
(2000) 05 GUJ CK 0080

In the Gujarat High Court

Case No : Special Civil Application No. 2908 of 1989

R.S. Kandilwal

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-05-2000

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 48

Citation : AIR 2001 Guj 60

Hon'ble Judges : K.M. Mehta, J

Bench : Single Bench

Advocate : G.R. Shaikh, for the Appellant; Government Pleader (for No. 1) and Asst. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.M. Mehta, J.—There is a constructed premises being a godown built upon the land admeasuring 83.61 sq. meters out of the land admeasuring 3,744 sq. meters of Survey No. 441 of Ishanpur, Taluka City, District Ahmedabad (hereinafter referred to as the "land in dispute").

2. Shri R. S. Kandilwal petitioner has constructed a godown on the land in dispute for the commercial purpose and the concern run by the petitioner is known as "Nirmal Roadways".

3. In the petition the petitioner has stated that, the construction has been done on the land which is Devasthan Inam land, the same being commonly known as Shah-e-Alam Devasthan Inam land and the Inamdar being competent for all purposes to grant non-agricultural permission and collect the revenues and the assessments relating to the "land in dispute". It has been submitted that, construction done after having obtained due permission for non-agricultural purposes at the relevant time.

4. It has been stated that, the Deputy Collector issued a show-cause notice dated 29th October, 1986 u/s 66 of the Bombay Land Revenue Code (hereinafter

referred to as Code) and Rule 100 of the Bombay Land Revenue Rules (hereinafter referred to as Rules). It was alleged in the show-cause notice that petitioner should show cause as to why an action should not be taken against petitioner for having constructed the godown on the land in dispute without having obtaining non-agricultural permission as provided u/s 65 of the Code.

5. The Deputy Collector by his order dated 6th January, 1987 was pleased to confirm the show-cause notice and also imposed certain fine on the petitioner and also directed the petitioner to pay certain non-agricultural conversion tax. The said order has been produced at Annexure-A (page 12) of the petition.

6. Being aggrieved and dissatisfied with the said order, the petitioner filed an appeal before the Collector, Ahmedabad being its LB Appeal No. 155 of 1987. The District Collector, Ahmedabad by its order dated 5th December, 1987 was pleased to dismiss the appeal.

7. Petitioner in the petition has further submitted that, along with the petition of the petitioner and other appeals being Appeal No. LB No. 178 of 1987 filed by Nirmal Corporation and other appeal being LB No. 156 of 1987 were filed by Deepak Chemicals and others before the Collector, Ahmedabad. These two appeals were also in respect of the part of land of the said survey number wherein there was also the construction of godown for commercial purposes. All these three appeals including appeal of the petitioner were heard together and evidence relating to the non-agricultural user permission was also produced and matters were heard and it was kept for orders.

8. However, the District Collector by his order dated 5th December, 1987 was pleased to dismissed the appeal No. 156 of 1987 filed by the petitioner.

9. Being aggrieved and dissatisfied with the said order of District Collector, the petitioner preferred the Revision Application being Revision Application No. SRD/NA/A"bad/ Vashi/59/88 before the Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad. The Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad by his order dated 31st August, 1988 was pleased to dismiss the Revision Application filed by the petitioner. The petitioner has stated that the Revision Authority has communicated the said order on 28th February, 1989.

10. Being aggrieved and dissatisfied with the said order, petitioner has filed the above numbered petition under Article 226 of the Constitution of India challenging all the orders of the Authority produced at Annexure A, B and C on 28th April, 1989. This Court admitted the petition of the petitioner and also granting necessary interim relief on the same day and the said interim relief was continued and confirmed on 10th April, 1991.

11. Now, the all matters have reached hearing before this Court. Shri G.R. Shaikh, learned Advocate appears on behalf of the petitioner and Shri Bukhari learned Additional Government Pleader appears on behalf of the Government.

12. Shri G.R. Shaikh, learned Advocate for the petitioner has stated that the land in dispute was originally land governed by Devasthan Inam Act and as per the sale deed 18th December, 1983 executed between Nirmalkumar Ramnivas Agrawal and Naranbhai Ishvarbhai Patel, a necessary permission for using the said land after 1969 was obtained and Gram Panchayat, Ishanpur has also passed necessary resolution on 16th December, 1974 for carrying out construction on the said land being Survey No. 52. A copy of the sale deed dated 18th July, 1983 has been produced by learned Advocate for the petitioner at Annexure D and necessary resolution of Ishanpur Gram Panchayat dated 16th December, 1974 has also been produced by him at Annexure E. He has also submitted that Shri Gazanfarali M. Bukhari had filed an application in February, 1962 before Collector, Ahmedabad, as to whether any permission is necessary for carrying out non-agricultural operations on the land in dispute which is Devasthan Inam land. The Collector, Ahmedabad by his communication dated 2nd April, 1962 stated that no permission is required if any non-agricultural operation is to be carried out on the said land. He has also stated that the office of the Collector has also prepared a memo regarding levy of non-agricultural assessment which stated that permission is not necessary for making non-agricultural use in the Devasthan Inam Land. He has also stated that, before the Additional Chief Secretary, Revenue Department (Appeals) he has already addressed a letter dated 5th January, 1988 and stated that as the land in question was Inami land and therefore, the order of the Collector dated 5th December, 1987 may be reviewed. The Additional Chief Secretary also replied to the said letter on 28th February, 1988 requesting the petitioner to furnish certain information regarding Devasthan Inam Land. The said letter has also been produced at Annexure-E(5) with the main petition and letter dated 4th January, 1988 is also produced at Annexure-E(6) with the main petition. The petitioner also stated that by 15th April, 1988, the petitioner has also addressed a communication in the office of the Additional Chief Secretary (Appeals) that petitioner has submitted written submissions and necessary proof of the written submissions in all the three revisions against three respective orders of Collector appeals and these written submissions may be considered. It was also stated that they had also filed reply before the Collector, Ahmedabad which has been also produced by the petitioner in his behalf.

13. The learned counsel for the petitioner has stated that, though before the Deputy Collector the petitioner had filed replied to the show-cause notice. However, the Deputy Collector has passed the order observing that no reply to the show-cause notice has been filed. He has further stated that, even before Collector, Ahmedabad it was stated that, the land in question was Inami land and necessary permission for carrying out non-agricultural operation was obtained. Still the Collector did not consider the same and dismissed the appeal. Even the revisional authority also dismissed the appeal without considering the evidence on record.

14. I have considered the submission of Mr. Shaikh and also the necessary

evidence which has been produced before the Authority and was also been produced before me in the petition.

15. I have heard the oral submission of the learned Advocate for the petitioner in which he has stated that the land in dispute is the Devasthan Inam Land. So, a Inamdar, was competent for all purposes to grant non-agricultural use permission and the construction thus has been done in due course of law on the strength of permission given by Inamdar. He has also submitted that the sale-deed of the land in dispute dated 2nd June, 1984 whereby the land in dispute has been transferred by its original owner and occupant to the present petitioner and the documents and its unequivocal terms stated and declared that, permission has been granted by the Inamdar and consequent thereupon construction has been executed on the land in dispute. The learned advocate for the petitioner has also submitted that relevant evidence in this connection was produced before Collector, Ahmedabad and also before the Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad to show that in the light of documentary evidence which has been referred earlier. The petitioner had obtained necessary permission for carrying out non-agricultural operation and therefore, the order of the Collector, Ahmedabad and the Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad were without considering relevant facts to the order is illegal and bad in law.

15.1. It was further submitted that, the land in question was Devasthan Inami Land and therefore, Devasthan Inami Land was competent and authorised to grant non-agricultural permission and levy assessment and collect revenue. The said fact has been approved and acted upon by authorised In other matters and therefore, the order of authorities are discriminatory as far as the petitioner is concerned.

15.2. It was further submitted by the learned advocate of the petitioner that, at relevant time permission was granted by Panchayat but thereafter the land in dispute has come within corporation limit and consequent thereupon Ahmedabad Municipal Corporation by his general resolution has sanctioned all constructions within the extended area of the Corporation of Ahmedabad including the disputed land and Ahmedabad Municipal Corporation is recovering all the taxes due from the petitioner.

16. Shri Bukhari, learned Additional Government Pleader on behalf of Government has tried to support the orders of authority below.

17. In my view the Collector, Ahmedabad by his order dated 5th December, 1987 as well as the Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad have not considered the basic contention of the petitioner that land in dispute was Devasthan Inam land and therefore, the Inamdar was competent for all purposes to grant non-agricultural use of permission and petitioner has obtained necessary permission for constructions. In my view, authorities have not considered the sale-deed dated 2nd June, 1984 regarding land in dispute,

permission granted by Ishanpur Gram panchayat after passing resolution dated 16th December, 1974 which have been produced at Annexure-E(1). The letter of Collector office, Ahmedabad dated 2nd-4th March, 1962 which have been produced Annexure-E(2) which specifically stated that, no permission is necessary in the Inami land, the order in Tenancy case No. 319 of 1988 passed by the Deputy Collector, Ahmedabad in exercise of jurisdiction u/s 76(a) of Bombay Tenancy and Agricultural Land Act, 1948 being produced at Annexure-E(3), which specifically recorded that, for carrying out non-agricultural operation, a permission has been obtained and necessary plans have been approved, a letter from office of the Collector dated 9th August, 1960 produced at Annexure-E(4) which also specifically states that non-agricultural permission is not necessary for making non-agricultural use in Devasthan Inam lands, E(5) letter from the Additional Chief Secretary, Revenue Department (Appeals) to petitioner dated 28th February, 1988 at Annexure-E(6). Affidavit filed by petitioner before the Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad and Annexure-E(7), application dated 15th April, 1988 given by the petitioner.

18. In my view, the order of the authorities are contrary to and inconsistent with the records of the case and both the authorities have ignored relevant evidence on record before deciding as to whether petitioner has obtained permission or not? In my view both the authorities have exercised jurisdiction without considering the evidence on record which was very material evidence and which goes to the root of the matter.

19. I therefore, quash and set aside the order dated 6th January, 1987 passed by the Deputy Collector, Ahmedabad produced at Annexure-A, order of District Collector dated 5th December, 1987 produced at Annexure-B and also the order of the Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad dated 31st August, 1988 produced at Annexure-C. I also hold that, the construction on the land in dispute is legal and proper after obtaining due permission from the authorities. I therefore, allow this petition and make the Rule absolute with costs.