

(2008) 12 GUJ CK 0013
In the Gujarat High Court

Case No : Letters Patent Appeal No. 997 of 1996 in Special Civil Application No. 9818 of 1995

Shah and Patel Construction Co.

APPELLANT

Vs

Baroda Municipal Corporation

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

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

Citation : (2009) 1 GLH 663 : (2009) 3 GLR 2040

Hon'ble Judges : Mohit S. Shah, J;H.N. Devani, J

Bench : Division Bench

Advocate : A.R. Majmudar, for the Appellant; Pranav G. Desai, for the Respondent

Final Decision : Dismissed

Judgement

Mohit S. Shah, J.—This appeal under Clause 15 of Utters Patent is preferred against the judgment dated 22nd July, 1996 of the learned single Judge dismissing the writ petition filed by the appellant, hereinafter referred to as the petitioner, for challenging Resolution Nos. 4 and 5 dated 22nd February, 1996 passed by the Standing Committee and Resolution No. 177 dated 6th March, 1996 of the General Board of the Baroda Municipal Corporation.

2. The broad facts of the case in dispute are that the land admeasuring 10599 sq.mtrs. in the city of Baroda being final Plot No. 76 of Town Planning Scheme No. 1 was reserved for the purpose of neighbourhood centre (local shops, library, public hall, open space, electric sub-station). The Baroda Municipal Corporation, hereinafter referred to as "the Corporation" issued an advertisement in the newspaper dated 5th June, 1994 offering the above parcel of land on lease basis. The auction was to be held on 30th June, 1994. At the" auction, the petitioner herein offered the highest bid of Rs. 1900/- per sq.mtr. It appears that the petitioner requested the Municipal Commissioner to alter the terms and

conditions of the auction and seven such alterations were suggested. The Municipal Commissioner accepted four suggestions and partly accepted another suggestion. The most important alteration suggested by the petitioner and accepted by the Municipal Commissioner was as follows:

Final Plot No. 76 of T.P. Scheme No. 1 is reserved for "neighbourhood centre". It will be responsibility of the Corporation to change the purpose and grant permission for residential, commercial and high-rise building.

3. The auction proceedings incorporating the above alterations were placed before the Administrator of the Corporation exercising powers as the Standing Committee on 1st July, 1994 "for information" by a Resolution dated 1st July, 1994. The Administrator exercising powers of the Standing Committee recorded on the proceedings as "taken note of". The file thereafter was placed before the Administrator exercising the powers of the General Board of the Corporation and by Resolution dated 8th July, 1994, the Administrator exercising the powers of the General Board accepted the recommendations of the Standing Committee.

4. Accordingly on 11th July, 1994, the petitioner deposited 10% of the amount which worked out to Rs. 28,68,810/- (Rupees twenty eight lacs sixty eight thousand eight hundred and ten only). The balance amount was required to be paid in three quarterly instalments. On 22nd July, 1994 an agreement (Banakhat) was executed between the petitioner and the Corporation.

5. A writ petition came to be filed challenging the above Resolutions of the Administrator and the auction proceedings held on 30-6-1994. The petitioner therein contended that in the advertisement it was shown that final Plot No. 76 was reserved for the purpose of neighbourhood centre and there was no mention in the advertisement that the Corporation will get aforesaid reservation cancelled and make the plot utilizable for residential, commercial and high-rise building purpose. The condition of auction was altered during the auction proceedings. Had such alteration appeared in the advertisement, the petitioner and many others would also have participated in the auction proceedings and offered much higher consideration than the amount offered by the appellant/petitioner. It was contended that there was a general disinclination to take the plot for utilizing it only as a neighbourhood centre. This Court entertained the petition and by order dated 7-9-1994 granted ad interim stay restraining the Corporation from handing over the possession and transferring the plot to the appellant/petitioner (respondent in the previous petition). It appears that the aforesaid ad interim stay was continued but upon election being held of the Corporation, the elected body took over on 1-7-1995 and the petition came to be dismissed as withdrawn on 5-7-1995. Thereafter, the petitioner approached the respondent-Corporation for taking necessary steps for acting upon the agreement dated 22-7-1994. Since, nothing was done by the Corporation, the present petitioner filed this petition giving rise to the present appeal and challenged the inaction on the part of the Corporation in not implementing and executing the terms and conditions of the public auction held on 30-6-1994 and in not giving the plot to the

petitioner. The learned single Judge of this Court passed order dated 11-1-1996 directing the Municipal Commissioner to take a decision on the petitioner's representation which was pending before the Commissioner. The matter was considered by the Standing Committee at its meeting held on 22-2-1996 and it was decided to reject the petitioner's representation for the following reasons:

(1) The Municipal Commissioner, without obtaining prior approval of the General Board, has made changes in the conditions of auction, which is beyond the authority of the Municipal Commissioner.

(2) Even then, if the Municipal Commissioner thought it fit to make changes in the conditions of auction, after obtaining prior permission of the General Board, in the interest of justice, he, after prior publication of the changed conditions, should give advertisement for holding auction afresh.

(3) If the Municipal Commissioner had followed the above procedure at the relevant time, there were sufficient possibilities that the Corporation would have obtained higher price of these lands, which standards have not been maintained in the present case.

(4) The power regarding taking a decision regarding change of object is vested in the V.U.D.A. and the State Government, and does not fall within the authority of the Municipal Commissioner.

(5) Considering all the aforesaid reasons and circumstances, the Standing Committee is of the view that the Municipal Commissioner be directed to cancel the present auction and return the amount deposited towards the auction till date.

6. The said Resolution of the Standing Committee also came to be approved by the General Board of the Corporation on 6th March, 1996 in the following terms:

Perused the submission received from the Municipal Commissioner.

Took the recommendation of the Standing Committee into consideration.

Over and above this, perused all the relevant papers produced in the present case.

Discussed. After careful consideration, it was decided to cancel the auction held and return the amount deposited towards the auction.

7. The present petition thereafter came to be amended for challenging the aforesaid resolution also. After hearing the learned Counsel for the parties, the learned single Judge dismissed the petition after giving the following findings:

(1) The power of the Municipal Commissioner to lease or sell the immovable property of the Corporation is subject to the sanction of the Standing Committee as provided in Section 79(c). Hence, the plot in question could not have been sold by the Municipal Commissioner on the altered condition without the sanction of the Standing Committee.

(2) The Commissioner had merely placed the auction proceedings before the Administrator exercising the powers of the Standing Committee on 1-7-1994 while the Administrator had merely recorded "taken note of". This did not amount to sanction of the proposal made by the Commissioner. Hence, the observation "recommendations of the Standing Committee accepted" also cannot be treated as sanction of the altered ., conditions

(3) In any view of the matter, the alterations in the terms and conditions of auction were material. If the altered conditions were indicated in the advertisement, many other people would have submitted their offers for much higher amounts as the party would be permitted to construct commercial complex, residential building, high-rise building without the onerous obligation of constructing public hall etc. to constitute a neighbourhood centre. In absence of any public advertisement containing such altered conditions, the previous decision to enter into an agreement with the petitioner on 22-7-1994 was not legal. The Commissioner could not have altered or changed the auction conditions on the spot. A decision in this regard could have been taken only by the General Board and in that event also it was necessary to give fresh advertisement incorporating the altered conditions.

8. In view of the above, cancellation of the agreement without giving an opportunity of hearing to the petitioner was not illegal because in any view of the matter during pendency of the petition the petitioner was given an opportunity to make a representation and the same was considered by the Corporation. Thereafter also, a full-fledged hearing was given by the Court on the merits of the case and relying on the decision of the Hon"ble Apex Court in the case of The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, the learned single held that the decision was not vitiated in absence of any hearing given prior to the decision. The decision of the Corporation was not mala fide. The decision of the Standing Committee as well as of the General Board of the respondent-Corporation was unanimous and the said Resolution was moved by the Councillors belonging to the Ruling party as well as the opposite party and independent Councillors also.

9. Mr. Mihir Thakore, learned Senior Counsel with Mr. A, R. Majmudar for the appellant has made the following submissions at the hearing of this appeal:

(1) The Municipal Commissioner himself had settled the terms of the public auction before the advertisement, and therefore, the alteration of the conditions in the public auction was not required to be approved by the Standing Committee or the General Board.

(2) In any view of the matter, the Standing Committee and General Board had approved the alteration made by the Municipal Commissioner before the Corporation entered into the agreement with the petitioner on 22-7-1994.

(3) The Corporation could not have unilaterally decided to cancel the agreement dated 22-7-1994.

(4) The principle of promissory estoppel would also apply. As the petitioner had paid 10% of the price/premium and the petitioner had thus acted upon the agreement, it was not open to the Corporation to resile from the contract. Reliance has been placed on the decision of the Hon''ble Apex Court in the case of Popcorn Entertainment and Another Vs. City Industrial Development Corpn. and Another, and in the case of Sunil Pannalal Banthia and Ors. v. C.I.D.CO. of Sunil Pannalal Banthia and Others Vs. City and Industrial Development Corpn. of Maharashtra Ltd. and Another,

10. Mr. S. N. Shelat, learned Senior Counsel appearing with Mr. Pranav G. Desai for the respondent-Corporation, has strongly resisted the appeal. At the outset, it is submitted that the relief claimed in the petition is in the nature of a prayer for specific performance of contract, which cannot be granted in a petition under Article 226 of the Constitution of India. It is further submitted that the Municipal Commissioner had no authority to change the conditions of auction and that a decision in that regard could only be taken by the General Body and that even if such change of conditions was approved by the General Body, a fresh auction notice would be required to be published incorporating the changed conditions. It is accordingly submitted that the auction proceedings being illegal and de hors the powers of the Commissioner have rightly been cancelled by the Corporation. Attention is drawn to the Resolution dated 1st May, 1994 passed by the Administrator acting as the Standing Committee to point out that by the said resolution the proceedings have only been taken note of and that the same have not been approved or sanctioned. It is argued that in absence of approval of the General Body, it was not permissible for the Commissioner to change the conditions of auction. That the action of the Commissioner being illegal and contrary to the provisions of the B.P.M.C. Act had rightly been cancelled by the Corporation. It was urged that the learned single Judge has given cogent and sufficient findings for dismissing the petition filed by the appellant and the same did not warrant any intervention by this Court.

11. A perusal of the auction notice (page 67) shows that the Plot in question was to be given on lease basis for the purpose of neighbourhood centre, local shops, library, public hall, open space, electric substation. One of the conditions of the auction was that leasehold rights in the land would be given for a period of 99 years subject to the conditions of auction. It was pursuant to the said auction notice that the appellant had participated in the auction. The appellant was the highest bidder insofar as the plot in question is concerned; however, it appears that the appellant had put up six counter-conditions, stating that they would take the land only if the said conditions are accepted. The main condition put forward by the appellant was that in the Akota Town Planning Scheme No. 2 (T.P. 1, Final Plot No. 76) the land is designated as neighbourhood centre; it shall be the responsibility of the Corporation to change the same and grant permission for residential, commercial and high-rise construction and pass the plans. Thus, the counter-condition was contrary to the very basic condition of the auction, namely that the plot in question was to be given by way of auction for the purpose of

neighbourhood centre. Despite the aforesaid position, the Municipal Commissioner accepted conditions Nos. 1, 2, 5 and 6 in toto whereas condition No. 3 was partly accepted. The Municipal Commissioner thereafter placed the proceedings before the Standing Committee, which at the relevant time consisted of the Administrator, as there was no elected body. The Standing Committee passed Resolution No. 156 dated 1st July, 1994, taking note of the proceedings (page 77). This Resolution was placed before the General Body, which again consisted of the Administrator alone. The General Body vide Resolution No. 108 dated 1st July, 1994 approved of the Resolution passed by the Standing Committee. Thereafter, the Municipal Commissioner proceeded on the basis that the proceedings have been sanctioned by the Standing Committee as well as the General Body and vide communication dated 6th July, 1994 the Deputy Municipal Commissioner (Administration) requested the appellant to deposit 10% of the amount of the total price i.e. Rs. 28,68,810-00 as per the terms and consent terms. Vide communication dated 11th July, 1994, the appellant informed the Deputy Municipal Commissioner they had deposited Rs. 28,68,810-00 on 11-7-1994 and that they have deposited the said amount only upon his approving all the conditions suggested by them. Subsequently, a leasehold agreement came to be executed between the appellant and the Vadodara Municipal Corporation on 22nd July, 1994.

12. At this stage, the resolution of the Administrator dated 7-7-1994 and the auction held on 30-6-1994 came to be challenged by way of a writ petition before this Court on the ground that in the advertisement, it was shown that Final Plot No. 76 was reserved for neighbourhood centre and that it was nowhere stated in the advertisement that the Corporation would get the purpose changed for using the same for residential, commercial and high-rise constructions. That had this fact been disclosed, the petitioner therein would also have participated and offered higher consideration than the appellant herein. By an order dated 7th September, 1994 this Court granted ad-interim relief restraining the Corporation from giving possession and transferring Plot No. 76 in favour of the appellant. Thereafter, the elected body took over on 1-7-1995 and the said petition was dismissed as withdrawn and the interim relief was vacated. Upon dismissal of the petition and vacation of interim relief, the appellant approached the Corporation for implementation and execution of the public auction as per the agreed terms and conditions. However, there was no response from the Corporation, hence, the appellant moved this Court by way of the present petition.

13. During the pendency of the petition, the learned single Judge had directed the Municipal Commissioner to take a decision in the matter and pass a speaking order. The Municipal Commissioner, accordingly passed a speaking order wherein it is specifically stated that as there was a change in the conditions of auction from neighbourhood centre to residential, commercial and high-rise buildings and also to obtain N.A. permission, the Commissioner had thought it fit to resubmit the proposal to the Standing Committee in view of the fact that on the earlier occasion when the proceedings were placed before the Standing Committee, the

Standing Committee had only taken note of the same, which does not amount to according approval to the proposal. Accordingly, the matter was placed before the Standing Committee, which in its meeting held on 22-2-1996 was of the view that it was beyond the competence of the Municipal Commissioner to alter the conditions of auction without prior approval of the General Board. Besides, after obtaining the approval for altering the conditions of auction, a fresh advertisement ought to have been issued in the larger public interest. The Standing Committee was also of the view that change of purpose in the Town Planning Scheme was beyond the competence of the Municipal Commissioner and that such decision could only be taken by the concerned Area Development Authority or the State Government. The Standing Committee, therefore, resolved to cancel the auction proceedings and place the same before the General Body. The General body vide Resolution No. 177 dated 6th March,, 1996 approved the Resolution passed by the Standing Committee.

14. Upon an overall view of the matter, it is apparent that the auction was for the grant of leasehold rights for neighbourhood centre etc. as specifically stated in the auction notice. This was a basic condition of the auction, variation of which would change the very basis thereof. Section 79 of the Bombay Provincial Municipal Corporations Act, 1949 contains provisions governing the disposal of municipal property. Sub-clause (c) thereof which is relevant for the present purpose lays down that "with the sanction of the Corporation the Commissioner may lease, sell, let out on hire or otherwise convey any property, movable or immovable, belonging to the Corporation". Thus, before giving immovable property on lease, it was incumbent upon the Commissioner to obtain the sanction of the Corporation. Whereas in the facts of the present case, the Standing Committee had only taken note of the proceedings placed before it and it was this Resolution, which was approved by the General Body. Thus, the Corporation had not sanctioned the alterations made in the conditions of auction. Hence, the Municipal Commissioner while permitting change of conditions of auction had changed the basic condition of auction without putting other interested persons to notice and without prior approval of the General Body. This action of the Municipal Commissioner being de hors his powers and being beyond the scope of powers of even the General Body inasmuch as change of purpose in the Town Planning Scheme does not fall within the purview of the powers vested in the Corporation, is bad in law, invalid and illegal and contrary to public policy and as such has rightly been cancelled by the General Body. The contention that as the Municipal Commissioner had himself settled the terms of the auction, hence, the alteration of conditions was not required to be approved by the Standing Committee and the General Body, therefore, cannot be accepted. The learned Counsel for the respondent-Corporation is right in contending that in case of such a drastic change in condition, a fresh advertisement was required to be issued which would have fetched much higher offers. The acceptance of the appellant's offer together with the conditions stipulated by the appellant, being opposed to public interest, has rightly been set aside by the Corporation. The

contention that the Standing Committee and the General Body had approved the alteration made by the Commissioner also deserves to be rejected inasmuch as the Administrator acting as the Standing Committee had only taken note of the proceedings and it was this resolution taking note of the proceedings that had been approved by the Administrator acting as the General Body. Thus, what was approved of by the General Body was only the resolution taking note of the proceedings and by no stretch of imagination can it be said that the General Body had approved the alterations made by the Commissioner...

15. As regards the contention that the Corporation could not have unilaterally decided to cancel the agreement dated 22nd July, 1994, the learned single Judge has held that the reasons given for cancellation of the resolution have been argued before this Court in great detail. Thus, in view of the fact that the impugned orders have been passed during the pendency of the petition and a full-fledged hearing has been given on the merits of the case, the impugned resolution cannot be said to be bad on the ground that the petitioner was not given an opportunity of hearing by the Standing Committee or the General Body of the respondent-Corporation. The learned single Judge had placed reliance upon a decision of the Supreme Court in the case of *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, wherein it has been held that if fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential procedural propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. We are in complete agreement with the reasoning adopted by the learned single Judge and find no reason to take a different view, as in a catena of subsequent decisions also the Hon'ble Supreme Court has taken the same view.

16. The decision of the Supreme Court in the case of *Sunil Pannalal Banthia and Others Vs. City and Industrial Development Corpn. of Maharashtra Ltd. and Another*, on which reliance has been placed on behalf of the appellant also does not carry the case of the appellant any further as in the facts of the said case the appellants therein had expended large sums of money towards the construction which had progressed to some extent, which is not so in the present case. In the facts of the present case, the appellant has deposited 10% of the total amount and no irreversible equities have been created in favour of the appellant. Besides in the facts of the said case, the Court has found that the allotment had been made in accordance with the Regulations, whereas in the facts of the present case; the Commissioner has exceeded his authority and permitted change in the basic conditions of the auction. In the circumstances, no case has been made out for invoking the doctrine of promissory estoppel. The decision of the Supreme Court in the case of *Popcorn Entertainment and Another Vs. City Industrial Development Corpn. and Another*, also does not support the case of the appellant as in the facts of the said case in all 65 plots were allotted on first-come-first-serve basis under the category of social facility without issuance of tender and none of the allotments had been cancelled by C.I.D.CO., whereas allotment in

favour of the appellants therein was cancelled on ground that no tender had been issued. The Court: held that allotment made in favour of the appellants cannot be faulted in a discriminatory manner by singling out the appellants.

17. In view of the above discussion as well as for the reasons stated by the learned single Judge we do not find any substance in the contentions urged on behalf of appellant. The appeal, therefore, deserves to be dismissed.

18. At this stage, the learned Counsel for the appellant submits that since the appellant had deposited 10% of the auction amount with the Corporation in the year 1994, hence the Corporation may be directed to refund the said amount with interest @ 18% per annum from the date of deposit till the date of refund.

19. The learned Counsel for the Corporation opposes the request and submits that immediately after cancelling the agreement pursuant to the Corporation Resolution No. 177 dated 6th March, 1996, the Corporation had called upon the petitioner on 5-7-1996 to collect the amount, but the appellant himself did not come forward to collect the deposited amount, and therefore, the Corporation may not be saddled with any liability to pay interest to the appellant.

20. In the facts and circumstances of the case while we direct the Corporation to refund the amount of deposit with 9% interest from the date of deposit till 4-7-1996, for the subsequent period from 5-7-1996 till the date of refund, the Corporation shall pay interest @ 6% per annum.

21. Subject to the above directions regarding refund of the deposit amount with interest at the above rates, the appeal is dismissed.