

(2018) 01 GUJ CK 0034
In the Gujarat High Court
Case No : 15546 of 2004

SHIR VENU CEMENT PIPE INDUSTRIES	APPELLANT
Vs	
THE COLLECTOR & ANR	RESPONDENT

Date of Decision : 25-01-2018

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2018) 01 GUJ CK 0034

Hon'ble Judges : B.N. Karia

Bench : Single Bench

Advocate : SURESHM SHAH, MEHUL S SHAH

Final Decision : Disposed off

Judgement

1. By means of filing this writ petition under Article 226 of the Constitution of India, the petitioner has challenged legality and validity of the Order

passed by the respondent no. 2 herein, rejecting two Revision Applications No. 3 of 2013 and 21 of 2013 preferred by the petitioner herein

challenging the Order dated 16th October 2002 passed by the District Collector, refusing change of user of the lands and the order of the said

authority, directing to confiscate the lands.

2. A short question which needs to be addressed in the present writ petition is whether a piece of land, which was allotted to a partnership firm can

be treated as a transfer and subjected to confiscation merely because some of the partners no more continue and few others, as per Government

record, are continued even as on today.

3. Before delving into merits of the matter, a succinct reference of the facts; as averred in the memo of petition, narrates thus :

4. Petitioner - a partnership firm was granted a piece of land admeasuring 5000 sq. yards out of Survey No. 129 of village Nagvadar of Upleta

Taluka for the purpose of erecting houses for Industrial purposes on 14th November 1963. On representation, mistaken unauthorized user of

7553 sq yards of land of the said survey number came to be regularized on 28th December 1967 and on 3rd April 1973, a further piece of land

admeasuring 368.3 sq yards from the same survey came to be granted to the petitioner-firm. Thus, by an Order dated 3rd April 1973, for the said

three different parcels of land of Survey No. 129 of Village Nagvadar of Upleta Taluka, the petitioner-firm was granted Sanad in Form No. HH

for construction of buildings of its industrial use, thereby regularizing encroachment of land. However, on 1st December 1997, Dy. Collector,

Gondal issued a show cause notice upon the petitioner to show cause as to why lands granted to the petitioner by three orders; referred to

hereinabove, should not be forfeited for the reason that since 10 years, they had not put in use the land granted to it and thereby committed breach

of condition of orders for grant of the land. The petitioner-firm tendered its reply on 29th May 1998 pointing out that the lands granted to it were

granted as the owner by recovering the market price for them and the petitioner is using the same for manufacturing cement pipes; since it is in the

business of manufacturing and selling the cement pipes, and there is no breach of condition in any way. It was also pointed out to the authorities

that there being slackness in the market, and therefore, there is great reduction in the business and the stock of cement pipes has piled up, and

during interregnum due to demise of some partners, their heirs have been joined as partners in the firm, and hence, a request was made to the

authorities not to confiscate the lands of the petitioner. The said request came to be acceded by the Deputy Collector, Gondal vide Order dated

30th November 1998 withdrawing show cause notice dated 1st December 1997 and thereby permitting the petitioner-firm to put these lands for

any other use than its user for cement pipe business; subject to prior permission of the Collector. Nevertheless, after lapse of three years, the said

order came into suo motu revision by the Collector under Section 211 of the Bombay Land Revenue Code, which came to be replied by the

petitioner firm on 18th December 2001. Consequently, vide final order dated 24th January 2001, the Collector, Rajkot ordered withdrawal of the

said show cause and directed the firm that as change has occurred in its partners, it should apply to the Government for sanctioning change by

charging required premium. When the request made by the petitioner-firm to permit change of user of the lands was turned down by the Collector

on 16th October 2002, the petitioner preferred Revision Application No. 3 of 2003 against the said order, to which the Collector, Rajkot issued

show cause notice to the petitioner-firm on 16th January 2003 alleging that the petitioner has committed breach of conditions of land granted as

new tenure land. And ultimately, by an Order dated 5th April 2003, the District Collector, Rajkot ordered confiscation of the lands granted to the

petitioner for breach of conditions of the grant. Aggrieved by the said order, the petitioner firm preferred revision application before the respondent

no. 2 herein, which came to be rejected by a common order passed in Revision Application Nos. 3 of 2003 and 21 of 2003 dated 20/27th

September 2004. Feeling aggrieved and dissatisfied with the said common Order, the petitioner-firm has preferred the present writ petition.

5. Heard Shri Mehul S Shah, learned senior advocate appearing on behalf of the petitioner-firm and Shri Hardik Soni, learned AGP for the

respondents no. 1&2 at length.

6. Learned counsel Shri Mehul S Shah for the petitioner assailed the impugned orders as at Annexures ""G"" ""F"" and ""D"" terming them to be

apparently erroneous. Shri Shah pointed out that there is an apparent error in finding that by mere change of partners in the firm, on joining heirs of

the partners who died and by retirement of certain partners, there is transfer of land without prior permission, which is illegal and amounts to

breach of condition of grant of land, and therefore, the lands are liable to be confiscated.

7. Shri Mehul S Shah, learned counsel further pointed out that there is an apparent error in the order at Annexure ""G"" wherein it is wrongly

considered that the petitioner-firm is not ready to pay premium for sanctioning the change in partners and that the petitioner denies payment of

premium. Counsel further pointed out that the petitioner had paid full market price, when lands were granted to it and therefore, no premium is

required to be paid for a mere change of partners in the firm and this aspect has not been properly appreciated by the authority below. He drew

attention of this Court to the induction of certain partners in the firm on retirement by some, way back in the year 1973, for which no breach can

be said to have been committed by the firm in the year 2003, for which land cannot be ordered to be forfeited by the successor in office vide

impugned Order as at Annexure ""D"" and ""F"" respectively. Counsel for the petitioner submitted that there is an apparent error in the impugned

Order [Annexure ""G""], in considering that the lands granted to the petitioner-firm were new tenure land, ignoring the Order dated 30th November

1998 [Annexure ""A""], wherein there is a finding that the lands given to the petitioner-firm were not of new tenure lands. Counsel for the petitioner

urged that once the Notice dated 1st December 1997 alleging breach of condition is withdrawn and even suo moto revision notice also stands

withdrawn, it is not open for the respondents authorities to pass impugned orders [Annexures ""F"" & ""G""].

8. Lastly, learned counsel for the petitioner urged that there is bar of principles of res judicata in passing an order to confiscate the lands of the petitioner.

9. Per contra, learned AGP Shri Hardik Soni appearing on behalf of the respondents made submissions on the line of reply affidavit filed by the

Mamlatdar, Upleta. He submitted that by an order dated 14th November 1963 passed by the Commissioner, Rajkot Division, the Government

waste land of Survey No. 129 paiki admeasuring 5000 sq. yards of village Nagvadar was allotted to the petitioner; subject to Government

Resolutions dated 17th October 1947 and 7th August 1956, and of course also subject to certain conditions stipulated in the said order. The said

allocation of land was of the conditions of restricted new tenure land. Learned AGP informed the Court that by virtue of an Order dated 28th

December 1967, a further piece of land out of the said survey number, admeasuring 7550 sq yards was allotted to the petitioner and thereafter, by

an Order dated 3rd April 1973, a piece of land admeasuring 368.3 sq yards was given as restricted new tenure land, as per Government

Resolutions dated 17th October 1947 and 7th August 1956 to the petitioner; subject to the condition that the lands so allotted were not

permissible to be sold, exchanged, mortgage or divisible.

10. Shri Hardik Soni, learned AGP submitted that petitioner initially applied for

change of use from residential to industrial of the land allotted to it, however on inquiry, it was found that the petitioner had committed breach of conditions, and therefore, show cause notice came to be issued. That, upon consideration of reply and hearing the petitioner, the said notice came to be withdrawn and the proposal was forwarded to the Government. That, the petitioner is not using the allotted land for the purpose of some industrial use, for which permission/allotment was granted. That, the petitioner had taken advantage of granting allotment of Government kharaba land and thereafter had tried to use it for residential purpose by making this plotting and event he constitution of partnership had been changed. According to learned AGP, all those actions had been taken without prior permission of the Government and contrary to the policy of allotment of the land and thereby the petitioner had attempted to gain huge profits by implementing the residential scheme by avoiding the payment of premium. Thus, de hors the policy of Government, the petitioner firm had changed the use of land allotted to it and thereby committed breach of trust.

11. By referring to the Orders dated 14th November 1963 and 28th December 1967 wherein share of each of the partners is described, learned

AGP pointed out that except two partners viz., Soni Dhirajlal Prabhudas and Soni Tapsukhlal Dwarkadas holding 10% of the share, remaining

90% of the partners have changed their respective share in the partnership firm. Therefore, as per Government Resolutions dated 7th August 1956

and 7th October 1977, the petitioner-firm was required to pay premium for breach of conditions. That, by an Order dated 5th April 2003 of the

District Collector, Rajkot, the land was ordered to be confiscated and when carried in revision, the said order has been confirmed by the

Secretary, Revenue Department. Thus, the land being of restricted new tenure, it cannot be sold, exchanged, mortgaged or transferred in any

manner without payment of premium for breach of condition, to be determined by the concerned Collectorate at the prevailing jantri rate.

12. On the aspect of charging premium, learned AGP placed reliance upon a decision of the Apex Court rendered in the case of Gohil Jesangbhai

Raysangbhai & Ors. vs. State of Gujarat, reported in 2014 5 SCC 199.

13. Learned AGP stated that in the instant case, when 90% share in the

partnership has changed hands without informing and taking sanction of the Government, and therefore, as per Resolution dated 7th October 1977 of the Revenue Department, the petitioner-firm is liable to pay premium against the transfer, as the original allotment was made on condition that the petitioner shall abide by the conditions mentioned therein as well as relevant Government resolutions. Learned AGP added that in case of violation of these stipulations, the petitionerfirm had transferred 90% share and therefore, liable for 100% premium and as the land is not in use for which it has been allotted, the same is liable to be vested in the Government. Learned AGP lastly urged this Court to dismiss the present writ petition.

14. Having heard learned advocates appearing on behalf of the respective sides and having considered material available on the record, it is not in dispute that the petitioner is a partnership firm which came to be granted certain pieces of land out of Survey No. 129 of Village-Nagvadar of Uptela Taluka for erecting houses for Industrial purposes in the year 1963 onwards. It is also not in dispute that since the land could not be put to use by the petitioner, it was served with a show cause notice calling upon the petitioner-firm as to why lands granted to it by three different orders should not be forfeited.

15. It is equally not in dispute that the petitioner tendered its reply on 29th May 1998 pointing out that the lands granted to it were granted as the owners, by recovering the market price and the petitioner was using the same for manufacturing cement pipes and due to slackness in the market, business has suffered set-back resulting into pilling of stock of cement pipes. It was also pointed out to the authorities that due to demise of some of the partners during the interregnum period, their heirs have been inducted as partners in the firm, and hence, a request came to be made not to confiscate the lands granted to the petitioner.

16. It is an admitted fact that the said request made by the petitioner-firm came to be acceded to by the Deputy Collector, Gondal vide Order dated 30th November 1998, withdrawing show cause notice dated 1st December 1997 and thereby permitted the firm to put these lands to use for any other purpose other than for cement pipe business; subject to prior approval of the Collector.

17. The fact of the said order, having been taken into suo moto revision by the District Collector under Section 211 of the Bombay Land Revenue

Code is also not in dispute, however, vide final order dated 24th January 2001, the Collector, Rajkot was pleased to order withdrawal of the

notice, directing the petitioner-firm that as a change has occurred in its partners, it should apply to the Government for sanctioning change on

payment of premium. It is also not in dispute that when approached, the District Collector, Rajkot turned down the request made by the petitioner-

firm vide order dated 16th October 2002 and the aggrieved petitioner approached the State challenging the said order in Revision Application No.

3 of 2003 which too came to be rejected by a common order dated 20/27th September 2004, giving rise to the present proceedings.

18. This Court also finds that during the interregnum period, there is a change of partners in the firm, due to demise and/or relinquishment of their

share by others in favour of newly inducted partners, and hence, a notice to show cause; as referred to above, came to be served upon the

petitioner-firm.

19. Moreover, the fact that the show cause Notice dated 4th December 2001 alleging breach of condition came to be withdrawn on payment of

premium by the petitioner-firm cannot be called in question, if the firm is ready and willing to pay premium as per the jantri rate, as determined by

the appropriate authorities; as ordered on 24th January 2002.

20. Now, when the learned senior advocate appearing on behalf of the petitioner-firm has consented, under the instructions from the petitioner, to

pay premium at the prevailing jantri rates applicable in the year 2002, this Court, without delving further into the merits of the matter, deems it

appropriate to direct the concerned revenue authorities to determine the premium, as per jantri rate applicable to zone, ward or block, where the

land of the petitioner-firm is situated, as per the policy framed vide various resolutions of the Department.

21. With these observations and direction, the present writ application stands disposed of. Needless to mention here that the appropriate

authorities in the Revenue Department shall expedite determination of premium, after availing opportunity of personal hearing to the petitioner

herein, within 60 days from the date of receipt of this order. This Court equally

expect that the petitioner-firm shall comply with terms of the order

granting sanction on payment of premium, as ordered by the authorities concerned.

22. Rule nisi made absolute to the aforestated extent. Interim relief granted earlier to continue till appropriate authority in the Revenue Department makes an order as to the payment of premium by the petitioner-firm.