
(2009) 07 GUJ CK 0072

In the Gujarat High Court

Case No : Special Civil Application No. 14326 of 2008

Saurashtra Chemicals Ltd.

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Gujarat Town Planning and Urban Development (Amendment) Act, 2001 — Section 6(B)

Gujarat Town Planning and Urban Development Act, 1976 — Section 6B

Citation : (2009) 07 GUJ CK 0072

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : K.S. Nanavati and Kunal Nanavati for Nanavati Associates, for the Appellant; N.J. Shah, AGP for Respondent Nos. 1 - 2 and Premal R. Joshi, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—Learned advocate for the petitioner has proposed a draft amendment and sought permission to amend the petition. Permission granted to amend the petition. The petition is taken up for final hearing and disposal today in light of the view that the Court is inclined to adopt after hearing the learned Counsel appearing for the parties.

2. RULE. Learned advocates appearing for respective respondents are directed to waive service of rule.

3. The brief facts are that the petitioner-Company applied for permission to put up construction as per applications moved on 28.02.2008 and 12.03.2008. On 18.10.2008 the respondent-Nagarpalika appears to have granted the permission as prayed for. On 06.11.2008 Chief Officer of respondent-Nagarpalika intimated that the permission granted on 18.10.2008 has been suspended till further orders.

4. The petitioner thereupon approached the Court praying for the following reliefs:

That Your Lordships may be pleased to quash and set aside the impugned notices Annexed at Annexure A and the proceedings No. 4/2008 initiated u/s 6B of the Act.

5. That pending the hearing and final disposal of the matter, Your Lordships be pleased to stay the execution and operation of the impugned notices at Annexure A and further be pleased to stay the proceedings initiated by the Respondent Authorities u/s 6(B) of the Act;

6. Such other and further reliefs as may be deemed just and proper in the facts and circumstances of the present case may kindly be granted;

7. Subsequently vide prayer for amendment, which came to be granted on 03.03.2009, following two additional prayers were made:

(AA) Your Lordships be pleased to issue a writ of Certiorari and/or mandamus or a writ in the nature of certiorari and/or mandamus or any other writ, order or Direction quashing and setting aside the impugned orders cancelling the permission of the construction annexed hereinabove as ANN.A-1.

(BB) Pending the final disposal of the present petition Your Lordships be pleased to stay/suspend the operation and execution of the impugned notices annexed hereto and marked as ANNEXURE: A-1.

8. In the meantime, before the amendment was carried out while issuing notice, following order came to be made by the Court on 05.12.2008:

Heard Shri K.S. Nanavati, learned senior counsel with Mr. Prabhav Mehta, learned advocate for the petitioner.

Shri K.S. Nanavati, learned senior counsel for the petitioner submits that permission for development, as envisaged under the Act i.e. Gujarat Town Planning and Urban Development Act, 1976 was granted by the Chairman, Town Planning Committee, Porbandar Nagarpalika on certain conditions. Later on, by impugned notice dated 6.11.2008, the Chief Officer, Porbandar Nagarpalika has given a notice/order that till the District Collector takes a decision u/s 6(B) of the Gujarat Town Planning and Urban Development (Amendment) Act, 2001, no further construction to be made.

The above impugned action of the Chief Officer, Porbandar Nagarpalika according to learned senior counsel is expressly illegal and contrary to principles of natural justice and the petitioner has no knowledge about the proceedings, if any, pending before the District Collector, Porbandar.

Considering the above submissions, Notice returnable on 23rd December, 2008.

Meanwhile, ad interim relief in terms of para 3(B) subject to further order that may be passed.

Direct service is permitted.

9. The grievance of the petitioner put forth by way of amendment is that the Collector has passed order on 29.11.2008 in terms of provisions of Section 6B of the Gujarat Town Planning and Urban Development Act, 1976 (the Act) cancelling the resolution dated 10.10.2008 bearing Nos. 245 and 246 made by the Town Planning Committee, Porbandar Nagarpalika without hearing the petitioner. It was further submitted that the order made by the Collector on 29.11.2008 has never been served upon the petitioner and the petitioner came to know about the said order for the first time only when the order came to be annexed with the affidavit-in-reply filed on behalf of respondent No. 1. That the order itself reveals that the petitioner was never made a party in the proceedings before the Collector and has thus not been given any opportunity of hearing before cancelling the resolutions of the Town Planning Committee of Porbandar Nagarpalika. Learned Counsel, therefore, submitted that, in the circumstances, the order made by the Collector is required to be quashed and set aside.

10. On behalf of respondent No. 1 learned Assistant Government Pleader invited attention to Paragraph No. 15 of the affidavit-in-reply dated 17.01.2009 to contend that if the petitioner is aggrieved by the order of the Collector an alternative remedy is available in accordance with the provisions of the Act and the petitioner having not availed the alternative remedy at the appropriate time, no challenge should be entertained. Responding to the submission that the order of the Collector was not served on the petitioner, learned Assistant Government Pleader submitted that the petitioner was intimated by the Nagarpalika, Porbandar about cancellation of the permission and the order had been duly served on the parties before the Collector.

11. Learned Counsel appearing on behalf of the respondent-Nagarpalika was not in a position to show from the record that a copy of the order of the Collector, which was received by the Nagarpalika, was served on the petitioner by the Nagarpalika. It was submitted that the petitioner was aware about the permission having been cancelled and hence, there was no question of the petitioner claiming any violation of principles of natural justice.

12. Having heard the parties it becomes apparent that the notice dated 03.11.2008 is in fact an interim order made by the Collector in T.P. Case No. 4 of 2008 wherein the parties are the State Government on one side and on the other side Chief Officer, Porbandar Nagarpalika and Deputy Town Planner, Porbandar Nagarpalika. The petitioner is not shown to be a party. In fact the said notice-cum-order, which fixed the hearing on 18.11.2008, categorically records that the concerned persons/affected persons are not required to remain present at the time of hearing. This interim order-cum-notice appears at Annexure-R3 of the affidavit-in-reply filed on behalf of the Collector. The order dated 29.11.2008, which appears at Annexure-R4, also indicates that the petitioner is not a party to the proceedings nor has the petitioner been called upon to make any submission before the permission granted to the petitioner is cancelled.

13. In the aforesaid facts and circumstances of the case ends of justice would be served if the following directions are made, without entering into merits of the controversy.

14. Impugned order dated 29.11.2008 made by District Collector, Porbandar is quashed and set aside. As a consequence earlier order dated 03.11.2008 and communication dated 06.11.2008 issued by the Chief Officer, Porbandar Nagarpalika are also quashed and set aside.

15. It will be open to the District Collector to initiate fresh proceedings in accordance with law, after giving opportunity of hearing to all the interested parties, including the petitioner before framing any order under the provisions of the Act.

16. The petition is accordingly allowed on this limited count. Rule made absolute. There shall be no order as to costs.