

(2015) 01 GUJ CK 0020
In the Gujarat High Court

Case No : Special Civil Application No. 10659 of 2014

Reliance Jio Infocomm Limited

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 01 GUJ CK 0020

Hon'ble Judges : Abdullah Gulamahmed Uraizee, J.; Mohinder Pal, J.

Bench : Division Bench

Advocate : Mihir Thakore, Senior Advocate and Amrita M. Thakore, for the Appellant; Megha Chitaliya, A.G.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

Mohinder Pal, J.—In this petition under Article 226 of the Constitution of India, the petitioner is seeking direction to the State Government to process the petitioner's applications dated 06.07.2013 and 15.07.2013 for grant of 4 sq. mtr. land on lease basis at various locations along roadside, footpath, road divider, junction or open space of roadside in Gandhinagar for erecting mobile towers so as to enable the petitioner to roll out 4G services in Gandhinagar.

2. Originally on 17.12.2014, this matter was listed before learned single Judge and the Court passed the following order:

"1. Heard Mr. Mihir Thakore, learned senior advocate with Ms. Amrita Thakore, learned advocate for the petitioner.

2. The principal prayer of this petition reads as under.

"A. This Hon'ble Court be pleased to issue a writ in the nature of mandamus or any other appropriate order writ, order or direction holding that the respondents' stand of not processing the petitioner's applications dated 6.7.2013 and 15.7.2013 until final decision in Special Civil Application No. 13550 of 2000 as

per their letter dated 4.7.2014 at Annexure-J hereto is not just, fair and valid and further directing the respondents to process and grant the petitioner's applications dated 6.7.2013 and 15.7.2013 at Annexure-C and D hereto." 3. Affidavit-in-reply is filed on behalf of the State Authorities referring to the pendency of Special Civil Application No. 13550 of 2000 which is taken on record.

4. Attention of the Court is invited to the order passed by Honourable the Supreme Court of India on Special Leave Petition (Civil) No. 896 of 2012 dated 02.11.2012.

5. Having heard learned advocate for the petitioner, prima facie, there appears substantial force in the argument on behalf of the petitioner that, the pendency of the said petition in no way, is to come in the way of the petitioner in getting the relief as prayed for, if otherwise it is entitled to it on merits. However, since the above referred petition which is a Public Interest Litigation is pending before the Division Bench, it would be proper, if clarification in that regard is given by the Division Bench. Therefore, it would be open to the petitioner to move the Division Bench for this purpose. At this stage, request is made on behalf of the petitioner that, let this petition be placed before the Hon'ble the Acting Chief Justice for being placed before the appropriate Division Bench. This request needs to be accepted. It is clarified that, this petition is not treated as a Public Interest Litigation by this Court, however, in the facts recorded above, the request of learned senior advocate for the petitioner is accepted. Registry to do the needful in the matter."

3. In pursuance to the order dated 17.12.2014, this matter was placed before the Hon'ble Acting Chief Justice and after obtaining necessary orders, the matter has been placed before this Bench for disposal.

4. Petitioner is a pan India operator (having a pan India Unified Licence i.e. for all 22 Service Areas across India) with Broadband Wireless Access (BWA) spectrum capable of offering 4G wireless services. For providing telecommunication services, Masts/Poles, also known as Base Transceiver Stations ("BTS") are required to be erected at various locations in each city/town. Petitioner has already set up several such BTS at various locations in several cities/towns across India. Petitioner's ground based BTS, which are also called Ground Based Masts ("GBMs"), are designed in-house in such way that they would occupy minimum space of land since it is designed to house the electronic equipments and necessary accessories within itself. A typical 30 mtrs. GBM requires just 4 sq. mtr. space below ground for foundation and the base thereof is of around 960 mm. diameter as against a typical traditional ground based BTS which would require about 100-150 sq. mtr. space on ground.

5. Recognizing the need for uniform, faster and smoother processing of applications for clearance of sites for the purpose of setting up such BTS across the cities/towns in Gujarat, the Government of Gujarat issued Government Resolution (GR) dated 03.10.2012 (subsequently amended on 22.12.2012), inter

alia, giving suitable directions to all municipal corporations, municipalities, urban local authorities in Gujarat and fixing the amounts to be charged from the petitioner in this regard. This act of the Government led to uniform, smooth and fast processing of applications by municipal corporations, municipalities, urban local authorities across Gujarat.

6. For the purpose of setting up necessary infrastructure in Gandhinagar, the petitioner required 4 sq. mtr. space at several locations and accordingly submitted applications dated 06.07.2013 and 15.07.2013 to Gandhinagar Municipal Corporation seeking approval for erection of GBMs in Gandhinagar. Thereafter the petitioner enquired about these applications, but came to know that nothing has happened to his applications. However, on 04.07.2014 the petitioner received a letter from respondent No. 2 (State of Gujarat) stating that, in view of order dated 02.11.2012 passed by the Hon"ble Supreme Court in SLP No. 896 of 2012, the matter would be considered only after the Gujarat High Court passes final judgment in SCA No. 13550 of 2000 pending before this Court. A copy of this letter is available on file at Annexure-J.

7. SCA No. 13550 of 200 has peculiar facts. It is a suo moto public interest litigation initiated by this High Court pursuant to a letter dated 17.10.2000 addressed by one B.H. Dani. Subject-matter of this petition pertains to alleged illegalities in allotment of residential plots in Gandhinagar to MPs, MLAs, government officers/employees etc. in violation of the conditions of allotment. Public Notice issued in this regard is reproduced as under:

"IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

District: Gandhinagar

SPECIAL CIVIL APPLICATION NO. 12550 of 2000

Suo Motu

...Petitioner

State of Gujarat

...Respondent

PUBLIC NOTICE

TO WHOMSOEVER IT MAY CONCERN

Whereas the Petitioner as Suo Motu, having initiated a petition under Article 226 of the Constitution of India, praying that the issues regarding irregularities of these residential plots of Gandhinagar be framed in the pending Suo Motu writ petition before Division Bench and an information of each plot be get produced from Government and an appropriate action may be taken moreover though the attention of the Government has been drawn regarding this the Government is making endeavour to allot other 1110 residential plots within one or two days after calling meeting of cabinet and for preventing its repetition, its humble

prayer to give proper direction that these plots may be allotted to the needy employees/officers not holding residential house their ownership at any place or to stay this action till the decision of writ petition.

And whereas upon hearing Mr. Mihir Joshi as amicus curiae for petitioner and Mr. Arun D. Oza, Govt. Pleader for the State of Gujarat.

In the aforesaid Special Civil Application on 03.04.2001 and 26.4.2001 the Hon''ble Court (Coram Hon''ble Mr. Justice B.C. Patel and Hon''ble Mr. Justiced D.A. Mehta) has inter alia directed to issue Public Notice on 03.4.2001 and 26.4.2001 in the newspaper published from Ahmedabad in vernacular and English language having larger circulation at Ahmedabad and Gandhinagar, on the following and other related issues:

1. Whether the Government Resolution dated 29.6.98, 3.4.99 and 25.11.2000 regarding allotment of plots at Gandhinagar and permitting allottees to lease them out in certain cases are legal and valid?
2. Whether the Government has failed to take the necessary required action in respect of breach of terms and conditions of allotment of plots, more particularly the condition requiring that the plot should be used only for the personal residence of the allottee and whether any directions are required to be issued to the allottees/occupants by this Court in this behalf.
3. Whether the action of the Government purportedly taken under the relevant Resolutions of compounding breach by the allottees, condoning lapses, permitting transfer, renting and exchanges of smaller plots against bigger plots etc. is reasonable, rational, legal and valid?

And pursuant to the said Order, Public Notice is issued to take Notice that Hearing of the aforesaid Special Civil Application will take place on 13.6.2001 at 11.00 a.m. peremptorily.

Now THEREFORE all concerned and interested persons are directed to remain present before the Hon''ble Court either personally or through their Advocate to argue the case on 13.6.2001 and if no appearance is made on your behalf by yourself or through an Advocate or through someone by law authorised to act on your behalf, the Court will hear and decide the said petition ex-parte in your absence.

WITNESS DEVDATTA MAHAV DHARMADHIKARI, Esquire Chief Justice at Ahmedabad aforesaid this 3rd 26th day of April 2001...."

8. During pendency of suo moto SCA No. 13550 of 2000, a Division Bench of this Court wanted to find out whether the principles enshrined in the Constitution of India were taken into consideration by the authorities while permitting the plot holders to further sell the plots and whether the guidelines laid down in the Constitution regarding equality of status and opportunity were taken into consideration. It was found that even government servants who were not

permanently required to serve at the offices situated at Gandhinagar were given plots as a result of which, on account of their transfer or if they decide to settle at other places, they would obviously try to earn money either by renting out or by selling the concerned property. It was also pointed out that in some cases employees who were not working at Gandhinagar were also allotted plots. If at all the Government wanted to see that the down-trodden or needy persons were required to be settled, whether plots were actually allotted to them or not. Originally plots were allotted with certain conditions and one of such conditions was that allottees used it for the purpose of their personal residence and that it was never the intention of the policy makers to allot plots for the purpose of sale without proper permission. In order to ascertain all these aspects and irregularities, a Committee consisting of Mr. Arun D. Oza as well as Mr. Amit Panchal was constituted to act as Court Commissioners to assist and visit the site and submit report. Accordingly, this Court vide its detailed order dated 03.04.2001 directed that subsequent Government Resolutions dated 03.4.1999 and 25.11.2000 relaxing the conditions of allotment shall not be enforced by the Government and with further direction that the Government shall not permit transfer of plots till the matter is finally decided.

9. Thereafter, this matter remained pending in this Court for all these years., However, during pendency of this matter, another Writ Petition (PIL) No. 5 of 2010 was filed in this Court and this Court vide its order dated 14.12.2010 dismissed this writ petition by holding that:

"This so-called public interest litigation has been preferred by an advocate to call upon the State Government to place before the High Court the administrative decision of giving plots of land admeasuring 330 sq. mtrs. in favour of Members of Legislative Assembly and Members of Parliament of different political parties at Gandhinagar at concessional rate and quash such decision.

Mr. P.K. Jani, learned Government Pleader while appearing on behalf of the respondent - State refers to Rule 5 of the High Court of Gujarat (Practice and Procedure for Public Interest Litigation) Rules, 2010 and submits that this writ petition does not fall within the purview of the public interest litigation, on hearing the parties, we not only find that a vague prayer has been made and no specific allegation of illegal allotment of plots of land in favour of one or other Members of Legislative Assembly or Members of Parliament has been shown, but we also find that no public interest is involved in this case. For the said reason, we are not inclined to entertain this writ petition and dismiss the same. However, taking into consideration the fact that the writ petitioner is a young lawyer, we do not impose any costs. The writ petition stands dismissed."

The aforesaid matter was further carried to the Hon"ble Apex Court by way of SLP No. 896 of 2012 titled Maulin J. Barot v. State of Gujarat. On 2.11.2012, the Hon"ble Apex Court passed the following order:

"Having heard learned counsel for the parties at some length, we feel that it

would be proper and expedient if the High Court is requested to dispose of the Special Civil Application No. 13550 of 2000 expeditiously.

It is pointed out that the aforesaid application was last listed on 29.11.2010. However, it appears that since 08.04.2008, no effective orders have been passed by the High Court. In that view of the matter, we request the high Court to take up the aforesaid application for final disposal as expeditiously as possible. The High Court would be free to pass any order or issue such directions as may be considered necessary for adjudication of the subject issue.

We, however, direct that till the high Court disposes of the Suo Motu action, no further allotments or permission to transfer the plots already allotted under the Government Resolutions in question, would be granted without the leave of the High Court. It may be noted that according to learned counsel appearing for the respondent, the State Government has not made any afresh allotments after the year 2000 and as a matter of fact, the entire policy for such allotments is being re-examined.

Call for directions after six months."

10. In aforementioned background, State of Gujarat declined to process the applications of the petitioner on the plea that no order can be passed on the applications dated 6.7.2013 and 15.7.2013 till Suo Motu Petition No. 13550 of 2000 is disposed of by the High Court and as such no relief can be granted to the petitioner.

11. Mr. Mihir Thakore, learned senior counsel with Ms. Amrita M. Thakore, appearing for the petitioner, has submitted that the action of the respondents of refusing to process the petitioner's applications seeking permission to erect GBMs at 38 locations in Gandhinagar on the basis of order dated 02.11.2012 passed by the Hon'ble Supreme Court and pendency of SCA No. 13550 of 2000 is unwarranted and unrelated. According to him, the said petition as well as the government resolution clearly pertains to allotment of residential plots in Gandhinagar to various persons like MPs, MLAs, government officers/employees etc., and the alleged illegalities in such allotment and permission to sell the plots have nothing to do with erection of poles by the petitioner company. It is further submitted that a small piece of land admeasuring 4 mtrs. x 4 mtrs. at 38 locations in Gandhinagar was needed for GBM poles in order to maintain transmission connectivity in the State of Gujarat. The State Government itself has issued notification dated 03.10.2012 to various municipal corporations and municipalities in different cities fixing terms and conditions for allotment of space and refusing to grant the same at Gandhinagar was in violation of the principles of natural justice, whereas the same has been allotted in other parts of the State by the Government itself. Finally it has been contended that directions were required to be issued to the respondents to decide the applications of the petitioner for granting permission to erect such GBMs at the remaining 38 locations specified earlier.

12. On the other hand, on behalf of the State Government it has been contended that in view of pendency of SCA No. 12550 of 2000 before this Court and in view of pendency of SLP No. 896 of 2012 and in view of order dated 02.11.2012 passed by the Hon'ble Supreme Court, the matter was sub judice and the required permission cannot be granted.

13. We have heard both the counsels. It will be relevant to note that insofar as government lands (which would include public space sought by the petitioner vide applications dated 06.07.2013 and 15.07.2013) within the territorial limits of the city of Gandhinagar are concerned, the power to allot such land is vested in the Government of Gujarat and are governed and guided by the policies incorporated in the Resolution at Annexure-N to the petition which was passed by the State Government itself. This was the reason that the petitioner has to approach the concerned authorities for leasing out the land required for the poles.

14. The State of Gujarat vide its G.R. No. LND-1079/590/III/2 dated 29.6.1988 formulated a policy, according to which the Government proposed to allot residential plots at Gandhinagar to various persons like MPs, MLAs, government officers/employees etc. Relevant extract of the said Policy is reproduced as under:

"Preface:

1. The policy to allot the government land in Gandhinagar had been decided first of all on 13.01.1969 vide government resolution No. COC-1067-172-2 and thereafter, the review of deposit amount for the selling of plots by way of allocation or auction for the various purposes in the Gandhinagar and as per the resolution dated 20.12.1979, the policy had been decided to allot the land years in the sector No. 6, 7, 8, 12 and 13 for the period of two years. In this regard, vide resolution dated 11.11.1982, the Government had decided to allot the residential plot of 200 sqr. Mtr. to 330 sq. mtr. to the Members of Parliament and Members of Legislative Assembly without auction with the rate of Rs. 45/- per sqr. Meter. The land had been allotted to some units of public sector and state government for government houses on the merit basis. Many applications have been received from social, religious, educational and other institutions/organizations to allot them a land. Thus, by considering all such facts and with a view to make proper development of Gandhinagar, the fact of framing omnibus policy for the use of that land was pending before the government for discussion since long.

Resolution:

At the end of deep discussion regarding the aforesaid facts, the Government has decided well organized and omnibus policy for allocation of land of various sectors located in Gandhinagar and to make allocation of saleable land located in the various sectors with the policy and standards mentioned in the below referred schedule for the purpose of proper development of the city.

The detailed administrative orders ancillary to this policy will be issued later on

and the orders relating to the land will come in force with immediate effect and the earlier orders regarding the same will be cancelled with immediate effect.

These orders are published by getting consent of the finance department on 28.6.1988 on the file of this department having equal number.

By order and in the name of the Governor of Gujarat"

xxxx

"SCHEDULE

For residential houses:

1.1 xxxx

1.2 xxxx.

2.1 Housing for the public:

xxxx

2.2 Housing for the Members of Parliament and Members of Legislative Assembly.

xxxx

2.3 Government employees:

xxxx

Conditions:

1. The Government employee shall construct his house within the period of two years from the date of taking possession of the plot and he shall have to reside compulsorily in that house, failing which he shall hand over government residence allotted to him.

2. The permission will not be given to the government employee for transferring his vacant plot but that plot shall be returned to the government and if the construction is made on that said plot then also the permission to transfer the same will not be given without prior permission of the government. With any specific reason, if the government employee intends to transfer the plot with construction made thereon then by considering prevailing market rate and its original purchase price, he shall have to deposit 50% amount of its difference before the government.

Note: The officers/employees of Gujarat Cadre of All India Services and officers/employees originally appointed in Government and later on transferred to the Board or Corporation by the Government with activities, Government officers/employees are included in government employees/officers for the purpose of this para."

2.4 Societies of Economically Backward and Non Government Members.

XXXX

2.5 Housing for the employees of the Board and Corporation of the State Government and employees of the Government of India.

XXXX "

15. Bare perusal of the said G.R. makes it clear that the same was for allotment of residential plots in the city of Gandhinagar. As some of the allottees of residential plots were finding it difficult to construct big houses on the plots allotted to them and since some of the employees who were transferred out from Gandhinagar further sought permission to sell their plots, upon receipt of various representations/suggestions from time to time, the government came out with two more government resolutions of the year 1999 and 2000 wherein stringent conditions imposed in the government resolution of 1988 were relaxed. Still further, some of the employees converted their plots into commercial properties and rented out the same for economic gain which was against the original policy of the State Government. This relaxation resulted into misuse by the allottees and accordingly the petitions seem to have been filed.

16. It will be relevant to note that the Government Resolutions of the year 1988, 1999 and 2000 are meant to regulate allotment of residential plots without auction at concessional rates to MPs, MLAs, and government officers/employees on ownership basis. On the other hand, the petitioner has requested the Government to grant small pieces of land on lease basis to erect GBM Poles. Thus, it is manifestly clear that Government Resolutions of 1988, 1999 and 2000 have nothing to do with leasing out of small pieces of land to the petitioner, as the petitioner required this land for erecting GBM poles. The area required by the petitioner for each of these poles was 4 mtr. x 4 mtr. and these poles were required to be erected at common places along roadside or in the open space left by the Government. The authorities seem to have mingled the issue by tagging it with allotment of plots which were required for construction of private houses by MPs, MLAs, government officers/employees and people belonging to weaker sections of the society etc. Otherwise also, when the State itself has issued government resolutions dated 03.10.2012 and 04.07.2014 directing various municipal corporations/municipalities in the State of Gujarat to allot land to the petitioner, there was no reason for the State Government to refuse sanction for leasing out space to erect GBM poles at Gandhinagar till decision of SCA No. 13550 of 2000 by this Court or decision of SLP No. 896 of 2012 by the Supreme Court of India. The subject-matter and purpose of both these petitions is entirely different from what has been prayed by the petitioner in this petition.

17. For the aforementioned reasons, present petition is separated from the main petition, i.e. SCA No. 13550 of 2000, and is allowed. Respondent authorities are directed to decide applications dated 06.07.2013 and 15.07.2013 of the petitioner within a period of two weeks from today. It is made clear that any observation made while disposing of this petition will not affect merits of the

main case which is yet to be decided. However, in view of the request of learned Advocate General Mr. Kamal Trivedi, other matters are adjourned to 06.02.2015. Rule is made absolute.