
(1999) 12 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No. 2466 of 1999

Rajabhai Bhimabhai Rabari

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 24-12-1999

Acts Referred:

Citation : (2000) 3 GLR 25

Hon'ble Judges : Anil R. Dave, J

Bench : Single Bench

Advocate : Satyen B. Rawal, for the Appellant; U.A. Trivedi, AGP, for Respondent Nos. 1, 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

A.R. Dave, J.—Rule. Learned AGP Shri U.A. Trivedi waives service of rule for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The petitioner has challenged the validity of an order dated 7.11.98 passed by the Deputy Secretary (Appeals), Revenue Department, Govt. of Gujarat, whereby the said revisional authority has upheld the order of the Collector, Surendranagar dated 12.6.96 whereby the Collector, Surendranagar, had quashed and set aside the order passed by the Deputy Collector, Wadhwan Sub-division dated 5.12.92 granting 2 acres of land forming part of Survey No. 714 situated at village Vadod in favour of the petitioner.

3. The Deputy Collector, Wadhwan Sub-division, Surendranagar, had granted 2 acres of land to the petitioner as the said land is abutting the land bearing survey No. 71 belonging to the petitioner. It was granted to the petitioner because the said land was having an irregular shape and it was a fragment, which could not have been disposed of independently. The order dated 5.12.92 passed by the Deputy Collector was taken into revision by the Collector, Surendranagar and after hearing the petitioner, by an order dated 12.6.96, the Collector,

Surendranagar had quashed the order passed by the Deputy Collector on the ground that the grant of the land in favour of the petitioner was not in accordance with the Government Resolution dated 15.2.89 because the land in question was not a fragment having an irregular shape which could not have been independently disposed of. Moreover, he had also observed that the land granted to the petitioner was not a fragment of 2 acres but it was forming part of a huge parcel of land admeasuring 1185 acres and 39 gunthas. Thus, as the land in question was granted from a huge chunk of land, the Deputy Collector had made an error by treating the said land as a fragment.

4. Being aggrieved by the order passed by the Collector, Surendranagar, the petitioner filed a revision application before the State Government. The revision application was rejected by an order dated 7.11.98. In the above-referred circumstances, the petitioner has approached this court with a prayer that the order passed by the Collector, Surendranagar, and the order dated 7.11.98 passed by the Deputy Secretary (Appeals), Revenue Dept., on behalf of the State Government, be quashed.

5. Learned Advocate Shri Raval appearing for the petitioner has submitted that the impugned orders are unjust and illegal as they are in violation of the principles of natural justice. It has been submitted by him that the Collector, Surendranagar has referred to a report dated 27.7.95 submitted by the Mamlatdar, Wadhwan but a copy of the said report was not given to the petitioner. As the material which was relied upon by the Collector was not shown to the petitioner, the impugned order is bad in law.

6. In reply to the said submission, learned AGP Shri Trivedi appearing for the respondents has submitted that as relevant record was not forwarded to the Collector, Surendranagar, the collector had addressed a letter dated 30.5.95 to the concerned Talati-cum-Mantri asking him to send the relevant papers and send his explanation as to why the relevant papers were not sent to the office of the collector, Surendranagar. In response to the said letter dated 30.5.95, a letter dated 27.7.95 was written by the Mamlatdar, Wadhwan to the Collector, Surendranagar. Alongwith the said letter, relevant papers pertaining to the case were forwarded to the Collector. Upon perusal of the files, no report other than the above-referred letter dated 27.7.95 could be traced. Thus, it is clear that the letter dated 27.7.95 has been treated as a report of the Mamlatdar. Of course, the Mamlatdar has given certain facts giving rise to the revision application but he has not submitted his report under the said letter.

7. In view of the above fact, it cannot be said that a copy of the office communication dated 27.7.95 should have been given to the petitioner and by not giving a copy of the said letter, the Collector, Surendranagar, had violated the principles of natural justice. Learned AGP Shri Trivedi has also submitted that the point with regard to not supplying a copy of the said letter was not urged by the petitioner before the revisional authority. Had the petitioner urged the said point before the revisional authority, the revisional authority could have dealt with the

said argument advanced by the petitioner. However, learned AGP Shri Trivedi has shown the record pertaining to the case and upon perusal thereof, except the letter referred to hereinabove, no other communication or report dated 27.7.95 could be traced.

8. In my opinion, it can not be said that the Collector, Surendranagar has violated any of the principles of natural justice by not supplying a copy of the letter dated 27.7.1995 to the petitioner. The said letter is only a part of office correspondence and it has nothing to do with the merits of the case. It is not necessary that copies of all documents should be given to the concerned party. If a document, on which no reliance is placed by the authority for the purpose of taking the decision, is not shown to the concerned party, by no stretch of imagination it can be said that non-supply of copy or the document or not showing the document would amount to violation of a principle of natural justice.

9. It is a settled principle of natural justice that no material should be relied upon by the concerned authority unless the concerned party has been given an opportunity of explaining it. The material to be relied upon must be placed before the person, against whom it is to be used, for his information so as to enable him to offer his comment or criticism on the said material. Thus, as a general rule, the principles of natural justice are violated when the material not disclosed to the concerned party is used against him for the purpose of arriving at final conclusions against him. However, the said principle shall not be violated when the material not disclosed to the concerned party is not prejudicial to him or is not considered for the purpose of deciding the case.

10. Looking to the settled principle stated hereinabove, it cannot be said that in the instant case, principles of natural justice were violated. The letter which has been referred to in the order of the Collector, Surendranagar, is not a document which was relied upon by the Collector, Surendranagar for deciding the case or that letter was not used by the Collector, Surendranagar for arriving at any conclusion against the petitioner for the purpose of deciding the case against the petitioner. The said letter, as stated earlier, was only a part of office correspondence which was sent alongwith the record of the case from one office to another office. At the most it narrated the background in which the case had arisen for consideration of the Collector, Surendranagar but in any case, it was not a document which was relied upon by the Collector, Surendranagar for deciding the case against the petitioner. In view of the facts of the case, in my opinion, non disclosure of the said letter would not result into violation of principles of natural justice and therefore I do not accept the submission of the learned advocate for the petitioner.

11. Moreover, learned AGP Shri Trivedi is also right in his submission that the petitioner ought to have raised the said contention before the State Government so that while deciding the said revision, the State Government, as a revisional authority could have dealt with the said contention and could have recorded its specific findings thereon.

12. Another submission which learned advocate Shri Raval has made is that there was no further material which the collector, Surendranagar had received after the land in question was granted to the petitioner by the Deputy Collector. In absence of any such material, it was not proper on the part of the Collector to cancel the order of grant of the land in question.

13. The said argument of learned advocate Shri Raval can not be accepted for the reason that the Collector, Surendranagar, has definitely come to a conclusion that two acres of land can not be said to be a fragment. Moreover, survey No. 714 is a huge piece of land admeasuring 1185 acres and 39 gunthas and therefore it cannot be said that it is a small piece of land which can not be independently disposed of. Upon perusal of the order passed by the Collector, Surendranagar, it is clear that the Deputy Collector, Wadhwan Sub-division had committed an error by treating the piece of land admeasuring 2 acres as a fragment through the said land is a part of Survey No. 714. Only upon perusal of the record of the case the Collector, Surendranagar had arrived at the said conclusion. Had the Dy. Collector, Wadhwan applied his mind to the facts of the case before the grant of the land in question, he too could have found the facts which were found by the Collector, Surendranagar. It is thus clear that the grant was in violation of the government policy and the gross irregularities committed by the Dy. Collector Wadhwan were patent on the record of the case. In view of the said fact, I do not find substance in the arguments of Shri Raval.

14. Learned Advocate Shri Raval has submitted that except the petitioner, no other person would be interested in purchase of the land in question. He has an apprehension that if in future the petitioner makes an application for grant of the land in question, his application might be rejected only on the ground that the present petition filed by the petitioner has been rejected. I am sure that if the petitioner gives an application for grant of the land in question, and if it is open to the Dy. Collector to grant the land in question in favour of the petitioner in accordance with relevant rules and regulations and as per the government policy, the rejection of this petition would not come in way of the petitioner. Thus, as and when the land in question is to be granted to anybody by holding a public auction or otherwise, if the petitioner is otherwise eligible to purchase the land in question, his case shall not be rejected only on the ground that this petition of the petitioner has been rejected.

15. No other argument has been advanced by learned advocate Shri Raval.

16. Looking to the facts and circumstances of the case and especially in view of the concurrent findings arrived at by the authorities below, I do not see any reason to interfere with the impugned order. The petition is therefore dismissed. Rule is discharged with no order as to costs.