

(2013) 10 GUJ CK 0052

In the Gujarat High Court

Case No : Writ Petition (PIL) No. 107 of 2013 and Special Civil Application No. 3710 of 2013

Paresh Bipinchandra Dave

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0052

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Percy Kavina and Mr. Asit B. Joshi, s No. 1, for the Appellant; Vacha Desai, AGP for the Opponent(s) No. 1, Mr. Prashant G. Desai, Mr. Himanshu K. Patel, Advocate for the Opponent(s) No. 2 - 3, Mr. Mihir Joshi, Mr. M.I. Hava, Advocate for the Opponent(s) No. 4 - 5 and Mr. Chanakya Bhavsar, Advocate for the Opponent(s) No. 4 - 5, for the Respondent

Final Decision : Disposed Off

Judgement

J.B. Pardiwala, J.—Since common questions of fact and law are involved in both the captioned petitions, those were heard together and are being disposed of by this common judgment and order. By this Writ Application in the nature of a Public Interest Litigation, the petitioner, a member of a society registered in the name of Shree Karnamukteshwar Mahadev Bhakt Mandal has prayed for the following reliefs.

12.

(A) This Hon"ble Court may be pleased to issue an appropriate writ, order or direction, to declare the action of respondent corporation in proposing to allot the land admeasuring 6220.40 sq. mtr. of TP scheme No. 18 (Sarangpur), FP No. 12 + 13/1 p (Subject land) to Mahalaxmi Bhawan Co-op. Housing Society Ltd. Vibhat-2, (respondent No. 5 herein) vide communication dated 20.04.2013 and agenda No. 3 of the meeting of the Standing committee held on 25.04.2013 (annexed at Annexure "J" colly) as being illegal, arbitrary, unjustified, contrary to

the order passed by this Hon''ble Court in Letters Patent Appeal No. 1824 of 2009 as also contrary to the development permission and provisions of the Gujarat Development Control Regulations and also against the public interest;

(B) This Hon''ble Court may be pleased to permanently restrain respondent No. 2 and 3 from parting with the land admeasuring 6220.40 sq. mtr. of TP scheme No. 18 (Sarangpur), FP No. 12 + 13/1 p in favour of Mahalaxmi Bhawan Co-op. Housing Society Ltd. Vibhag-2 in pursuance of the commendations made by respondent No. 2 as considered by respondent No. 3 vide agenda No. 3 in a meeting dated 25.04.2013, and further be pleased to direct respondent corporation to forthwith take the possession of the subject land, pending the admission, hearing and final disposal of this petition;

(C) Pending the admission, hearing and final disposal of the petition, this Hon''ble Court may be pleased to direct respondent No. 2 and or 3 to place on record the details with regard to proceedings in the standing committee meeting held on 25.04.2013 and decision taken thereto on agenda item No. 3, and further be pleased to direct the parties/respondents to maintain status quo qua subject land in all manner;

(CC) Pending the admission and hearing and final disposal of the petition, this Honourable court may be pleased to restrain respondent No. 2 and the General Board of the Ahmedabad Municipal Corporation from accepting any proposal as per agenda No. 40 of the meeting scheduled on 10.5.2013 and maintain status quo qua all proceedings in respect of the subject land and also direct the respondent No. 2 to forthwith take possession of the subject land from respondent No. 4 and or 5 in the interest of justice and equity;

(D) This Hon''ble Court may be pleased to direct respondent No. 1 to 3 not to alter the status of the land admeasuring 6220.40 sq. mtr. of TP scheme No. 18 (Sarangpur), FP No. 12 + 13/1 p and not to grant any permission for construction on the subject land pending, hearing and final disposal of this petition;

(E) This Hon''ble Court may be pleased to pass such other and further order in the interest of justice that may be deemed fit in the facts and circumstances of the case.

2. The case made-out by the petitioner in public interest may be summarized as under:

2.1) A parcel of land bearing Survey No. 20/2 admeasuring 37791 sq. mtrs. situated at Mouje Shaherkotada was of the ownership of a Trust of the Karnamukteshwar Temple.

2.2) The said land was leased to Ahmedabad Cotton Manufacturing Mill Ltd., which got closed, as a result of which the land along with the entire undertaking was taken-over by the Gujarat State Textile Corporation Ltd., (for short "GSTC"). At a later stage the GSTC also got wound-up.

2.3) At the relevant point of time the Trust filed a Civil Suit in the City Civil Court at Ahmedabad for the purpose of restraining the GSTC from disposing of the land in question. The Civil Suit had to be filed because on 19/12/1987 the GSTC issued a Public Notice inviting proposals for sale of the land of the Trust. In pursuance of the said notice, one M/s. Mahalaxmi Housing & Finstock Pvt. Ltd., bided for the same and the bid was accepted by the GSTC.

2.4) It appears that the said dispute was ultimately resolved between the Trust, the GSTC and M/s. Mahalaxmi Housing & Finstock Pvt. Ltd. By a tripartite agreement executed among the parties, it was decided that M/s. Mahalaxmi Housing & Finstock Pvt. Ltd., would hand over the possession of 6689 sq. mtrs. of land from FP No. 12 to the Trust.

2.5) In view of such a settlement, the GSTC surrendered the lease in favour of the Trust with respect to 6689 sq. mtrs. of land identified as FP No. 12/2 of TP No. 18 vide Indenture dated 8/10/1993 and handed over the possession of the land with respect to land bearing FP No. 12/2.

2.6) The FP No. 12 was divided in two parts, viz., FP No. 12/1 admeasuring 31102 sq. mtrs. which remained with the GSTC and FP No. 12/2 admeasuring 6689 sq. mtrs. which came to the Trust.

2.7) On 18/12/1993 the Mahalaxmi Bhawan Co-op. Housing Society Ltd., i.e. parent society of the respondent Nos. 4 and 5 was registered vide Registration No. GH-11471.

2.8) The successful bidder, namely, M/s. Mahalaxmi Housing & Finstock Pvt. Ltd., nominated the then Mahalaxmi Bhawan Co-op. Housing Society Ltd., (now bifurcated as respondent Nos. 4 and 5) for purchase of the land from GSTC and requested the GSTC to execute a Sale Deed of FP No. 12/1 (i.e. balance 31102 sq. mtrs. of land) in favour of the then Mahalaxmi Bhawan Co-op. Housing Society Ltd.

2.9) The GSTC vide the sale deed dated 18/10/1996 transferred 31102 sq. mtrs. of land of FP No. 12/1 in favour of the then Mahalaxmi Bhawan Co-op. Housing Society Ltd., (i.e. parent society of respondent Nos. 4 and 5).

2.10) Thereafter M/s. Mahalaxmi Bhawan Co-op. Housing Soc. Ltd., submitted an application to the Ahmedabad Municipal Corporation seeking development permission in respect of FP No. 12/1. The Ahmedabad Municipal Corporation vide order dated 13/11/1997 granted the development permission on a condition to keep 20% of the land open as indicated in the Lay-out plan.

2.11) Accordingly the FP No. 12/1 was further bifurcated as under:

- i) 24881.60 sq. mtrs. of land for the development of the society.
- ii) 6220.40 sq. mtrs. of land be kept open for public utility purpose.

2.12) It appears from the materials on record that the Mahalaxmi Bhawan Co-op.

Housing Society Ltd., challenged the said condition imposed by the Ahmedabad Municipal Corporation of keeping 20% land open before this Court by filing a Special Civil Application No. 3448/1998. The learned Single Judge of this Court vide judgment and order dated 5/11/1999 rejected the said Writ Application.

2.13) The judgment and order passed by the learned Single Judge of this Court was challenged by way of Letters Patent Appeal No. 1824/1999. The LPA also came to be dismissed by a Division Bench of this Court vide order dated 4/9/2009.

2.14) In view of the dismissal of the LPA the decision of the Ahmedabad Municipal Corporation asking the society to keep 20% of the land open for public utility purpose attained finality.

2.15) According to the petitioner in such circumstances, the developer was under a legal obligation to keep 20% of the land open and to hand over the possession of such land to the Municipal Corporation for public utility and the Municipal Corporation is also obliged to take over the possession of the said open land so that it could be used for public purpose.

2.16) According to the petitioner, when the Special Civil Application No. 3448/1998 was pending, the Executive Committee of the Mahalaxmi Bhawan Co-op. Housing Society Ltd., passed a resolution No. 2 dated 15/8/1999 to bifurcate the society into two different societies. Accordingly, an application was filed before the District Registrar, Co-op. Societies, Ahmedabad City dated 21/9/1999 for the same.

2.17) The District Registrar, Co-op. Societies, Ahmedabad ordered to bifurcate the then Mahalaxmi Bhawan Co-op. Housing Society into two separate housing societies, namely, respondent No. 4 and respondent No. 5 herein respectively vide order dated 7/12/2005.

2.18) According to the petitioner, the land admeasuring 24881.60 sq. mtrs. of FP No. 12/1 in which the Ahmedabad Municipal Corporation granted permission for construction came to the share of the respondent No. 4 society whereas the balance 20% land i.e. 6220.40 sq. mtrs. (the subject land), which according to the petitioner is statutorily required to be handed over to the competent authority as open land under Clause-10.10.1 of GDCR, 2002 for public utility purpose came to the share of the respondent No. 5 society.

2.19) The parent society of respondent Nos. 4 and 5 obtained a loan of Rs. 4.00 crore from the Mehsana Urban Coop. Bank Ltd. and created a charge on the land admeasuring 6220.40 sq. mtrs. of FP No. 12/1 which is required to be kept open for public utility purpose under clause-10.10.1 of GDCR, 2002.

It is case of the petitioner that he has learnt that the respondent No. 5 (i.e. the Society Part-II) has approached the AMC for the allotment of 20% of the land and further to permit the Society Part-II to put-up the necessary construction and in exchange thereto the Society part-II has offered a parcel of land to the

Corporation at places like Sarkhej, Shilaj, Hebatpur and Thaltej.

2.20) Upon receipt of the proposal of the Society part-II, the respondent No. 2 Commissioner vide communication dated 20/4/2013 has recommended to the Municipal Secretary to consider the proposal of the Society Part-II in a meeting of the Standing committee which was scheduled to be held on 25/4/2013.

2.21) According to the petitioner, the respondent No. 2 Commissioner requested the Standing Committee to consider the proposal of the society and to accept the plot offered at Thaltej, Shilaj or Hebatpur.

2.22) It is also the case of the petitioner that thereafter he immediately lodged his objections with the Municipal Corporation and requested not to accept the proposal of the society as recommended by respondent No. 2 in view of the fact that the society had lost before the High Court right upto the stage of an LPA.

2.23) According to the petitioner, he has a strong apprehension that the respondent No. 2 Corporation in collusion with the society would get the proposal passed through the General Board and the land admeasuring 6220.40 sq. mtrs. would be allotted to the society and the development permission would also be granted to the society.

2.24) According to the petitioner, it was the duty of the Corporation to take over the possession of the 20% land from the society for the use of the public at large. It is also the case of the petitioner that as on today, 20% of the land is open and is in unauthorized occupation of the respondent No. 5 society part-II whereas on the other hand, the public at large are deprived from parking space and other public utility services.

2.25) In such circumstances referred to above it is prayed by the petitioner that the petition deserves consideration and the Corporation be directed to take over the possession of the 20% land from the respondent No. 5 society Part-II.

3. Stance of the Respondent No. 5 Society Part-II:

According to the respondent No. 5 Society Part-II it was submitted before the Division Bench of this court while hearing the LPA No. 1824/1999 that the direction compelling them to keep 20% of the land open in absence of any provisions under any of the statutes would be unreasonable and violative of Article- 31A of the Constitution of India and even the Municipal Commissioner in his letter dated 20/8/2004 addressed to the State Government had accepted that the stance of the Corporation was unreasonable. On behalf of the Corporation it was submitted before the LPA Bench that the revised development plan and GDCR (General Development Control Regulation) had come into effect from 18/5/2002 and clause 10.10.1 stipulated for contributing 20% of the land belonging to the closed mills for public purposes.

3.1) According to the respondent No. 5, while disposing of the appeal, the Bench made the following observations:

We are of the view, now the rights of parties can be adjudicated only by the regulations now in force. Land in question is now governed by the General Development Control Regulations (for short "GDC Regulations") framed by the AUDA. These Regulations have been framed by the Development Authority in exercise of powers conferred on it, in pursuance of the provisions contained in clause (m) of sub-section (2) of Section 12 and clause (c) of sub-section (2) of Section 13 of the Town Planning Act. In this case, we are concerned with a closed textile mill, which is covered by 10.10.1 of the GDC Regulations, which is extracted herein for easy reference:

10.10.1 CLOSED TEXTILES MILLS

In case of development/redevelopment of land of closed mills for any permissible purpose other than use of textile mills, the competent authority shall enforce owners/applicant to contribute land to the competent authority at the rate of 20% in aggregate of its plot/building unit (Final Plot) by reconstitution of such plot/building unit, so as to provide land for public amenities/public purpose in that area. The land so obtained shall not be used other than public purpose and public amenities.

The above clause says that in case of development/redevelopment of land of closed mills for any permissible purpose other than use of textile mills, the competent authority shall enforce owners/applicants to contribute land to the competent authority at the rate of 20% in aggregate of its plot/building unit (Final Plot), by reconstitution of such plot/building unit, so as to provide land for public amenities/public purpose in that area. It has been specifically stated in the clause that the land so obtained shall not be used other than for public purpose and public amenities.

We are of the view that so far as clause 26 stands; the request of the petitioner for utilization of land cannot be permitted unless he satisfies the above mentioned clause 10.10.1. Further, no useful purpose will be served by striking down clause 26 so far as this case is concerned because if petitioner wants to utilize the land, petitioner has to make a fresh application, and such an application can be considered only in accordance with the regulations which are in force on the date of consideration and not on the date of submission application.

So far as the present case is concerned, when the application for sanction was made, condition incorporated in clause 26 was imposed, and with open eyes petitioner had accepted that condition and carried out the construction, therefore, petitioner is stopped from wriggling out of that agreement. Over and above, we have already indicated that assuming that the petitioner wanted to utilize the rest of the land; he would be covered by the regulations which are now in force.

The above being the factual and legal situation, the contention raised by the petitioner based on the provisions of Section 71 of the Town Planning Act, which

is not relevant for deciding this case, is of no avail. We, therefore, find no error in the view taken by the learned Single Judge.

Letters Patent Appeal lacks merit and the same is dismissed. Consequently, Civil Applications are also dismissed.

3.2) According to the respondent No. 5 in the aforesaid premises it preferred an application dated 11/11/2009 requesting the Ahmedabad Municipal Corporation to permit the development of the land admeasuring 6220.40 sq. mtrs. being FP No. 12 paiki inter alia stating as under:

a) That the said plot admeasuring 6220.40 Sq. Mts. is a separate plot of the ownership of Resp. No. 5 Society and the division thereof has been approved by D.I.L.R., Vide Order dated 28-5-2006.

b) That the Circular issued by the, Commissioner dated 4-3-2009 bearing No. 16/2008, stipulates conditions to be considered, while approving construction plans in respect of Final Plots belonging to joint owners, wherein division is approved by D.I.L.R. prior to 25-8-2006 and the Society's case is squarely covered by the said Circular.

c) That in contemplation of Variation of Town Planning Scheme direction to keep 20% of the Land as open space was given however State Government, vide letter dated 26-2-2009 has rejected the proposal and therefore the only alternative with the Corporation is to resort to the provisions of Section 20 of the Town Planning Act for acquiring the land under the Land Acquisition Act. However as is apparent from the letter of the Commissioner dated 20-8-2004, Corporation is not interested in acquiring the said land through private negotiations or under the Land Acquisition Act.

d) As per the existing Regulations 10.10.1 the Resp. No. 5 Society is willing to contribute 20% of the land i.e. 20% of 6220.40 Sq. mts. = 1244.08 Sq. Mts. or in the alternative is willing to pay the market price thereof as per the current Jantri.

3.3) According to the respondent No. 5 it received a communication dated 2/6/2011 addressed by the Deputy Estate Officer, Central Zone to the Chairman/ Secretary of the Society informing that in view of the judgment and order passed by this Court in SCA 3448/1998 and LPA 1824/1999, the request of the society to permit them to develop 20% land had been rejected and the said land was required to be handed over to the Corporation.

3.4) The respondent No. 5 Society being aggrieved by such communication dated 2/6/2011 came before this Court by way of SCA 10565/2011 challenging the order dated 2/6/2011 directing it to surrender the land admeasuring 6220.40 sq. mtrs. The SCA 10565/2011 is pending before this Court.

3.5) According to the respondent No. 5, in the meantime, they approached the Urban Development and Urban Housing Development Department, Gandhinagar

vide representation dated 27/3/2012 for grant of development permission in respect of the land admeasuring 6220.40 sq. mtrs. and requested to reconsider the decision of the Corporation in refusing to grant the Development permission on the said land.

3.6) According to the respondent No. 5 vide letter dated 28/8/2012 of the Municipal Commissioner, Ahmedabad addressed to the Additional Secretary, Urban Development and Urban Housing Development Department, the Corporation accepted the proposal of the society agreeing to handover the possession of 20% of the land admeasuring 6220.40 sq. mtrs. i.e. 1244.08 sq. mtrs. without any compensation from the land bearing FP No. 12 + 13/1 of T.P. Scheme No. 18 of the ownership of the Society in accordance with Regulation 10.10.1 and the offer to give a plot of land admeasuring 4976.32 sq. mtrs. of equal market value within the limits of Ahmedabad Municipal Corporation without any consideration.

3.7) The Chief City Planner, AMC, vide letter dated 18/9/2012 directed the respondent No. 5 society to out-line the alternative lands within the limits of AMC. In response to the same the Society vide letter dated 5/10/2012 addressed to the Chief City Planner submitted the plan indicating land admeasuring 1244.08 sq. mtr. i.e. 20% of the land to be surrendered from FP No. 12 + 13/1 of TP Scheme 18 beyond different plots of land available to the Corporation in lieu of 4976.32 sq. mtrs.

3.8) According to the respondent No. 5 the Standing Committee of the Ahmedabad Municipal Corporation in its meeting held on 25/4/2013 passed a Resolution No. 127/2013-14 accepting the proposal made by the Commissioner.

3.9) In such circumstances referred to above, according to the respondent No. 5, the action of the Corporation and the State Government could be termed as just, fair and reasonable and therefore, no indulgence deserves to be granted to the petitioner in the name of public interest.

In such circumstances the respondent No. 5 prays that there being no merits in this petition, the same deserves to be rejected.

4. Stance of the respondent No. 2 A.M.C.:

4.1) According to the AMC, the Corporation passed a resolution for Variation of the TP Scheme in the year 1999 for taking over possession of the land to the extent of 20% from 6220.40 sq. mtrs. for public purpose in accordance with Regulation 10.10.1 of the GDCR in the revised Draft Development plan of the AUDA. The Chief Town Planner has granted such permission for variation. However, the State Government, by a Notification cancelled the permission which was granted by the Chief Town Planner.

4.2) According to the Corporation, it requested the society to hand over possession of the land of 6220.40 sq. mtrs. for public purpose in accordance with the provisions of Regulation 10.10.1 of the GDCR in the sanctioned revised

Development Plan of 2002 of AUDA of 2/6/2011.

4.3) The Society, however, requested the Corporation to consider its representation to the effect that the land admeasuring 1244.08 sq. mtrs. would be handed over to the Corporation out of 6220.40 sq. mtrs. and so far as the balance area is concerned, the Society was ready and willing to pay the amount @ Rs. 17600/- per sq. mtr.

4.4) It is the stance of the Corporation that out of three options which were given by the society, the Corporation thought fit to accept one of the options, viz. that the Corporation would take over possession of 1244/08 sq. mtrs. for frontage road purpose so that the plot could be used for parking, garden or open commercial use and the balance area of the plot would be handed over to the Corporation from Revenue S. No. 204 + 206 + 207/1 + 208 in Draft T.P. Scheme No. 53/A (Shilaj, Thaltej and Hebatpur) being FP No. 157 of the Corporation would get an FSI of 1.2. According to the Corporation, the possession of 1244.08 sq.mts of the land in question would be taken over by them from the respondent No. 5, whereas alternate plot of the balanced area would be handed over by the respondent No. 5 to them at village Shilaj. According to the Corporation, such arrangement is more beneficial even financially. According to the Corporation in light of such understanding arrived at, the entire controversy has been taken care of and it is not necessary to adjudicate this public interest litigation which is otherwise not in the nature of PIL, but the Trustees are more interested to see that if the land is kept open, then the devotees who visit the temple may not have to face any inconvenience so far as the parking of vehicles etc is concerned.

In such circumstances referred to above, the Corporation prays that the petition deserves to be rejected.

We have heard Mr. Percy Kavina, the learned senior advocate assisted by Mr. Ashit Joshi, the learned advocate appearing for the petitioner, Mr. Mehul Rathod, the learned advocate appearing for the petitioner of the connected matter, Mr. Mihir Joshi, the learned senior advocate assisted by Mr. M.I. Hawa, the learned advocate appearing for the respondent No. 5, Mr. Prashant G. Desai, the learned senior advocate appearing for the Ahmedabad Municipal Corporation and Ms. Vacha Desai, the learned AGP appearing for the State respondent.

Having heard the learned counsel appearing for the respective parties and having gone through the materials on record, the only question that falls for our consideration in this petition is, whether there is any element of public interest involved, and if yes, then whether the same has been taken care of by the authorities or not.

We are of the opinion that the entire controversy revolves around the issue, whether the respondent No. 5 Society is entitled to retain 6220.40 sq.mtrs of land, taking into consideration the earlier round of litigation between the respondent No. 5 Society and the authorities, more particularly, the Ahmedabad Municipal Corporation.

It appears that the Trust, at whose instance this petition has been filed, is more interested to see that 6220.40 sq.mtrs of land is kept open by the Society and the possession of the same is taken over by the Corporation so that the same could be used for the convenience of the devotees who come to the temple everyday.

To the aforesaid extent, we are convinced that there appears to be some personal interest of the Trust in the matter which is sought to be projected in the name of a public interest.

Be that as it may, the controversy appears to have been resolved with the decision of the Corporation to take over the possession of 1244.08 sq.mtrs of the land from the respondent No. 5 Society and use it for the public, whereas the balance area will be in the form of another plot which the respondent No. 5 Society has agreed to handover to the Municipal Corporation at village Shilaj, free of cost.

The alternative plot which the respondent No. 5 Society has offered to the Municipal Corporation could be used for the advantage of the public at large. Therefore, considering the stance of the Ahmedabad Municipal Corporation and the understanding arrived at, we do not find any reason to entertain this petition.

For the foregoing reasons this petition fails and is hereby rejected. However, in the facts and circumstances of the case, there shall be no order as to costs.

In view of the order passed in the Writ Petition (PIL) No. 107 of 2013, the connected Special Civil Application No. 3710 of 2013 is also accordingly disposed of. Interim order granted earlier stands vacated.

Bhaskar Bhattacharya, C.J.

J.B. Pardiwala, J.

After this order is passed, the learned advocate appearing on behalf of the petitioner, prays for stay of operation of our order.

In view of what has been stated above, we find no reason to stay our order. Prayer is refused. Let a certified copy of the order be handed over to the petitioner by tomorrow, if applied.