

(1996) 04 GUJ CK 0020

In the Gujarat High Court

Case No : Spl. Civil Application No. 6838 of 1990

Prayas Woollens (Pvt.) Ltd.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 16-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Maharashtra Land Revenue Code, 1966 — Section 211, 65, 65(1)

Citation : AIR 1997 Guj 55 : (1997) 3 GLR 234

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : A.J. Patel, for the Appellant; A.G. Uraizee, A.G.P. and Nithin N. Pandya, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—Whether respondent No. 2 Assistant Collector, Dabhoi has jurisdiction to revoke or cancel the N.A. permission granted by or on behalf of the Collector is the main theme of the present petition under Articles 226 and 227 of the Constitution of India.

2. The petitioner-company is a company established under the provisions of the Companies Act, 1956. The petitioner-company purchased the land bearing Survey No. 77 Part admeasuring Acres 6 Gunthas 22 situated in the sim of village Sarnej, Taluka Vaghodia, District Vadodara, for the purpose of establishing a woollen yarn factory from respondents Nos. 3 to 5 who applied for conversion of the said land into non-agricultural use on 18th Nov. 1989. The permission for non-agricultural use submitted by respondents Nos. 3 to 5 came to be granted by the TDO, Vaghodia, by his order dated 12-2-1990. The mutation entry No. 1025 came to be effected in the revenue record pursuant to the said permission. The said entry was certified on 10-5-1990. The petitioner-company had thus purchased the land in question admeasuring 4 acres from respondents Nos. 3 to 5 by paying consideration of Rs. 1,19,155 by registered sale deed dated 2nd Nov.

1990. The name of the petitioner-company came to be mutated pursuant to mutation entry No. 1027 in the revenue record. It was also later on certified. The petitioner-company had started taking steps for establishing woolen yarn factory by taking financial assistance from various financial institutions.

3. Respondent No. 2 Assistant Collector issued a show cause notice indicating 5 defects or points and non-compliance of some of the aspects of the permission for non-agricultural use. Notice was replied. None of the five objections is pertaining to the authority of the Taluka Development Officer in granting the permission. The petitioner-company through its officers appeared and rectified the defects in part. Some of the documents which were sought and not produced were also later on produced by the petitioner-company. Respondent No. 2 by his order dated 11-7-1990 cancelled the non-agricultural permission granted by the TDO on 12-2-1990. Being aggrieved by the said order the petitioner- company now come before this Court knocking the doors of justice.

4. The first question which arises for the consideration at this juncture is as to whether the Assistant Collector could be said to be a competent person to pass the impugned order? In other words, could it be said that the Assistant Collector has jurisdiction to take the matter in a suo motu revision u/s 211 of the Bombay Land Revenue Code ("the Code" for short) and to cancel the permission for non-agricultural use granted by the Collector or his delegate u/s 65 of the Code. Taking into account the overall scheme and the underlying purport and design of Section 65 and Section 211 of the Code, the obvious answer would be in the negative.

Section 65 of the Code reads as under:

"65. Use to which occupant of land for purposes of agriculture may put his land -- Any occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid.

Procedure if occupant wishes to apply his land to any other purpose -- But, if any occupant wishes to use his holding or any part thereof for any Other purpose the Collector's permission shall in the first place be applied for by the occupant.

The Collector shall on receipt of such application:

- (a) shall send to the applicant a written acknowledgment of its receipt, and
- (b) may, after due inquiry, either grant or refuse the permission applied for;

Provided further that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgement within seven days from the date of

receipt of the application, be reckoned from the date of receipt of the application.

Unless the Collector shall in particular instances otherwise direct, no such application shall be recognised except it be made by the occupant.

(2) Notwithstanding anything contained in Sub-section (1) but subject to any terms and conditions laid down by the State Government in this behalf where an occupant has his holding in an: area comprising a gram and such area is not within an urban agglomeration or within a radius of five kilometres from the limits of a municipal borough or notified area of industrial estate and such occupant wishes to use his holding or a part, thereof only for a residential purpose, it shall not be necessary for him to obtain permission of the Collector under Sub-section (1)."

It could very well be seen from the aforesaid provision that the competent authority for the grant of permission for non-agricultural purpose under the Code is the Collector or his delegate. In the present case, the permission for non-agricultural use came to be granted u/s 65 for conversion into non-agricultural use by TDO, Vaghodia, as a delegate of Collector on 12-2-1990. The permission u/s 65 could only be granted either by the Collector or by his authorised delegate. There is no dispute about the fact that the TDO at Vaghodia who granted the permission on 12-2-1990 was competent and authorised delegate. Therefore, it is not in dispute that the permission was legally granted and it is very clear from the record that the permission was granted by the delegate of the Collector who is empowered to issue or grant permission u/s 65 of the Code.

6. The dispute which came to be raised by Assistant Collector, Vaghodia, in a suo motu revision u/s 211 of the Code with regard to non-compliance of some aspects and conditions of the grant of non-agricultural permission by TDO, Vaghodia. Whether the five grounds on which the show cause notice came to be issued and the ground on which suo motu revision came to be allowed cancelling the N.A. permission may not be examined threadbare in a meticulous detailed discussion as the Very first point about the competence and the jurisdiction goes to the root of the matter. How could an Assistant Collector revoke or cancel the N.A. permission by taking the matter in a suo motu revision u/s 211 an order passed by the Collector or his delegate? Even the Collector or his delegate himself could not be able to take the matter in suo motu revision. The only authority competent for taking the matter in suo motu revision in a reasonable time would be the State Government. It would therefore be necessary to refer to the provisions of Section 211 of the Code which reads as under:

"211. Power of State Government and of certain revenue, officers to call for and examine records and proceedings of subordinate officers. -- The State Government and any revenue officer, not-inferior in rank to an Assistant of Deputy Collector or a Superintendent of Survey, in their respective departments may call for and examine the record of any inquiry on the proceedings of any subordinate revenue officer for the purpose of satisfying itself or himself, as the

case may be, as to the legality or propriety of any decision of order passed, and as to the regularity of the proceedings of such officer.

The following officer may in the same manner call for and examine the proceedings of any officer subordinate to them in any manner in which neither a formal nor a summary inquiry has been held, namely, a Mamlatdar, Mahalikari, Assistant Superintendent of Survey and an Assistant Settlement Officer.

And to pass orders thereupon -- If in any case, it shall appear to the State Government or to such Officer aforesaid, that any decision or order or proceedings" so called for should be modified, annulled or reversed, it or he may pass such order thereof as it or he deems fit.

Provided that an Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but, shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit."

A plain perusal of the aforesaid provision would go to show that the Assistant Collector is not competent and not authorised to take the order passed u/s 65 in a suo motu revision u/s 211 of the Code. No doubt Section 211 is a residuary section and the powers thereunder obviously are wide and ample. Otherwise also it is a matter of common understanding that the order of an inferior authority or a lower authority could be taken into revision by the higher authority. Here it is other way round. The permission u/s 65 of the Code is granted by the Collector or his delegate whereas it came to be cancelled in a suo motu revision by the subordinate officer to the Collector namely, Assistant Collector, Vaghoda, respondent No. 2 herein. It could never be contended for a moment that the Assistant Collector was competent to take the matter in the suo motu revision. The order u/s 65 of the Code granting N.A. permission came to be passed by the T.D.O. as a delegate of the Collector although the inquiry for the permission is held by the delegate, namely, the TDO to whom the powers of the Collector in this connection are delegated, the order would still remain the order of the Collector. Therefore, it is not the Assistant Collector who is empowered or authorised to take the matter in suo motu revision u/s 211 of the Code. It is the State Government which could take the matter in the suo motu revision against the order of the Collector.

7. Having regard to the facts and circumstances emerging from the record of the present case and keeping in mind the relevant proposition of law and the underlying purport and design of the provisions of Sections 65 and 211 of the Code this Court is fully convinced that the impugned order purported to have been recorded by the Assistant Collector, Vaghodia, exercising powers u/s 211 of the Code against the order of the TDO, a delegate of the Collector u/s 65 of the Code, is without authority, jurisdiction and is per se illegal with the result this petition is required to be allowed quashing and setting aside the impugned order, Accordingly, this petition is allowed and the impugned order is quashed and set

aside with no order as to costs. Rule is made absolute to the aforesaid extent.