

(2014) 08 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 15803 of 2012

Nawanagar Cooperative Bank Ltd.

APPELLANT

Vs

Jamnagar Municipal Corporation

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Citation : (2014) 08 GUJ CK 0021

Hon'ble Judges : G.B. Shah, J

Bench : Single Bench

Advocate : Megha Jani, Advocate for the Appellant; Jayant P. Bhatt, Advocate for the Respondent

Judgement

G.B. Shah, J.—By filing the present petition, the petitioner has sought the relief"s which read as under.

"8. A That the Hon"ble Court be pleased to issue a writ of mandamus, a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the order dated 29.6.2012 issued by the Town Planning Officer, Jamnagar Municipal Corporation (Annexure-M) and notice dated 2.7.2012 issued by the Commissioner, Jamnagar Municipal Corporation(Annexure-N).

B. That pending the hearing and final disposal of the petition, the Hon"ble Court be pleased to stay execution, operation and implementation of the order dated 29.6.2012 issued by the Town Planning Officer, Jamnagar Municipal Corporation and of the notice dated 2.7.2012 issued by the Commissioner, Jamnagar Municipal Corporation.

C. xxxx xxxx xxxx

D xxxx xxxx xxxx"

2. The facts of the case of the petitioner, in brief, are that the petitioner-Nawanagar Co-operative Bank Ltd. is owner of land bearing Plot Nos. 201 and

202 situated at Ward No. 11, Sheet No. 195, New City Survey No. 1437 and Ward No. 11, Sheet No. 195, New City Survey No. 1438 respectively. The land bearing Plot No. 201 was purchased by the petitioner-bank from one Rajnikant Jivraj Shah by a registered sale deed dated 14.7.2005. The land bearing Plot No. 202 was purchased by the petitioner-bank from one Jaysukhlal Kanji Shah and Mansukhlal Jivraj Shah by registered sale deed dated 14.7.2005. On purchasing the lands, the petitioner applied for development permission to Jamnagar Municipal Corporation ("the Corporation" for short). The Corporation granted development permission No. 019978 permitting construction on the ground floor, first floor, second floor and terrace as shown in the sanctioned plan. On receiving the development permission, the petitioner commenced construction on the lands in question. One Bhavdip Vajubhai Vala objected to the construction started by the petitioner and pursuant to the said objection, the Commissioner directed the petitioner to stop construction vide letter dated 18.3.2008. The respondent No. 1 again by letter dated 10.4.2008 informed the petitioner that if the documents as called for in the letter dated 18.3.2008 are not furnished, the proceedings will be initiated for cancelling the development permission. It is the case of the petitioner that the petitioner had complied with both the above referred letters and despite the same, the Corporation did not take any steps permitting the petitioner to commence construction. Therefore, the petitioner addressed letters dated 16.4.2008 and 28.7.2008 and also issued notice through advocate on 29.4.2008 as well as the letters dated 6.11.2009, 25.11.2009, 19.12.2009, 5.1.2010 and 19.4.2010, copies of which are produced by the petitioner at Annexure-H collectively to the petition. In response thereto, the respondent No. 2 called upon the petitioner by letter dated 28.4.2010 for personal hearing on 10.5.2010 and thereafter, permitted the petitioner to commence construction.

2.1 It is averred in the petition that as soon as the construction was commenced by the petitioner, again said Bhavdip Vajubhai Vala raised objection and at his objection, respondent No. 2 again directed the petitioner by his letter dated 29.6.2012 (A copy of which is at Annexure-M) to stop construction. It is averred that, thereafter, the respondent No. 1 issued the notice dated 2.7.2012 to the petitioner (a copy of which is at Annexure-N) to show cause as to why the development permission should not be cancelled. Under the aforesaid background, the petitioner has approached this Court by filing the present petition seeking the prayers as referred above.

3. When the matter is taken up for admission hearing by this Court on 12.12.2012, the Court issued the notice making it returnable on 9.1.2013 and granted the interim relief. Thereafter, the matter was adjourned from time to time and on 1.7.2013, this Court passed the following order.

"Heard Ms. Megha Jani, learned advocate appearing for the petitioner.

When the matter is called out, no one appears for the respondents-authorities. No affidavit-in-reply is filed.

It is submitted that construction carried out by the petitioner is in consonance with the development permission granted by the respondents-authorities and measurement was carried out at city survey office.

RULE. Interim relief granted earlier to continue till further orders."

4. In pursuance of the aforesaid orders, the respondent Corporation filed the affidavit-in-reply sworn in by Jagdishbhai Sedani, Town Planning Officer of Jamnagar Municipal Corporation on 16.9.2013 wherein in paragraph 19, it is averred as under.

"19..... I say that a 30 meter wide D.P. road has been approved which is passing adjacent to the land of the petitioner. No central line is yet fixed by the respondent Municipal Corporation nor it has been implemented hence the exact deduction from the plot of the land in question has not yet been determined and therefore, the petitioner has been asked to stop construction vide letter dated 29.6.2012."

5. Heard learned advocates for the parties and perused the record of the case in light of the submissions made by them.

6. It is submitted by learned advocate Ms. Megha Jani for the petitioner that the plan is duly sanctioned by the respondents and development permission has also been granted and accordingly, the petitioner started the construction, but upon the objection raised by one Bhavdip Vajubhai Vala, the action is taken by the respondents which is ex facie illegal, arbitrary and without jurisdiction. It is further submitted that the petitioner has satisfied the requirements of the respondents and produced the map prepared by the City Survey Office which was produced vide letter dated 12.4.2008, however, the respondents took three years to grant permission to the petitioner to resume construction. In her submission, therefore, once the order dated 12.4.2008 was passed by the respondent authority, there was no reason for the respondent No. 2 to pass an order on 29.6.2012 requiring the petitioner to stop construction. She further submitted that the notice dated 2.7.2012 issued by the respondent No. 1 is also illegal, arbitrary, unreasonable, high handed and without jurisdiction.

7. Learned advocate, Mr. Jayant P. Bhatt for the respondents, opposing strongly the petition, submitted that an application was submitted by the petitioner bank seeking permission to make construction for use of the bank on City Survey Nos. 1439 and 1438 in plot Nos. 201 and 202, however, since said land situated adjacent to very old main road of 30 meter wide on the other side of Gulabnagar area on Rajkot road in Jamnagar City was affected with deduction of area due to D.P. Road, which has yet not been implemented due to local geographical conditions, the plot area shown in the plan could not be treated to be final area as there would deduction for laying of D.P. Road. Apart from the above, he submitted that a dispute was raised by one Mr. Narendra Govindbhai and others, who are having adjacent plots situated on the southern side of the plot of the petitioner, relating to area of the plot under construction of the petitioner and

therefore, on affording an opportunity of personal hearing, the petitioner was informed to stay development work on 18-3-2008 asking the petitioner bank to get demarcation of the plot through City Survey and to make change in view of deductions due to 30 meter D.P. Road as the further construction is likely to cause injustice either to petitioner or the objector. He further submitted that after taking final decision on the disputed issue by the competent authority, the petitioner would be intimated about continuance or not of the construction in question. It is, therefore, urged that this petition be dismissed.

8. This Court has considered the rival submissions made by the learned advocates appearing for the respective parties together with order and notice impugned.

9. It is pertinent to note that in pursuance of development permission having granted by the Town Planning Officer of the respondent Corporation on 12-10-2007, the petitioner has started construction. Thereafter, when petitioner was asked to stay the construction and directed to furnish details pertaining to the disputed construction in pursuance of objection raised by an objector vide letter dated 18-3-2008 by the respondent No. 1, relevant documents namely, measurement sheet prepared by the City Survey Office dated 11-4-2008 as well as sketch prepared by the Town Planning Officer, Jamnagar Mahanagar Palika dated 1-7-2005 based on 30 metre D.P. Road, were furnished by the petitioner vide letter dated 12-4-2008. Thereafter, permission to restart construction was granted by the Town Planning Officer based on the measurement sheet prepared by City Survey vide order dated 20-4-2012. However, thereafter again, in pursuance of same objection raised by the objector of land bearing Survey Nos. 18/19/1/paiki, petitioner was directed to stop development work by the respondent Corporation by letter dated 19-6-2012. Once the Corporation has granted permission to start construction and thereafter permitting to restart construction after having satisfied about submission of relevant documents as asked for by the Corporation, this Court is of the opinion that the action of the respondent Corporation directing the petitioner to stop construction raising the same objection again at the instance of the same third party objector would be a mala fide exercise of power and it cannot be permitted since the valid and enforceable rights of the petitioner are violated. This petition, therefore, requires to be allowed.

10. This petition is accordingly allowed. Impugned order dated 29-6-2012 (Annexure-M) issued by the Town Planning Officer and notice dated 2-7-2012 (Annexure-N) issued by the Commissioner of the Jamnagar Municipal Corporation are set aside. The petitioner is hereby permitted to carry on construction as per the development permission dated 12-10-2007 at Annexure-A (page 13) as well as permission for commencement of construction vide letter dated 20-4-2012 at Annexure-K (page 44) granted by the respondent Corporation. Rule is accordingly made absolute to the aforesaid extend.