

(2014) 09 GUJ CK 0020
In the Gujarat High Court

Case No : Special Civil Application No. 8187 of 2014

Shaikh Isratbanu Mohmad Samir

APPELLANT

Vs

Vadodara Municipal Corporation

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226, 227

Citation : (2014) 09 GUJ CK 0020

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : M.A. Kharadi and Mahmood A. Madni, Advocate for the Appellant;
Maulik G. Nanavati, Advocate and Bharat Vyas, Asst. Government Pleader,
Advocate for the Respondent

Judgement

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Rajesh H Shukla, J.—present petition is filed by the petitioners under Articles 14, 19, 21, 226 and 226 of the Constitution of India as well as under the provisions of the Bombay Provincial Municipal Corporations Act and also under the Jawaharlal Nehru National Urban Renewal Mission for the prayers, inter alia, that the impugned order dated 9.6.2014 at Annexure-A may be quashed and set aside and direct the respondents to take a fresh decision in accordance with the policy at Annexure-A on the grounds stated in the petition.

2. The facts of the case briefly state are as follows:

2.1 The petitioners are the residents in Kamatipura, Fatehganj area of Vadorara for 40 years as claimed and the land on which they are residing is belonging to the Government and shown in the official record in the name of the Collector, Vadodara. It is claimed that the Union of India has, under the Jawaharlal Nehru National Urban Renewal Mission (hereinafter referred to as "JnNURM") policy, made an attempt for upliftment of the downtrodden and under the said policy it is aimed to provide pucca constructed housing units to the slum dwellers.

However, it is contended that under the scheme the local authority has been provided with the work of rehabilitation of such slum dwellers and they have undertaken to demolish the locality which has led to filing of the present petition. It is contended that the demolition of the premises occupied by the petitioners on the land will render them shelterless and therefore they have claimed that as per the JnNURM policy while allotting residential quarters the authorities are required to consider the livelihood of the allottees and to construct the premises at the existing site only. The details of the policy have been stated and they have also tried to focus on certain area like Kishanwadi contending that it is not suitable. It is specifically contended that the allotment made at Kishanwadi area is not suitable. At the same time it is also stated that the allotment has been made in the order dated 9.6.2014. The said allotments have been made to lady members of the family and they have been asked to vacate the existing premises and to occupy the allotted residences with immediate effect. Therefore the present petition has been filed.

3. An affidavit-in-reply as well as additional affidavit-in-reply has been filed by the respondent No. 1 Corporation. It has been specifically contended that an impression is sought to be created by the petitioners that they are being removed from the houses of their ownership in an arbitrary and illegal manner. However, it is contended that the land occupied by the petitioners belong to the government and the possession of the said land was never given to the petitioners and it is an unauthorized, illegal encroachment on the land. There are no facilities of road, drainage, sanitation etc. and the houses have been constructed without any permission or authority from the local authority. However, all the slum dwellers have been provided alternative accommodation which is developed by the respondent Corporation and therefore the present petition is not a bona fide one. It is also contended that as the petitioners have not approached with clean hands the petition deserves to be dismissed in limine. Reliance has been placed on the judgment of the Hon"ble Apex Court reported in Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others, It is also contended that the entire petition has been premised on the ground that the petitioners would be rendered homeless if the slums are demolished by the Corporation pursuant to the eviction order dated 9.6.2014. It is contended that the entire basis is ill-founded and factually incorrect.

4. It is specifically contended that as per the survey conducted by the Corporation in the year 2007-08 there were about 362 houses in the slum area. Out of these 362 houses, by draw system constructed houses have been allotted to 266 families who have applied for allotment of constructed dwelling units as back as in the year 2010. It is therefore contended that most of the petitioners have been already granted alternative accommodation and they have voluntarily chosen not to reside there. However, the contentions are sought to be raised that they would be rendered shelterless which is a misleading statement to only gain sympathy of the court. It is specifically stated that the petition is only an abuse of the process of law to subvert justice and the petition under Art. 226 and 227

may not be entertained. It is also stated that though the allegation about infringement of the fundamental rights under Art. 21 of the Constitution have been made, it is misconceived. It is specifically contended that acquisition of even a private land legitimately owned by a person is not a violation of constitutional or fundamental right. It is contended that the petitioners are not legitimate owners of the land from where they are sought to be removed and in fact they have made encroachment upon the government land. However, the petitioners are not rendered shelterless and they are provided alternative accommodation in another place and they are shifted into a place equipped with better basic amenities and sanitation facilities. It is therefore contended that constructed houses equipped with basic facilities are made available and still the petitioners or some of the people continue to reside in inhuman conditions and resort to such legal proceedings as an abuse of process only to insist that the respondent authority must construct dwelling units for them at the same place.

5. It is contended that as per the policy of the Government of India which require "the local authority has to start the project as provided under the policy for the rehabilitation of the slum dweller and that too at the same place" is incorrect and it is denied. It is contended that there is no such provision in the policy of the government making it compulsory for the local authority to rehabilitate the slum dwellers at the same place. It is specifically contended that the only requirement is to accommodate such slum dwellers by providing alternative accommodation. It is therefore contended that the choice of locality is made by the government depending upon the availability of land and feasibility of construction of the housing block over the land. It is specifically contended that "even the option of in situ rehabilitation of slum dwellers of Kamatipura was considered by the Corporation. In so far as the present slum is concerned, there are some huts in the river bank and most of the huts are situated on the bank of river Vishvamitri. Almost every year the area gets inundated with water in monsoon season..... The soil strength in the locality is also not congenial to construction of a multi storied block." After considering all these aspects it was felt that in situ construction is not practical or viable from engineering point of view and hence the demand or request of the residents for construction of housing scheme at the same location was rejected by the Corporation. Without prejudice, it is submitted that the only recognizable legal right, if any, of a slum dweller occupying government land is to get alternative accommodation and not accommodation at a place of his choice and desire. It is therefore contended that any such demand would result in subversion of justice and therefore the present petition deserves to be dismissed. Again, it has been specifically stated that the other alternative places like Kishanwadi and Dabhoi Road which are provided as an alternative accommodation are not suitable is misconceived. The apprehension about riots is also not justified and unfortunately an attempt is made to raise an apprehension which is not existing and thereby an attempt is made to frustrate the objective of the Corporation to rehabilitate such people under the policy of the Union of India.

6. There is an additional affidavit also referring to certain more details about the

JnNURM and it has been specifically stated that some of the petitioners who have been allotted the houses in the year 2010 in Kishanwadi have for the first time raised the grievance in 2014.

7. Heard learned advocate Shri Kharadi for the petitioners, learned counsel Shri Moulik Nanavati for respondent No. 1 Corporation and learned AGP Shri Bharat Vyas for the State.

8. Learned advocate Shri Kharadi has submitted that the land on which the hutments of the petitioners is situated does not belong to Vadodara Municipal Corporation (for short "VMC") and therefore they have no right to evict the petitioners. He also referred to the representations and the orders passed thereon. Learned advocate Shri Kharadi referred to the affidavit-in-reply and tried to submit that the soil test report which is relied upon stating that it does not permit such construction is incorrect. It was submitted that deliberately such report is not placed on record and in fact they have the opinion of a private engineer which is relied upon by learned advocate Shri Kharadi. He submitted that the policy of JnNURM is aimed at providing rehabilitation or better constructed premises to the hutment dwellers and therefore efforts should be made to rehabilitate people like the petitioners at the same place. He referred to the policy and tried to emphasize some of the paras to support his submission that they should make construction at the same land occupied by the petitioners for rehabilitation. He also tried so submit that the Corporation should not take any such stand by which the petitioners are unnecessarily put to harassment.

9. Learned counsel Shri Moulik Nanavati referred to the papers and has tried to reflect on the conduct of the petitioners stating that though they are rank encroachers on the government land who are sought to be rehabilitated pursuant to the policy of the Union of India under JnNURM the attitude is rigid and hostile rather than that of co-operation. He submitted that when the authority like the Corporation which is the nodal agency for implementing the policy of JnNURM are able to construct premises for rehabilitation of hutment dwellers like the petitioners and suitable accommodation is provided to them, the insistence is that the Corporation should construct the premises on the same land which is occupied by the petitioners by encroachment and they would not shift to any other place, which is improper and unreasonable. Learned counsel Shri Nanavati submitted that no right much less any fundamental right of the petitioners has been violated and in fact they are encroachers upon the government land. However, pursuant to the policy of JnNURM by which the government as a social measure makes effort to rehabilitate such slum dwellers by making pucca constructed units. Therefore, persons like the petitioners who are the slum dwellers need to cooperate and should shift to better premises with sanitation facilities rather than adopting such hostile attitude. He submitted that the impression which is sought to be created they are sought to be evicted or rendered shelterless is thoroughly misconceived and in fact even after the allotment in 2010 they have not shifted to the new premises and they are

enjoying both the ways inasmuch as the allotted premises they have taken and do not shift to the same. They are also not vacating this particular place which further delays the implementation of the programme under the same JnNURM for construction and rehabilitation. He submitted that the petitioners are also offered other alternative places but they have not acceded to the request. Learned counsel Shri Nanavati submitted that the other places like the Kishanwadi and Dabhoi Road which is claimed as alternative is not under the JnNURM and therefore if it is in a different scheme the criteria would be different and the petitioners have to fulfill that criteria and has also to come in queue with others similarly situated persons.

10. Therefore, learned counsel Shri Nanavati submitted that the petitioners cannot claim that they may be allotted such premises as an alternative for which they are not either eligible or they have not even applied and therefore when the agency which has to undertake such scheme is different like the State Government it may not be possible to accommodate them in other premises constructed under a different scheme by the State Government without fulfillment of the criteria. Therefore, learned counsel Shri Nanavati submitted that when alternative accommodation is provided the petitioners cannot make any grievance. However, instead of being satisfied they are giving a different choice for another place and in fact in the process it has not only created difficulty for the Corporation which is implementing the policy but it affects the rights of others also. He submitted that as per the order passed by the other Bench of the High Court in similar circumstances the respondent Corporation or the Government is required to make the allotment and the options which are being made available may also not remain available. He therefore strenuously submitted that it is in the interest of the petitioners themselves to occupy the premises which is offered to them without any reservation.

11. Learned counsel Shri Nanavati emphatically submitted that the persons like the petitioners cannot insisted how, when and where the government should make the construction of houses for the purpose of the policy and therefore the present petition may not be entertained once alternative accommodation is provided to them which is also allotted to them since 2010. He referred to the papers including Annexure-E which is referring to the order passed by the High Court in Special Civil Application No. 2317 of 2013 and has referred to the details about the other different places where either the proposed site is under development and some other place where the allotments are already being made. He has also referred to the order at Annexure-B.

12. Learned counsel Shri Nanavati has also referred to the additional affidavit filed by the petitioners and submitted that there are other schemes like Chief Minister's Housing Scheme which is based on public-private participation with different criteria which is required to be fulfilled and the cost as well as other relevant criteria are totally different. He therefore submitted that the petitioners cannot make a claim in any such scheme without getting themselves enrolled or

fulfillment of the criteria. He therefor submitted that the present petition may not be entertained.

13. In view of these rival submissions, it is required to be considered whether the present petition can be entertained.

14. From the facts which have been discussed hereinabove, it is evident that the petitioners are encroachers upon the government land having made their hutments. However, as a part of social measure, pursuant to the policy like the JnNURM, efforts are being made by the Union of India and the Corporation as an implementing agency to provide and rehabilitate such hutment dwellers with better facilities in constructed or pucca houses. Therefore, as a part of social measure for upliftment of the slum dwellers, the government has come out with such scheme and they have made an attempt to uplift such hutment dwellers with better living accommodation and with better amenities including sanitation facilities.

15. Therefore, the moot question is whether there is violation of any right of the petitioners much less any fundamental right particularly when it is aimed at providing them with better suitable alternative accommodation. It is not the case that they are rendered shelterless which would then stand on a different footing. Again, it has to be perceived in background of the broader constitutional objects which are perceived as social measure. Therefore, even if the petitioners may not have the right as slum dwellers encroaching upon the government land, efforts are made to rehabilitate them with suitable accommodation with better sanitation facilities. The policy itself is a social measure aimed at improving the standard of living of the people in the hutments under Art. 21 of the Constitution of India. In spite of such efforts, can it be thwarted at the instance of some few people because of their adamancy or some wrong notions about their right which are misplaced and whether they can be heard to say that the government or the authority like the Corporation who implement the policy in the manner suggested by them? Is it open for them to say that the Corporation or the Union of India should construct such premises under JnNURM at the same place on which they have made encroachment and give them constructed houses at the same place? The answer has to be in the negative as they cannot have any right, much less any fundamental right. In fact, it runs counter to the very spirit and the purpose of the social measure which is sought to be achieved by such policies which are sought to be implemented as a larger public purpose.

16. It is well-settled that the right of a person would come to an end the moment the right of the other starts. Even in case of *Olga Tellis* [(1985) 3 SCC 545], the Hon'ble Apex Court has made an observation that even if a person has a right to carry on trade or busies under Art. 21 of the Constitution encroaching upon the government land in larger public interest he cannot encroach upon the right of ingress or outgress meant for the people. In the same way when such policies are sought to be implemented as a social measure the persons like the petitioners cannot claim, even when they are provided with alternative

accommodation with better facilities, that they would insist for construction of such premises under the policy like JnNURM at the same place. In fact, as pointed out by learned counsel Shri Nanavati the respondent Corporation is making allotment for similarly situated people pursuant to the orders passed by the High Court in other proceedings also before the coordinate bench. This would imply that there are other people also and they are required to be allotted when they are deprived of any such facility. On the other hand, persons like the petitioners who are allotted and having accepted the allotment since 2010 and do not occupy such alternative accommodation and have also continued the encroachment upon the government land with the kind of prayer in this petition that they will not shift to other alternative accommodation and they are seeking direction that construction of the houses should be made at the same place of the encroachment made by them. This appears to be a misconception under some misconceived notion which have no basis or justification. The submission has been made by learned advocate Shri Kharadi trying to point out and controvert from the affidavit of the respondent corporation that how making the construction at the same place is not feasible. It is not open for the petitioners to advise the government or the Corporation that they should construct in the manner which they suggest based on some private opinion. Even the opinion of the private engineer is also not clear as he has only stated about construction of the low rise meaning thereby the petitioners are also insisting that the construction should be in a particular manner as suggested by them. Therefore, when alternative accommodation is provided, the petitioners cannot be heard to say that they will not move or shift to other place on excuses like riots or lack of school and other facilities. In fact, as pointed out by learned counsel Shri Nanavati, other areas or the options which are suggested are also developed having facilities like school etc. and therefore these are not the issues which can be said to be relevant but it only reflects the attitude of the petitioners or rather arrogant and misconceived notions are reflected in the attitude.

17. In any view of the matter, as rightly pointed out, when possible alternative accommodations are also subject to the orders passed by the courts in other proceedings, whatever the options which are available may also get affected and therefore this court had also made an effort and impressed upon learned advocate Shri Kharadi to impress upon his clients, the petitioners herein, to have a more pragmatic approach. The endeavor was made by this court to address this as a human problem with a more reasonable attitude but it appears that all efforts have failed and the petitioners have failed in appreciating these aspects. In any view of the matter, for the purpose of deciding this petition, in light of the discussion made hereinabove, it is also well settled that under the concept of judicial review while considering the policy or implementation thereof, the court is required to consider certain aspects. Even under the concept of judicial review the court may examine the policy or the implementation provided there is justification. In fact, the court may scrutinize the policy or implementation if there is a violation of any rights or fundamental rights or it has any arbitrariness

or even from the angle of humanity and human approach.

18. A useful reference can be made to the observations made by the Hon"ble Apex Court in a judgment reported in Union of India and others Vs. Hindustan Development Corpn. and others, With regard to the scope of judicial review and the approach by the courts, the Hon"ble Apex Court has observed and quoted referring to the judgment in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, ,

"But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most import functions of the Court and also one of the most essential for preservation of the rule of law." (emphasis supplied)

19. Similarly, The Hon"ble Apex Court in a judgment reported in Union of India (UOI) and Another Vs. International Trading Co. and Another, has observed,

"....The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose..... The ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration."

Thus, it has been observed that in such matters of policy or the scheme for public interest, the court should not lightly interfere as the scope in such matters would be limited and it can be tested only to examine whether it is reasonable and fair or not.

20. Therefore, considering these broad guidelines with regard to the concept of judicial review even in implementation of such policy for the measures which are ultimately made for achieving larger public interest or social measure the court

would not be justified in entertaining such petition which has no basis to stand as it is thoroughly misconceived. Therefore, as discussed above, the petition deserves to be dismissed and accordingly stands dismissed. Interim relief, if any, stands vacated. Rule is discharged.