
(2016) 12 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 6886 of 2001

Patan Municipality

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-12-2016

Acts Referred:

Citation : (2017) 1 GCD 753

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

Bench : Single Bench

Advocate : Mr. S.N. Shelat, Sr. Advocate With Mr. Shivang M Shah, Advocate, for the Petitioner No. 1; Mr. Venugopal Patel, AGP, for the Respondents No. 1; Mr. Dhaval C. Dave, Sr. Advocate With Mr. Dhaval N Vakil, Advocate and Mr. Rakesh R Patel, Advocate, for the Re

Final Decision : Allowed

Judgement

Bela M. Trivedi, J.(Oral)—The present petition has been filed by the petitioner-Patan Municipality challenging the order dated 30.05.2001 (Annexure-A) passed by Respondent No.2 Collector, Patan as also letter/order dated 21.03.2001 of the Respondent No.1 State Government, pursuant to which the Collector had passed the said order dated 30.05.2001. The petitioner had amended the prayer clause as per the Court's order dated 18.11.2010, whereby the petitioner has also challenged the impugned decision dated 07.08.2000 as well as 08.01.2001 (Annexure-I) passed by the State Government.

2. After hearing learned Counsel for the parties, it appears that earlier one Mr. K.C. Patel, President of Patan Municipality had filed Special Civil Application No.5503 of 1997 in the nature of public interest litigation challenging the order dated 16.07.1997 passed by the Collector, Mehsana assigning the land bearing Survey No.2249 admeasuring 302.04 sq. mtrs. situated in Patan City to one Naranbhai Mohanbhai Patel-Respondent No.4 herein, and who was the Respondent No.3 in the earlier petition.

3. The main contention raised in the said petition was, whether the land bearing Survey No.2249 was the Government land or had vested in the Patan Municipality. The Division Bench after considering the contentions raised by the respective parties had disposed of the said petition by passing the following order on 20.01.1998,

"9. Reference was made to the decision of the Apex Court in Shri Sachidanand Pandey and another v. The State of West Bengal and others, AIR 1987 SC 1109 to advance an argument that when all the materials are considered by the Government, this Court is not to interfere unless and until malafides is established. In this case the Government did not consider any of the issues raised by parties. Collector on a wrong understanding of facts passed orders assigning land to third respondent. So we hold that the order passed by the Collector cannot stand and order that the whole matter must be considered by the Government afresh in the light of the observations made here-in-above in this judgment. While considering the claims put forth by the third respondent the contentions raised by Municipality should be considered in all its aspects, in compliance with the principles of natural justice.

10. In view of what is stated above, we allow this petition, quash and set aside the order at Annexure-A and remit the entire issue to the Government for consideration of the issue relating to assignment of land comprised in S.No.2249 of Patan City in accordance with law."

4. Despite the afore stated directions given by the Division Bench in the earlier petition, the Collector vide the order dated 30.05.2001 allotted the land to the Respondent No.4 giving reference to the order/ communication dated 21.02.2000 made by the Revenue Department. It transpires from the said order/ communication dated 21.02.2000 (Annexure-R8) of Section Officer, Revenue Department addressed to the Collector that the Respondent No.1 had not obeyed or complied with the directions given by the Division Bench in the order dated 20.01.1998. Though the Government was directed to consider the whole matter afresh in light of the observations made in the said judgment and to consider the contentions raised by the Patan Municipality in compliance with the principles of natural justice, while considering the claim put forth by the Respondent No.4, the Respondent No.1 had passed the order in favour of the Respondent no.4 in complete disregard of the said directions.

5. In view of the above, vide the order dated 06.12.2016 the Court had directed the Secretary, Revenue Department to file affidavit explaining as to why the directions issued by the Division Bench were not complied with before taking the decision as contained in the communication dated 21.02.2000. In view of the said order, Mr. K. Srinivasan, Principal Secretary, Revenue Department has filed the affidavit. Though it has been stated in the affidavit that there was no intention to flout the orders of the High Court, there is no explanation stated as to why the directions issued by the Division Bench in the earlier order were not complied with. The concerned Secretary, Revenue Department was specifically

directed by this Court to file affidavit in this regard, however the affidavit has been filed only to justify the impugned order passed by the Government. From the tenor of the said affidavit, it appears that the concerned Secretary has reiterated the contents of the affidavit in reply filed by the Chitnis to the Collector, Patan without explaining as to why the directions of the Division Bench were not complied with while passing the impugned order dated 21.02.2000. There is not a whisper in the said order that the contentions raised by the Patan Municipality were considered in compliance with the principles of natural justice. It may be noted that the orders passed by the Courts are expected to be complied with or challenged before the High Forum. If the Respondent No.1 was aggrieved by the earlier order passed by the Division Bench in Special Civil Application No.5503 of 1997, it should have challenged the same before the Higher Forum, but if not challenged the same was required to be complied with. The Respondent No.1 cannot be permitted to disobey the same.

6. In view of the above, learned Senior Counsel Mr. S.N. Shelat for the petitioner and learned Senior Counsel Mr. Dhaval C. Dave for the Respondent No.4 have fairly submitted that they have no objection, if the Government is directed to decide the issue afresh after granting reasonable opportunity of hearing to both the parties and decide their claims over the land in question in accordance with law. However, Mr. Shelat requested that instead of directing the Secretary, Revenue Department, who has filed the affidavit justifying the impugned order, suitable directions be given to the Chief Secretary.

7. Under the circumstances, the Chief Secretary to Government of Gujarat is directed to decide the matter afresh by himself or he may direct any other Principal Secretary holding equivalent post of the Principal Secretary, Revenue Department, but not by the Principal Secretary, Revenue Department, who has filed the affidavit, to decide the matter afresh as per the directions given by the Division Bench in the order dated 20.01.1998 passed in Special Civil Application No.5503 of 1997, as expeditiously as possible and not later than six months from today.

8. Having regard to the facts and circumstances of the case, without expressing any opinion on merits of the case, the petition is allowed with cost of Rs.50,000/- (Rupees Fifty Thousand only) to be deposited by the Respondent No.1 in the Registry of this Court within four weeks from today. Learned AGP shall communicate this order to the Chief Secretary to the Government of Gujarat forthwith. A copy of this order be made available to learned AGP for his onward communication and compliance. Rule is made absolute to the aforesaid extent.