
(1984) 06 GUJ CK 0010
In the Gujarat High Court

Punja Gokal

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 21-06-1984

Acts Referred:

Constitution of India, 1950 — Article 227, 227

Citation : (1984) 2 GLR 1210

Hon'ble Judges : A.S. Qureshi, J

Bench : Single Bench

Judgement

A.S. Qureshi, J.—In these two petitions identical question arises and hence they are both heard and disposed of by this common judgment. The petitioner in each of the petitions is the owner of agricultural land situated at the outskirts of Rajkot city. The petitioner in each of these two petitions applied for granting permission to use the land for non-agricultural purpose. The permission was granted by the Collector on 2nd February, 1970 on condition that the construction would be completed within the specified time. The Sanad was granted on 31st January, 1982. In neither case the petitioner carried out the construction as per the condition. Hence the Collector instituted a case against the petitioner in each case for contravening the condition of permission by not constructing over the land in question.

2. The petitioners in both these petitions filed their reply to the show cause notice on 3rd May, 1977. The Collector disregarded the said reply to the show cause notice as, according to him, the same was filed beyond time. By his order dated 18th May, 1977 he held that the petitioner in each case had committed breach of condition laid down in the permission granted for non-agricultural use of the suit land. He, therefore, held that each petitioner was liable to pay an amount equal to 10 times the assessment by way of penalty which amounted to Rs. 6,368.89 p. He directed that the said amount of penalty be recovered forthwith.

3. Against the said order of the Collector, the petitioner in each case filed a

Revision Application before the Special Secretary, Government of Gujarat on various grounds including the ground that the Collector has passed the order without giving the petitioner an opportunity to be heard in his defence and that his reply to the show cause notice has been wrongly disregarded. The Special Secretary upheld the finding of the Collector as regards the breach of condition to construct and modified the Collector's orders in respect of the amount of penalty payable directing that the penalty be calculated on a different basis. Calculating the amount of penalty at the rate directed by the Special Secretary the amount came to Rs. 1,910.40 p. in each case. Against the said order of the Special Secretary the petitioners have come to this Court under Article 227 of the Constitution of India.

4. Mr. P.V. Hathi, the Learned Counsel for the petitioner in each case has urged that the Collector has violated the principles of natural justice by not giving the petitioner an opportunity to be heard before passing an order of penalty against him. According to him, the Collector was not justified in disregarding the reply to the show cause notice filed by the petitioner on the ground that the same was filed beyond time. Mr. Hathi has urged that there is no limitation period prescribed for filing the reply to the show cause notice. Even so, the petitioner had filed the reply on 3rd May, 1977 while the Collector has passed the order on 18th May, 1977 i.e. 15 days after the reply was filed by the petitioner. Mr. Hathi, therefore, urges that the Collector has clearly gone wrong in not considering the aforesaid reply to the show cause notice. Mr. Hathi further urged that over and above the reply to the show cause notice the Collector ought to have given an opportunity to the petitioner in each case to put up his case if necessary to bring such oral and documentary evidence as he wished to produce before passing the order imposing penalty on him.

5. Miss K. N. Valikarimwala appearing on behalf of the respondents states that the petitioner in each case was given sufficient opportunity to put forward his case by giving him show cause notice. According to her the petitioner could have produced all the necessary evidence and material which he wanted to produce for the consideration by the Collector. Hence, Miss Valikarimwala urges that it is not open to the petitioner to raise a contention at this stage that he had not been given an opportunity to be heard. According to her, ample opportunity was given to the petitioner by giving him show cause notice and that he did not take advantage of such an opportunity, and failed to adduce any evidence.

6. Although the show case notice was given to the petitioner and the petitioner filed his reply thereto, the Collector was not justified in disregarding the said reply on the ground that the same was not filed within time. Miss Valikarimwala has not been able to point out that there is any limitation period prescribed by law for filing such a reply. In any case the Collector had passed the impugned order about a fortnight after the reply to the show cause notice was filed and hence there is no justification whatsoever for the Collector to ignore the said reply to the show cause notice.

7. The second contention of Mr. Hathi that the petitioner has not been given an opportunity to be heard also must be upheld because the petitioner is entitled as a matter of right to lead such evidence as he desires and to place such material as he wishes to produce to avoid the consequence of his being held guilty of the breach of condition of granting permission for non-agricultural use of the suit land. It is not correct to say that the reply to the show cause notice is a sufficient opportunity and the petitioner is not entitled to any further hearing. In this case the fact that the Collector has ignored the reply to the show cause notice is sufficient to vitiate the impugned order of the Collector. In matters where persons' rights are to be determined or where penalty is to be imposed the principles of natural justice must be scrupulously followed to the fullest possible extent and every opportunity must be given to the person to defend himself to the best of his ability. Any violation of the principles of natural justice or any arbitrariness while imposing penalty has to be looked at with considerable concern. On the facts of this case it is inescapable to come to the conclusion that the Collector has imposed penalty without giving the petitioner an opportunity to be heard. Hence, the impugned order of the Collector, modified by the Special Secretary, is hereby quashed and set aside and both these matters are directed to be sent back to the Collector with the direction that he will not only take into consideration, the reply to the show cause notice filed by the petitioner but also give an opportunity to the petitioner in each case to lead such oral or documentary evidence as he chooses to adduce.

In the result, the petitioners are allowed. Rule made absolute with no order as to costs.