the construction, the Collector vide the letter dated 20.06.2006 (Annexure "T") directed the petitioners to pay the fine of Rs. 5, 666/- . The petitioners were further informed that they will have to make payment of premium to the extent of 50 per cent of the prevailing market price of the shops constructed on 869.11.77 sq. mtrs. of lands. The petitioners, pursuant to the said letter paid up the fine of Rs. 5, 666/- , and submitted their consent for making payment of premium as may be fixed by the Government. Accordingly, the Collector passed the order on 26.09.2006 (Annexure "U") regularising the breach of conditions in respect of construction of shops on 869.11.77 sq. mtrs. and extending time upto two years to complete the construction on the remaining area of 1019.52.12 sq. mtrs. out of the said lands in question. Thereafter, in response to the application dated 21.04.2007 made by the petitioners, the Deesa Nagarpalika granted permission to put up construction on the City Survey No. 263 as per the order dated 24.01.2008 (Annexure "V"). It appears that thereafter the Town Planning Authority fixed the amount of premium at Rs. 12, 705/per sq. mtrs. as per the letter dated 02.12.2009 (Annexure "X") addressed to the Collector.

2.5. It further appears that the petitioners had sought permission from the Collector to sell the shops constructed on the area of 869.11.77 sq. mtrs. out of the Survey No. 264, 265 and 266, however, the said permission was not granted by the Collector vide the order dated 14.12.2009 (Annexure "Y") for various reasons inter alia that the petitioners had not made any provision for parking area for the shops constructed on City Survey No. 264, 265 and 266, and that though undertaking was given, the petitioners had not provided any parking area in Survey No. 263 for the said shops, and thus no permission to sell the said

shops could be granted without making necessary arrangement for parking for the said shops. The petitioners, therefore, challenged the said order of Collector before the S.S.R.D. by preferring the Revision Application No. 04 of 2010. The S.S.R.D., vide the order dated 23.11.2012 (Annexure "Z") allowed the said revision application, and set aside the order dated 14.12.2009 passed by the Collector, and further directed the Collector to take decision with regard to the recovery of premium amount.

2.6. In the meantime, it appears that the Collector vide the notice dated 17.05.2010 (Annexure "Z1") had called upon the petitioners to show cause as to why the penal action should not be taken against them for committing breach of conditions as the petitioners had transferred the shops constructed on the lands in question without making payment of premium. The petitioners submitted the reply (Annexure "Z2") contending inter alia that the petitioners had not transferred the shops in question, but had given the same only on license basis for 11 months and 29 days. However, the Collector vide the impugned order dated 08.04.2011 (Annexure "V") directed to forfeit the entire lands in question in favour of the State Government on the ground that the petitioners had committed breach of conditions of the grant. Being aggrieved by the said order, the petitioners had preferred the revision applications being No. 11 of 2011 and 12 of 2011, which came to be dismissed by the S.S.R.D., vide the impugned order dated 08.12.2012 (Annexure "A"). Hence, the present petitions have been filed.

3. After having heard the learned advocates for the parties at length, the Court had found that the two officers of the respondent State Government i.e. the Secretary, Revenue Department (Appeals), and the Additional Secretary, Revenue Department (Appeals) had passed the orders dated 08.12.2012 and 23.11.2012 respectively in conflict with each other inasmuch as, vide the order dated 23.11.2012 (Annexure "Z"), the Additional Secretary, Revenue Department (Appeals) while allowing the Revision Application being No. 4 of 2010 filed by the petitioners challenging the order dated 14.12.2009 passed by the Collector rejecting their application seeking permission to sell the shops in question, had set aside the said order of the Collector, and had directed the Collector to take appropriate decision for the recovery of premium from the petitioners, whereas the Secretary, Revenue Department (Appeals) while rejecting the Revision Application being No. 11 of 2011 and others filed by the petitioners challenging the order dated 08.04.2011 forfeiting the lands in question in favour of the State Government, had confirmed the said order of the Collector. The Court, therefore, had put a query to the learned counsel Mr. J.M. Patel, for the petitioners as to whether the petitioners had brought to the notice of the Additional Secretary, who decided the Revision Application being No. 4 of 2010 about the pendency of the Revision Application being No. 11 of 2011 and others pending before the Secretary, Revenue Department (Appeals), and whether the petitioners had brought to the notice of the Secretary, Revenue Department (Appeals), who decided the Revision Application No. 11 of 2011 and

others, about the order dated 23.11.2012 passed by the same authority in Revision Application No. 4 of 2010. In response to the said query, Mr. J.M. Patel, learned counsel for the petitioner had pointed out to the Court the further affidavit of Shashikant Shantilal Shah and Nanalal Shantilal Shah filed before this Court contending inter alia that the petitioners had submitted an application on 29.04.2011 to the Additional Secretary before whom the Revision Application No. 4 of 2010 was pending, seeking prayer to remove the seals put by the Collector, Banaskantha pursuant to his order dated 08.04.2011. However in none of the said further affidavits filed in the present petition, the petitioners have stated as to whether the respective two officers of the respondent No.1 authority were made aware about the pendency of the respective revision applications filed by the petitioners against the orders of the Collector. The Court, therefore, has reason to believe that the Additional Secretary, Revenue Department (Appeals) while passing the order dated 23.11.2012 in Revision Application No. 4 of 2010 was not aware about the pendency of the Revision Application being No. 11 of 2011 and others filed by the petitioners before the Secretary, Revenue Department (Appeals). Similarly, the Secretary, Revenue Department (Appeals) while passing the impugned order dated 08.12.2012 in Revision Application No. 11 of 2011 and others, was not made aware about the order dated 23.11.2012 passed by the Additional Secretary in Revision Application No. 4 of 2010. Such non-communication and nondisclosure of true facts before the said authorities had resulted into passing of conflicting orders by the said officers, who were exercising their powers under Section 211 of the Code, as delegated by the State Government.

4. Under the circumstances, without going into the merits of the case, the Court deems it proper to remand the case to the respondent No. 1 for deciding the revision applications filed by the petitioners afresh and in accordance with law. It is needless to say that the respondent No. 1 shall give reasonable opportunity of hearing to all the parties, and pass the order on merits and in accordance with law. It is clarified that the Court has not expressed any opinion on the merits of the case.

5. In that view of the matter, the impugned order dated 08.12.2012 passed by the respondent No.1 (Annexure "A") is set aside, and the matter is remanded to the respondent No.1 for deciding the Revision Applications of the petitioners afresh on merits, and in accordance with law as expeditiously as possible, and not later than 31.12.2016. All the parties are directed to cooperate the respondent No. 1 for the disposal of the said revision applications. It is further directed that both the parties shall maintain status-quo as regards the possession, transfer and alienation of the lands and shops in question till the disposal of the Revision Applications by the respondent No.1.

6. The present petitions stand disposed of accordingly.