(2011) 03 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 18056 of 2006

Samrat Construction Proprietor-Kanubhai Babaldas Modi — APPELLANT

Vs

Ahmedabad Municipal Corporation and Another — RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 451, 451(1), 79
Constitution of India, 1950 — Article 226

Citation : (2011) 2 GLR 1564

Hon'ble Judges : K.A. Puj, J;H.K. Rathod, J

Bench : Division Bench

Advocate : K.G. Sukhwani, for the Appellant; Prashant G. Desai, for Respondent No. 1, Rashesh Rindani, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The Petitioner has filed this petition under Article 226 of the Constitution of India praying for quashin`g and setting aside the Resolution dated 21-6-2006 passed by the State Government, the Respondent No. 2 herein, suspending implementation of Resolution No. 1892 dated 20-2-1997 and Resolution No. 997 dated 29-3-1997 passed by the Standing Committee and General Body of Ahmedabad Municipal Corporation, the Respondent No. 1 herein. The Petitioner has also prayed for the direction to the Respondent No. 1 to accept Rs. 61,88,332/- and hand over the peaceful and vacant possession of sub-plot No. 3 of Final Plot No. 96 of T.P. Scheme No. 10 admeasuring about 3166 sq.mts. The Petitioner has also prayed for an interim relief restraining the Respondent No. 1 from allotting the plot in question to any other person, till the final disposal of the petition.

2. The Court has issued notice on 29-8-2006 and directed the parties to maintain status quo. The petition was admitted on 9-10-2006 and rule was issued.

3. The brief facts giving rise to the present petition are that the Petitioner is carrying on the business as Municipal Building Contractor. Tenders were invited

by the Respondent No. 1-Corporation in the year 1996 for the sale of sub-plot No. 3 of Final Plot No. 96 of Town Planning Scheme No. 10 admeasuring 3166 sq.mts. The Petitioner purchased the blank tender documents and filled in the same along with E.M.D. of Rs. 1.50 lacs. The Petitioner''s offer of Rs. 2,002/- per sq.mtr. for the plot in question was highest amongst all the bidders, and hence, the Standing Committee of the Respondent No. 1-Corporation, by Resolution No. 1892 dated 20-2-1997 accepted the offer of the Petitioner. Thereafter, the Respondent No. 1- Corporation in its General Body''s meeting passed Resolution No. 997 dated 29-3-1997 approving the Standing Committee''s Resolution No. 1892 dated 20-2-1997. Despite the fact that the Standing Committee had passed the Resolution on 20-2-1997 and the General Body of the Corporation had upheld and approved the Resolution of the Standing Committee, neither the amount was collected from the Petitioner nor the possession of the plot in question was handed over to the Petitioner. Thereafter, vide letter dated 10-12-1999, the Deputy Municipal Commissioner directed the Petitioner to deposit an amount of Rs. 83,14,405-50 so as to enable the Corporation to hand over the possession of the plot in question to the Petitioner. The Petitioner disputed the said demand on the ground that as per the offer accepted by the Respondent Corporation, the amount comes to Rs. 61,88,332/- whereas the amount demanded from the Petitioner was Rs. 83,14,405-50. Despite several representations made by the Petitioner, no steps were taken by the Respondent Corporation, and hence, the Petitioner issued a legal notice to the Corporation through his Advocate which was duly received by the Corporation and yet, the possession of the plot in question was not handed over to the Petitioner. The Petitioner, therefore, filed Special Civil Application No. 13481 of 2006 before this Court seeking direction against the Respondent Corporation to accept the amount of Rs. 61,88,332/- being the purchase price of the plot in question and to hand over the said plot to the Petitioner. During the pendency of the said petition before this Court, the Respondent No. 2 exercised the powers vested u/s 451(1) of the Bombay Provincial Municipal Corporation Act, 1949 cancelling the Resolution No. 1892 dated 20-2-1997 and Resolution No. 997 dated 29-3-1997. Since the said communication was required to be challenged, the Petitioner withdrew his earlier petition with a liberty to file fresh petition and to challenge the communication dated 21-6-2006 passed by Respondent No. 2.

4. In the above view of the matter, the Petitioner has filed the present petition challenging the communication dated 21-6-2006 issued by Respondent No. 2 suspending the implementation of the Resolution No. 1892 dated 20-2-1997 and Resolution No. 997 dated 29-3-1997.

5. Mr. K.G. Sukhwani, learned Advocate appearing for the Petitioner has submitted that despite the fact that the Petitioner was ready and willing to pay the purchase consideration, neither the said amount was accepted nor the possession of the plot was handed over to the Petitioner. On the contrary, vide communication dated 9-2-2000, the Petitioner was asked to pay the said amount along with interest. He further submitted that no intimation with respect to

acceptance of the offer was given prior to 10-12-1999, and hence, there was no question of paying interest. He further submitted that there was no condition with respect to payment of interest in the tender document. Since, the Respondent No. 1 failed to take any action as requested by letters dated 24-12-1999, 28-2-2000 and 19-4-2000, the Respondent No. 1 was reminded from time to time for issuing necessary orders for depositing an amount of Rs. 61,88,332/-.

6. Mr. Sukhwani further submitted that Resolution No. 1892 dated 20-2-1997 and the Resolution No. 997 dated 29-3-1997 were passed by the Respondent No. 1-Corporation accepting the offer of the Petitioner at Rs. 2,002/- per sq.mtr. for the plot in question. From the communication dated 21-6-2006, it becomes very obvious that the Petitioner was not informed about the payment of the premium by the Respondent No. 1 due to Civil Suit Nos. 856 of 1997 and 1513 of 1997 filed by one Gopal Krishna Estate. He further submitted that the Petitioner should not be penalized for the act of third party. The Petitioner was ready and willing to deposit the premium for the plot in question. At no point of time, the Petitioner had refused to make the payment as per the said offer. The question of paying interest to the Respondent No. 1 does not arise for the simple reason that the Petitioner was not at fault. He further submitted that the provisions of Section 451(1) of the Act are not applicable to the facts of the present case., The act of the Respondent No. 1 was not in contravention of or in excess of powers conferred by the Act. The act of the Respondent No. 1 could not lead to breach of the peace or cause injury to the public or cause the annoyance to the public or any class or body of the persons as defined in Section 451(1) of the Act. He has, therefore, submitted that in view of this clear legal position, question of suspending or prohibiting the Respondent No. 1 from implementing Resolution No. 1892 dated 20-2-1997 and Resolution No. 997 dated 29-3-1997 does not arise. He has, therefore, submitted that the communication issued by the Respondent No. 2 suspending the aforesaid Resolutions is absolutely bad in law, and it is required to be quashed and set aside.

7. On behalf of Respondent No. 1, Mr. Prashant G. Desai, learned Senior Advocate appeared. An affidavit-in-reply is filed by the Estate Officer on behalf of the Respondent No. 1-Corporation. Similarly, on behalf of Respondent No. 2, learned Assistant Government Pleader Mr. Rashesh Rindani appeared and affidavit-in-reply is filed by Deputy Secretary, Urban Development and Urban Housing Department, Gandhinagar. Since, the stand of Respondent Nos. 1 and 2 is the same, instead of separately dealing with their submissions, their common submissions are taken into consideration.

8. Mr. Prashant G. Desai, learned Senior Advocate leading the arguments on behalf of the Respondents submitted that the Municipal Commissioner of the Respondent No. 1-Corporation had made a proposal vide his letter dated 12-12-2005 requesting the State Government to suspend Resolution No. 1892 dated 20-2-1997 of the Standing Committee and Resolution No. 997 dated

29-3-1997 of the General Body of the Respondent No. 1-Corporation. On perusal of the proposal of the Municipal Commissioner, it was found that some more information was required including pendency of the litigation filed against the Corporation by one Gopal Krishna Estate. Therefore, details were asked for from the Municipal Commissioner, Ahmedabad. The said information was supplied to the office of the Deputy Secretary on 23-1-2006. The Respondent Corporation had sent details regarding Civil Suit Nos. 856 of 1997 and 153 of 1997 filed by one Gopal Krishna Estate. The State Government, after considering all the relevant materials supplied by the Corporation and after considering all relevant aspects of the proposal forwarded by the Municipal Commissioner, has passed an order suspending the aforesaid two Resolutions by exercising the powers u/s 451 of the Act. He further submitted that in the larger interest of the Corporation, the State Government has exercised the power u/s 451(1) of the Act. Since, Civil Suits were filed by Gopal Krishna Estate challenging the said matter of the tender between the Petitioner and the Respondent No. 1, the contract between the Corporation and the Petitioner could not be materialized. The price of Rs. 2,002/- per sq.mtr. of the disputed plot of land was in the year 1997. As per the provisions of Section 79(d) of the Act, the Municipal Corporation is competent to dispose its land/property at the prevailing market rate only. The Corporation is not empowered to allot the disputed land in the year 1999 at the market price of 1997. The Corporation, therefore, decided to take interest upon the premium amount of the disputed plot of land at the bank rate from the Petitioner. Accordingly, the Respondent-Corporation intimated the Petitioner vide letter dated 10-12- 1999 to deposit the amount of Rs. 83,14,405-50 ps. towards the disputed plot. The Petitioner refused to deposit the said amount and insisted to deposit actual amount of Rs. 61,38,332/- without any interest thereupon towards the disputed plot. In the year 1999, the market rate of the disputed plot is about Rs. 5,000/- per sq.mtr. If the Corporation had allotted the disputed plot of land to the Petitioner at the market rate prevailing in 1997, the Corporation would have suffered financial loss of about Rs. 95 Sacs. He has, therefore, submitted that there was no mala fide intention on the part of the Corporation to penalize the Petitioner. The Corporation, in the larger interest and considering the economical loss to the Corporation, forwarded the proposal to the State Government which cannot be said to be illegal or arbitrary. The State Government is competent and empowered to take a decision on the proposal made by the Municipal Corporation in the interest of public at large and considering huge financial loss to the Corporation. He has, therefore, submitted that the Petitioner is not entitled to any of the reliefs as prayed for in Paragraphs 20(A) to (F).

9. Learned Assistant Government Pleader appearing for Respondent No. 2 has virtually adopted the arguments canvassed by Mr. Desai, and hence, the same are not separately required to be dealt with.

10. Having heard learned Counsel appearing for the parties and having considered their rival submissions in light of the facts and circumstances of the

case and the provisions of the Act and the case, law on the subject, the Court is of the view that the State Government is justified in suspending the Resolutions passed by the Standing Committee as well as General Body in respect of the plot in question. It is true that the offer made by the Petitioner was the highest one. However, the acceptance of the said offer was not communicated to the Petitioner till December, 1999, and hence, till such acceptance is communicated, the Petitioner had got no vested right in the property in question. Even after acceptance of the offer, dispute arose and the Respondent-Corporation was dragged into litigation in respect of the very same property, and hence, till such proceedings are over, the Respondent No. 1-Corporation would not be in a position to accept the amount from the Petitioner and to hand over the possession of the plot in question to the Petitioner. As soon as the proceedings are over in 1999, the Petitioner was asked to pay the premium amount with interest at the bank rate. The Respondent-Corporation could have straightaway invited fresh offers instead of claiming interest from the Petitioner. However, without undergoing the process of inviting fresh tender, the Petitioner was called upon to pay interest on the premium amount. Though the Petitioner has raised the dispute about the payment of interest, he has not taken any legal action in the matter till 2006. Since, the Respondent No. 1-Corporation could not sell the property at the rate prevailing in 1997 by virtue of the provisions contained in Section 79(d) of the Act, the Corporation wrote letter to the State Government to suspend the Resolutions of the Standing Committee as well as General Body. The State Government after examining all aspects of the matter and considering larger interest of the Corporation as well as public, has suspended the said Resolutions on 21-6-2006. The premium rate is more than Rs. 5,000/- in the year 1999. In 2006, it is more than Rs. 10,000/- and if the present market rate is considered, it is much higher than the rates in 2006. The legal position is well settled that unless and until the amount is accepted and contract is executed, it cannot be said that there is a concluded contract. The Petitioner has simply made an offer which was accepted by the Respondent-Corporation since it was the highest offer. However, mere acceptance of an offer would not confer any right on the Petitioner. The Petitioner has not paid any amount except E.M.D. of Rs. 1.50 lacs. From 1999 to 2006, the Petitioner remained silent. When the Resolutions are suspended by the State Government, the Corporation is not empowered to allot the plot in question to the Petitioner on the basis of the alleged acceptance of the offer of the Petitioner made in 1997. The action of the State Government cannot be said to be an arbitrary action as the State Government has acted in the larger interest of the public as well as the Corporation and interest of the public at large as well as the Corporation is required to be given priority in comparison to interest of an individual. The action of the Corporation or of the State Government is in accordance with law and no mala fide is alleged. The said action was not taken to favour any third party.

11. Considering all the above aspects of the matter, the Court is of the view that the challenge to the communication of the State Government suspending the two

Resolutions of the Corporation is not tenable either in law or on facts. The Court does not find any substance or merits in this petition. The petition is accordingly dismissed. Rule discharged. Interim relief granted earlier stands vacated.

12. The Respondent No. 1-Corporation is directed to refund the E.M.D. amount of Rs. 1.50 lacs to the Petitioner forthwith and in any case within one month from today.

