
(2008) 03 GUJ CK 0077

In the Gujarat High Court

Case No : Special Civil Application No's. 13413 and 20602 of 2007 with Civil Application No. 7325 of 2007 in Special Civil Application No. 13413 of 2007

Sarpanch-Paddhar Gram Panchayat

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 20, 211
Constitution of India, 1950 — Article 226, 227
Gujarat Land Revenue Rules, 1972 — Rule 108, 108(6A)

Citation : (2008) 2 GLR 1349

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Nalin K. Thakker, in Special Civil application Nos. 13413 and 20602/07 and Civil application 7325/07, for the Appellant; Mini M. Nair, AGP for Respondent 1, Dhaval D. Vyas, for Respondent 2 and Suresh M. Shah and Mehul S. Shah for Respondent 3 in Special Civil Application Nos. 13413 and 20602/07 and Civil Application 7325/07, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—As common issues are involved in these two petitions, the subject matters of which are also similar, both these petitions are being heard and decided by a common judgment.

2. In Special Civil Application No. 20602 of 2007 the orders dated 16.7.2007 (Annexure: H, I and J) issued by respondent No. 1 " Collector in favour of respondent No. 2, 3 and 4, in connection with granting land of Survey No. 741 Paiki situated in sim of Paddar village of Taluka Bhuj-Kachchh, have been challenged, whereas in Special Civil Application No. 13413 of 2007, the orders dated 5.6.2004, in connection with granting land of Survey No. 741 Paiki situated in sim of Paddhar village of Taluka Bhuj-Kachchh, (Annexure:B, C and D) issued by Respondent No. 1-Collector in favour of Respondent Nos. 2, 3 and 4, are

impugned.

3. Since the parties and the lis are the same in each petition, the facts, as found in Special Civil Application No. 20602 of 2007 only, are being adverted to.

4. During the pendency of Special Civil Application No. 13413 of 2007, Civil Application No. 7325 of 2007 came to be filed by the applicant-original petitioner. It appears from the record that a statement was made on behalf of the respondents Nos. 2 and 3 that they shall not put any construction on the land in question and by an order dated 8.6.2007 passed in the Civil Application, the respondent No. 4 was restrained from putting up any construction on the land in question.

5. Briefly stated, the facts, as emerging from a perusal of the averments made in the petition are that the petitioner is the Sarpanch of Paddhar Gram Panchayat. It is averred that waste land in Survey No. 741 (Part), admeasuring about 30 acres situated in village Paddhar, is being utilized as Gauchar (grazing) land since the past many years and the possession of the said land is with Paddhar Gram Panchayat. According to the averments made in the petition, about 2000 heads of cattle of the villagers of village Paddhar are grazing there and there is also a water source for drinking, nearby. It is stated that the cattle of the neighbouring four villages are also grazing on the said land. It is averred that Paddhar Gram Panchayat passed Resolution No. 35 on 28.12.1982, for formation of 'Gramvan' on the land of Survey No. 741 (Part). However, the Collector, Kutchh (respondent No. 1) issued orders dated 5.6.2004, allotting the land admeasuring 19600 Sq.Mtrs. to the respondent No. 2, land admeasuring 19600 Sq.Mtrs. to the respondent No. 3 and land admeasuring 19000 Sq.Mtrs. to the respondent No. 4, from the land bearing Survey No. 741 (Part) of village Paddhar, for industrial purposes, subject to the terms and conditions stated in the orders of allotment. Copies of the orders dated 5.6.2004, impugned in Special Civil Application No. 13413 of 2007, are annexed as Annexures-B, C and D to this writ petition. It appears from the record that after the allotment of the lands in question to the respondents No. 2, 3 and 4 was made, proceedings for breach of conditions of the orders of allotment dated 5.6.2004, were initiated against the said respondents, wherein show cause notices dated 5.6.2007 came to be issued to them. After hearing the concerned respondents, the Collector passed three orders dated 16.7.2007, accepting the explanation given by them and condoning the breach of conditions. It was directed that the construction upon the lands in question should be completed within a period of one year from the date of the order and the lands be used for the purpose for which they were granted. The copies of the orders dated 16.7.2007, which are impugned in Special Civil Application No. 20602 of 2007, are annexed as Annexures H, I and J to the petition.

6. Notice was issued in these writ petitions and pursuant thereto, affidavits-in-reply have been filed by the respondents No. 1, 2 and 3 to which an affidavit-in-rejoinder has been filed by the petitioner.

7. At the very outset, Mr. Dhaval D. Vyas, learned Counsel for the respondent No. 2 has raised a preliminary objection to the effect that the petitions are not maintainable since an alternative statutory remedy is available to the petitioners and therefore, this Court may not entertain the petitions. This objection has also been taken in the replies filed by the concerned respondents.

8. Ms. Mini M. Nair, learned Assistant Government Pleader as well as Mr. Suresh M. Shah, learned Counsel for the respondent No. 3, have also submitted that the orders impugned in the petitions have been passed by the Collector and are amenable to revision under the provisions of Section 211 of the Bombay Land Revenue Code, 1879, ("the Code" for short) and therefore, since an alternative statutory remedy is available, the petitions may not be entertained. In support of this contention, Ms. Mini M. Nair has placed reliance upon the following judgments: (1) Punjab National Bank v. O.C. Krishnan and Ors. 2001(6) SC 569, (2) Commissioner of Customs, Visakhapatnam and Ors. v. Jaya Satya Marine Exports (P) Ltd. and Ors. 2001(9) SC 765 and (3) Shamlabhai Mamaiyabhai v. District Collector and Ors. 2007(1) GLH 731.

9. Mr. Nalin K. Thakker, learned Counsel for the petitioner has submitted that:

i. The impugned orders passed by the Collector are administrative orders and not quasi-judicial orders and therefore, there is no alternative statutory remedy available to the petitioner. In support of this submission, the learned Counsel for the petitioner has placed reliance upon a decision in the case of Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others,

ii. Since the petitioner has no lis with the respondents, the provisions of Rule 108 of the Gujarat Land Revenue Rules will not apply and therefore, the impugned orders cannot be subject to appeal/ revision under the provisions of Rule 108 of the Rules.

iii. The impugned orders in favour of the respondents have been passed behind the back of the petitioner and since the petitioner is aggrieved by the allotment of the lands to the respondents Nos. 2, 3 and 4, the orders dated 16.7.2007 whereby the proceedings for breach of conditions of allotment have been withdrawn and the respondents have been directed to complete the work of construction within a period of one year and to use the lands for the purposes for which they were granted, should have been passed after giving an opportunity of hearing to the petitioner. In support of this submission, the learned Counsel for the petitioner has placed reliance on a decision in the case of N.R. Chaudhari v. Principal, Govt. Industrial Training Institute, Ahmedabad and Anr. 1993(2) GCD 641 (Guj).

On the above grounds, the learned Counsel for the petitioner has submitted that since the petitioner has no alternative statutory remedy available to him, this Court should decide the matter on merits, and the petitions deserve to be allowed.

10. Mr. Dhaval D. Vyas, learned Counsel for the respondent No. 2 has submitted that the impugned orders of the Collector are amenable to challenge in revision proceedings, under the provisions of Section 211 of the Code, where an alternative remedy has been provided and since the petitioner has by-passed the alternative remedy and straightaway filed the petitions, the same may not be entertained by this Court.

11. No other point has been urged before me by the learned Counsel for the respective parties.

12. I have heard Mr. Nalin K. Thakker, learned Counsel for the petitioner, Ms. Mini M. Nair, learned Assistant Government Pleader for the respondent No. 1, Mr. Dhaval D. Vyas, learned Counsel for the respondent No. 2, and Mr. Suresh M. Shah, learned Counsel for the respondent No. 3 at length and in great detail.

13. The first submission of the learned Counsel for the petitioner, to the effect that since the impugned orders of the Collector are administrative orders and not quasi-judicial orders, there is no alternative remedy available to the petitioner, is without any substance and cannot be accepted. If the provisions of Section 211 of the Code are perused, it is evident that the power of the State Government and certain revenue officers to call for and examine the records and proceedings of subordinate officers for the purpose of satisfying itself/ themselves as to the legality or propriety of any decision or order passed and as to the regularity of proceedings of such officer, are wide. The provisions of Section 211 empower the State Government to call for and examine the legality and propriety of any decision or order passed by a subordinate officer and the question whether the order is an administrative one or a quasi-judicial one will not arise, and therefore, the submission of the learned Counsel for the petitioner that since the impugned orders are administrative orders, there is no alternative remedy available to the petitioner, is not worthy of acceptance.

The judgment in the case of *Km. Neelima Misra v. Dr. Harinder Kaur Paintal and Ors.* (supra) which has been relied upon by the learned Counsel for the petitioner is in relation to the concept of fairness in administrative actions. Paragraph 21 of this judgment contains a quotation from *Administrative Law* by H.W.R. Wade, 6th Ed. pp.46-46, which reads as under:

A judicial decision is made according to law. An Administrative decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice.

This proposition of law cannot be disputed. However, it has no bearing upon the issue in question, that is, whether the petitioner should be relegated to avail of the alternative remedy and, therefore, this judgment will not advance the case of the petitioner.

14. The second submission of the learned Counsel for the petitioner, that there is no alternative remedy under the provisions of Section 108 of the Rules is not relevant since, it is an admitted position that this provision of law will not have any application, as the petitioner can challenge the order of the Collector by filing a revision application under the provisions of Section 211 of the Code. Therefore, the submission of the learned Counsel for the petitioner cannot be accepted.

15. The third contention of the learned Counsel for the petitioner is to the effect that the petitioner was not heard before the impugned orders were passed and, therefore, the principles of natural justice have been violated. If the impugned orders are perused, it is evident that they have been passed in respect of the allotment of the waste lands of the State Government to the respondents No. 2, 3 and 4 for industrial purposes, where proceedings were initiated against the respondents Nos. 2, 3 and 4 for breach of conditions of grant of land. The matter was between the State Government and the concerned respondents, and therefore, the question of violation of the principles of natural justice by not giving the petitioner an opportunity of hearing, does not arise. However, if the petitioner so desired, it was open to him to file an application before the competent authority, for being given an opportunity of hearing. Having chosen not to do so, the petitioner has filed the present petitions by by-passing the alternative statutory remedy in respect of the orders impugned in both the petitions. In my view, no violation of the principles of natural justice has occasioned in passing the impugned orders and, therefore, this submission of the learned Counsel for the petitioner cannot be accepted.

In *N.R. Chaudhari v. Principal, Govt. Industrial Training Institute, Ahmedabad and Anr.* (supra) relied upon by the petitioner, it has been held that mere existence of an alternative remedy is no bar to the exercise of powers under Article 226 of the Constitution when the Court finds violation of the principles of natural justice. There can be no quarrel with this proposition of law. However, the present is not a case where there is any violation of the principles of natural justice, or any glaring illegality so as to convince the Court to exercise its powers under Article 226 of the Constitution, in spite of the availability of an alternative remedy.

16. Although it is true that the availability of an alternative remedy does not, in any way, dilute the jurisdiction of the Court under Article 226 of the Constitution, however, sound judicial discretion demands that where there is an alternative statutory remedy, the Court should normally refrain from exercising its jurisdiction under Articles 226 and 227 of the Constitution.

17. This view is supported by a catena of judgments, some of which are referred to hereinbelow.

In *Punjab National Bank v. O.C. Krishnan and Ors.* (supra), the Supreme Court has held as under:

6. The Act has been enacted with a view to provide a special procedure for

recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal u/s 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

In *Commissioner of Customs, Visakhapatnam and Ors. v. Jaya Satya Marine Exports (P) Ltd. and Ors.* (supra), the Supreme Court held as under:

8. We are of the view that the High Court should not have entertained these writ petitions and should have relegated the writ petitioners to the alternate remedy.

In *Shamlabhai Mamaiyabhai v. District Collector and Ors.* (supra), this Court held as under:

12. In the result, it cannot be said that the order passed by the Collector, which is impugned in the present petition is without jurisdiction and further the petitioners have the remedy under Rule 108(6-A) of approaching before the State Government against the order of the Collector. It is an admitted position that the petitioners have not exhausted the said remedy. It is well settled that when the statutory remedy is available to the parties to the proceedings, this Court, by way of self-imposed restrictions, would normally not entertain the petition under Article 226 and 227 of the Constitution of India. Hence, as the statutory remedy is available to the petitioner and as the same is not exhausted the present petition does not deserve to be maintained.

18. In view of the aforesaid discussion, the relevant provisions of law, as well as judicial pronouncements referred to hereinabove, it is evident that the petitioner has an alternative remedy which could have been availed of by him, before invoking the writ jurisdiction of this Court. Matters relating to revenue proceedings usually require minute examination of the factual aspects after verification of the relevant record, before a finding of fact can be arrived at. In such cases, it is appropriate that the alternative statutory remedy, if available, be resorted to at the first instance so that, at a later stage, the Court will get the benefit of the reasonings and findings of the authorities / Courts below. When a procedure is provided for by a statute, it is meant to be followed and an alternative remedy should not, ordinarily, be by-passed by straightaway filing a petition under Article 226 and 227 of the Constitution of India.

19. For the aforesaid reasons, in my considered opinion, this is not a case where jurisdiction under Article 226 of the Constitution should be exercised. However, it

is open to the petitioner to avail of the alternative remedy, if so desired. It is clarified that this Court has not gone into the merits of the matter and no observation made in this order may be construed as touching upon the same.

20. The writ petitions are, therefore, dismissed. Notice is discharged. There shall be no orders as to costs.

21. In view of dismissal of writ petitions, Civil Application No. 7325 of 2007 is also dismissed. Notice is discharged.

22. At this state, Mr. Nalin K. Thakker, learned Counsel for the petitioner has submitted that this Court may direct status-quo to be maintained for some time. Since the prayer made by the learned Counsel for the petitioner is a reasonable one, it is directed that status-quo, as it exists today, will be maintained by the parties till 21.4.2008.