

(2019) 07 GUJ CK 0043

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 2138 Of 2017 In R/Special Civil
Application No. 15000 Of 2016

Savorttam Textil Mills Pvt Ltd

APPELLANT

Vs

State Of Gujarat & 2 Others

RESPONDENT

Date of Decision : 10-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 GUJ CK 0043

Hon'ble Judges : Anant S. Dave, J;Biren Vaishnav, J

Bench : Division Bench

Advocate : Dhaval M Barot, Chintan Dave

Final Decision : Dismissed

Judgement

Anant S. Dave, J

1. Challenge in this appeal under Clause-15 of the Letters Patent is to the order dated 11.9.2017 passed by learned Single Judge in Special Civil

Application No. 15000 of 2016, whereby the prayer of the appellant-original petitioner seeking direction against the respondents to renew the lease and

also grant of stay restraining the respondents from dispossessing the petitioner from the land came to be rejected.

2. It is not in dispute that lease was granted to the petitioner as early as in the year 1982, based on conditions contained in the lease deed and that too,

for a period of 10 years. The above lease was granted for the land bearing Survey Nos. 433 and 434 of village Vav, Taluka Satlasana for minor

minerals, viz., sand with specific purposes provided in Part-2 of the lease deed so as to carry on construction, namely, factory shed, godown, quarters

for workers etc. It is the case of the petitioner that Assistant Geologist, vide

communication dated 25th October, 1982 informed the General Manager of District Industries Centre that the petitioner had been granted liberties to carry on any type of construction activity over the land allotted by way of quarry lease. Chief Inspector of Factories granted license under the provisions of the Factories Act, 1948 and utilization thereof was to start from 29th October, 1988. Even the Gujarat Pollution Control Board issued No Objection Certificate with respect to expansion of existing industrial unit in favour of the petitioner on 30th May, 1991.

3. It transpires that order was passed by the Collector, Mehsana for cancellation of lease on 20th May, 1996, against which appeal was preferred before the appellate authority under the provisions of the Mines and Minerals (Development and Regulation) Act 1957. The said appeal was rejected by the appellate authority vide order dated 11th October, 1999 and the order of the Collector, Mehsana, cancelling the lease was upheld. Thereafter, revision application was preferred by the appellant, whereby the order dated 20th May, 1996 passed by the Collector, Mehsana as well as the order dated 11th October, 1999 passed by the appellate authority came to be quashed and set aside vide order dated 13th March, 2008 and the matter was remanded to the Collector, Mehsana with direction to pass order for renewal of the lease of the petitioner after making site inspection regarding progress of the project, upon payment of outstanding dues by the petitioner.

4. Respondent No.3, upon verification of the site inspection report, thought it fit not to renew the lease and again order was passed on 5th October, 2013, rejecting the application for renewal. Against the said revision application was filed, which was rejected vide order dated 24th June, 2016.

5. Upon challenge to the order dated 24th June, 2016 passed by Collector, Mehsana before this Court by way of special civil application, the learned Single Judge dismissed the same vide order impugned in this appeal.

6. It is profitable to refer to paragraphs 4 and 5 of the order passed by learned Single Judge in the writ petition, which are reproduced hereunder:

4. Learned AGP Ms. Jyoti Bhatt referred to the affidavit-in reply and pointedly referred to Annexure-5 and submitted that the construction of the

factory would not be permissible. In fact, she referred to the impugned order which clearly records that the lease was granted for excavation of the

sand whereas the petitioner has put up construction of the factory premises,

office premises, plan and machinery in violation of the terms and conditions. She referred to the affidavit-in-reply and submitted that the lease deed of 1982, which was terminated in the year 1992, is sought to be now questioned in this petition. It was submitted that in such matters where lease has been terminated, now cannot be renewed in light of the new policy.

5. In view of this rival submissions it is required to be stated that the petitioner is seeking to challenge the impugned order at Annexure-A on different

grounds contending that there is shift in the stand of the Government or the authority. However, as it is evident from the record the lease which was

granted in 1982 and terminated in 1992 is made the subject matter of litigation earlier revision application was filed which was remanded and

thereafter, again the order was passed by the Collector, which was carried out by way of revision and the impugned order came to be passed. This

itself would suggest that the petitioner has tried to prolong his possession which is not permissible. The lease has been granted timely for the

excavation of the sand and it appears that he has got some license or permission for the factory premises in form No.4; meaning thereby the

construction of the factory or such premises has been made and thereafter decided that he has been using for the cement plant.â??

7. Thus, according to the learned Single Judge, in view of breach of certain conditions of lease deed as well as the policy of the government pertaining

to grant of lease only by way of e-auction, no relief could be granted to the petitioner in exercise of power under Article 226 of the Constitution of

India. The writ-petition, therefore, came to be dismissed.

8. Mr. D.M. Barot, learned advocate, appearing for the appellant would contend that by passing the order dated 5th October, 2013, the Collector

ignored mandatory direction of the revisional authority to renew the lease and even site inspection was carried out noticing certain construction, which

was permissible pursuant to communication addressed as early as on 25th October, 1982 by the Assistant Geologist, Mehsana to the General

Manager, District Industries Centre, Mehsana, which was in accordance with law and carried on under the Factories Act, 1948, and it was inbuilt

condition in the lease deed to provide shed to factory and houses for workers. It is therefore, submitted that District Collector, Mehsana was duty

bound to carry out the direction issued by the revisional authority. It is further

submitted that new policy framed by the State Government, as such, cannot have any significance. That upon an application made for renewal of lease, which was granted in favour of the petitioner since 1982 and in time renewal applications were preferred by the petitioner before the competent authority, which ultimately attained finality in the year 2008 wherein revisional authority allowed the revision application in favour of the petitioner directing the Collector, Mehsana to renew the lease. By taking us to other contentions raised before the learned Single Judge, it is submitted that contention raised in the writ-petition on merits of the matter, namely, grant of renewal of lease, is not considered by the learned Single Judge and in the absence of new policy document for grant of lease by the State Government, the learned Single Judge could not have passed the order even on merit. It is, therefore, submitted that the order of the learned Single Judge deserves to be quashed and set aside.

9. Mr. Chintan Dave, learned Assistant Government Pleader, appearing for the respondents, supported the order passed by the learned Single Judge.

He would further contend that chronology of events will make it clear that the petitioner lost all rights when the lease deed came to be cancelled and

the order passed by revisional authority in the 2008 gone to the extent of seeking site verification and directing to take a decision upon reasonable

satisfaction. That it was mandatory on the part of respondent No.3-Collector to renew the lease by relying on the new policy of the State Government

framed under the Gujarat Minor Minerals Concession Rules, 2017, which came into force on 24.5.2017. Lease is to be granted through electronic

auction process as prescribed under the rules and therefore, no right accrued in favour of the petitioner for seeking renewal of the lease. He,

therefore, submitted that the order passed by the learned Single Judge need not be interfered with and the appeal may be dismissed.

10. Heard learned counsel for parties.

11. From the record, it is revealed that pursuant to the order passed in revision application, remanding the matter to the Collector, Mehsana with a

direction to pass order after site inspection regarding the progress of the project, upon payment of outstanding dues by the petitioner, when the site

inspection was made, it was noticed that the petitioner had continued to breach of condition of lease. It was further noticed that there was no progress

of the project, and therefore, by order dated 5th October, 2013, the Collector, Mehsana rejected the renewal application of the petitioner. Even in the order dated 24th June, 2016 passed by the revisional authority in the revision application made by the petitioner, it was observed that there was breach of condition of lease, that lease granted to the petitioner was for excavation of minor minerals but the petitioner had constructed factory premises, office premises, administrative blocks, and thus, it had committed breach of condition of lease.

12. Affidavit in compliance is also filed by the respondent-State in compliance of the order dated 9th January, 2019, wherein, this Court recorded the statement of learned Assistant Government Pleader that there is change in the policy and as per the same, sand leases can be granted only by way of auction. Learned Assistant Government Pleader was, therefore, directed to place copy of the policy before the Court. By the above affidavit dated 10th July, 2019, the respondent-State has placed Gujarat Minor Mineral Concession Rules, 2017. As per the said rules, any quarry lease shall be granted by the Government through electronic auction process. It is further stated in the said Rules that all applications for grant of a quarry lease received prior to the date of commencement of these Rules shall become ineligible.

13. Thus, there was breach of condition of lease granted to the petitioner and even in the wake of new policy framed by the Government of Gujarat for grant of lease only by e-auction, the petitioner cannot claim renewal or grant of lease.

14. We are, therefore, in complete agreement with findings recorded by the learned Single Judge in the impugned order. The appeal is, therefore, dismissed.