
(2017) 12 GUJ CK 0039
In the Gujarat High Court
Case No : 18446 of 2014

RUSTOM JEHANGIR CAMA & ANR.

APPELLANT

Vs

MUNICIPAL COMMISSIONER & ORS.

RESPONDENT

Date of Decision : 21-12-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 12 GUJ CK 0039

Hon'ble Judges : Bela M. Trivedi

Bench : Single Bench

Advocate : ZUBIN F BHARDA, ?PRASHANT G. DESAI

Final Decision : Dismissed

Judgement

1. The petitioners, by way of present petition, filed under Article 226 of the Constitution of India have challenged the action of the respondents in demolishing the boundary wall situated on the western side of the final plot Nos. 125 and 126 adjoining the Sabarmati River Front, and further prayed to direct the respondents to reconstruct the said boundary wall at their costs.

2. The Court, while issuing the notice to the respondents, vide the order dated 19.12.2014, had granted ad-interim relief in terms of para 9(D), whereby the respondents were restrained from carrying any further demolition of the premises of the petitioners situated in the final plot Nos. 125 and 126, and from dispossessing the petitioners' portion of the land adjoining to the river front by attempting to put concrete on lawn belonging to the petitioners during the pendency of the petition. The petition has been resisted by the respondent Corporation by filing the affidavit-in-reply, to which the petitioners have filed the affidavit-in-rejoinder and also further affidavits.

3. As per the case of the petitioners, the international class 4th Star Hotel "Cama" as well as the residential house of the petitioner No.1 are situated in the

land bearing final plot Nos.

125 and 126 of Town Planning Scheme No. 3 (D.K. Section) in the Khanpur area of Ahmedabad city. According to the petitioners, initially the lands in question were agricultural lands which were purchased by the forefathers of the petitioner No. 1 in the year 1949. Thereafter, the town planning scheme having come into force in the year 1950s, the area of the plots belonging to the petitioners was modified, and once again the plot boundaries of the petitioners were unilaterally modified when the said scheme was approved in 1956. According to the petitioners, in the year 2002-03, the Sabarmati River Front Development Project was envisaged in respect of the development of the river front. The father of the petitioner No.1 therefore had addressed various letters to the Chairman of Sabarmati River Front Development Corporation Limited (hereinafter referred to as "the SRFDCL"), seeking information in respect of the said project to ensure that the said project may not be in any way detrimental to the property of the petitioners, however, the father of the petitioner No. 1 was assured that their property would not be affected. Thereafter, the respondents had started alleging that the petitioners had made encroachments upon the land belonging to river front. According to the petitioners, the entire river front project was constructed without any proper planning, transparency and precision. A footpath on the land adjoining to the premises of the petitioners was also envisaged. The resultant effect was that the road falling on the southern side of the final plot Nos. 126, which was once the land of the petitioners, and was carved out of the petitioners' land, was sought to be further broadened, and for which the petitioners were being threatened that the construction on the southern side of the plot on which the plant and machinery and other construction were existing would be demolished. It is further the case of the petitioners that thereafter the officers of the respondents acting in prejudicial and mala fide manner, were attempting to destroy the boundary walls on the western side of the petitioners residential as well as the business establishment, by laying down concrete on the lawn and by removing trees and plantation on the final plot Nos. 125 and 126, and hence the petition was filed.

4. The respondent - Corporation has resisted the petition by filing the affidavit-in-reply denying the allegations made in the petition, and further contending inter alia that the Town Planning Scheme No. 3 (Ellis Bridge) D.K. Section, (1st Varied) was sanctioned on 07.07.1956, and the final scheme was sanctioned by the State Government on 02.09.1976 under the Bombay Town Planning Act. As per the record, against the original plot Nos. 125 and 126 admeasuring 2645 and 5032 sq. yards, the concerned owners were provided the final plot Nos. 125 and 126 admeasuring 3092 and 4708 sq. yards respectively as per form "F" annexed as Annexure I. On the sanction of the scheme, the same had become part of the Act, and the rights with respect to the final plots decided by the Town Planning Officer had become final and binding to the parties. It is further contended that the land abutting the boundaries of final plot Nos. 125 and 126 comprised in the river bed area of Sabarmati river was to be used for SRFDCL project. According

to the respondents, the said project has already been implemented and reached to an advanced stage and has essentially become part of the development of city of Ahmedabad. Since there were encumbrances beyond the areas of final plot Nos. 125 and 126, the owners of the said lands including the father of the petitioner No.1, were requested to cooperate in implementing project. The father of the petitioner No. 1 was also vide the communications Annexure III and IV, requested to furnish the sanctioned plans of the compound wall / retaining wall with details and development permission, however he had failed to supply the same. On the contrary, the father of the petitioner No. 1 vide the communication dated 30.05.2014 and 02.06.2014 (Annexure V and VI respectively), made an offer to take the portion of the lands in question on permanent lease basis or by outright purchase. According to the

respondent Corporation, after the long lasting repeated requests and deliberations, and in view of the expressed urgency of the implementation of the said project, the encumbrances in the nature of compound wall and peripherals on the boundary of river bed area were ultimately sought to be removed, as they were required for the implementation of the project.

5. It appears that pending the petition, the petitioners had moved a Civil Application being No. 3139 of 2015 on 03.03.2015 seeking permission to reconstruct the compound wall by removing the concrete put on the lands bearing final plot Nos. 125 and 126, however, though the Court had not granted such prayer, the petitioners had started placing boundaries on the said land to cover the entire area. The respondents had therefore moved another Civil Application (for direction) being No. 11099 of 2015 seeking directions against the petitioners to abide and cooperate, and permit the measurement of the lands in question to be taken. The Court, therefore, vide the order dated 21.03.2016, after considering the contents of the application and the photographs, allowed the said application and directed the District Inspector of Land Records, Ahmedabad to make measurement of land bearing final plot Nos. 125 and 126 in the presence of the officers of the respondent Corporation and the petitioners or their representatives. The report therefore was submitted before the Court by the DILR on 18.04.2016. However, it appears that on 12.01.2017, the Court again passed the order in Civil Application No. 3139 of 2015 directing that the measurement be taken by the officers of the Town Planning Department in presences of the petitioners as well as CCP of the Corporation. The Town Planner submitted the report on 01.02.2017 before the Court along with map, measurement sheets and Hissa Form No.4.

6. The learned advocate Mr. Zubin Bharda appearing for the petitioners placing reliance upon the averments made in the petition as well as the affidavits filed by the petitioners, vehemently submitted that the respondents had acted in arbitrary and prejudicial manner by removing the boundary wall of the petitioners' property. According to him, as seen from the photographs, the western side of the final plot Nos. 125 and 126 covered a wall which was

adjoining to the Sabarmati river bed area and under the guise of SRFDCL project, the said wall was sought to be demolished for constructing the footpath, though there was no encroachment made by the petitioners. In the opinion of the Court there is hardly any substance in the submission of Mr. Bharda. It is not disputed and as is transpiring from the redistribution and valuation statement Annexure-I, produced by the respondent Corporation along with affidavit-in-reply, the

owners of the original final plot Nos. 125 and 126 admeasuring 2645 and 5032 sq. yards respectively were allotted final plot Nos. 125 and 126 admeasuring 3092 and 4708 sq. yards. Meaning thereby, on the reconstitution of the original plots, the petitioners were allotted more area in final plot No. 125 and less area in the final plot No. 126. The part plan of the said final plots is also produced along with the said statement, from which it clearly transpires that on the western side of the final plot Nos. 125 and 126, there was an encroachment made beyond the boundaries of the said plots. Even as per the measurement reports and plans submitted by the DILR and the Town Planning Officer pursuant to the order dated 23.03.2016 and 12.01.2017 respectively passed by the Court, it clearly emerges that the petitioners had made encroachment of 70 sq. mtrs. on the road marked as "A" in final plot No. 125 and encroachment of 226 sq. mtrs. on the road marked as "B" in final plot No. 126. At this juncture, it is required to be noted that though the said encroachments were already removed by the respondents before filing of the petition by the petitioners, and though the prayer of the petitioners to construct the wall made in Civil Application No. 3139 of 2015 was not granted by the Court, the petitioners taking law in their hands had covered the area by putting iron sheets again making encroachments on the said part of the land

abutting the river bed area which was part of Sabarmati river front project. Such a conduct on the part of the petitioners is strongly deprecated. When the matter is subjudice and pending for orders of the Court, the petitioners could not have put such iron sheets of semi permanent nature without the permission of the Court. However, without stretching the matter any further, suffice is to say that the petitioners have no right to put up any construction of wall or boundaries beyond the boundaries of final plot Nos. 125 and 126 as shown in the part plan annexed with the statement at Annexure-I.

7. The Court also does not find any substance in the submission of Mr. Bharda that the respondents had arbitrarily demolished the wall covering the boundaries of said final plots. As transpiring from the record, the father of the petitioner No. 1 was time and again called upon to produce the sanctioned plan, or the permission granted by the competent authority to put up such boundary walls, and he was also requested to cooperate in the implementation of the river front project, however, he having failed to produce any documents or cooperate the respondents, the encroachments made beyond the boundaries of final plot Nos. 125 and 126 were removed by the respondents, which action could not be said to be an arbitrary action.

8. It is needless to say that unauthorized construction and encroachment could not be compounded, and they have to be demolished. Because of such illegal construction and encroachment, the very concept of planned development of area gets affected. In the instant case, because of the non-cooperation of the petitioners, and the encroachments made by them on the land in question, beyond the boundaries of final plots allotted to them, the planning and implementation of very ambitious river front project, which is essential part of the development of Ahmedabad city, has been hampered.

9. In that view of the matter, the petition being devoid of merits, is dismissed. The ad-interim relief granted earlier stands vacated forthwith. Notice is discharged.