
(1978) 02 GUJ CK 0006
In the Gujarat High Court

Shree Dasa Sorathiya Vanik Gnati

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 27-02-1978

Acts Referred:

Bombay District Municipal Act, 1901 — Section 174
Gujarat Municipalities Act, 1963 — Section 258, 258, 262(2)

Citation : (1978) 19 GLR 1000

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a petition by the trustee of a registered public trusted Styled as Shree Dasa Sorathiya Vanik Gnati, Junagadh." The subject-matter of the challenge in this petition is the Collector,

Junagadh's order-annexure "H" to the petition, dated 22nd August, 1973 passed by him u/s 258 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act" for brevity's sake) and the Government's order-annexure T, dated 10th May, 1974 purporting to have been passed u/s 262(2) of the Act.

2. A few facts require to be stated.

3. In the city of Junagadh, there was a part of a public street. A part of that land admeasuring 369-1 square yards was sold by the Junagadh Municipality deemed to be constituted under the Gujarat Municipalities Act, 1963 at the concessional rate of Rs. 1/- per square yard. Different resolutions had come to be passed by the municipality in this connection. First was the resolution No. 1534 dated 17-3-1971 resolving to sell the said land to the petitioner's trust. The second resolution is No. 811 dated 30-3-1971 cancelling the earlier resolution, to take the proceedings u/s 146 of the Act to close that street. The third resolution is No. 158 dated 15-6-1971 reiterating this body's resolve to give the land to this petitioner-trust as decided earlier. The next resolution is No. 244 dated 9-8-1971 cancelling the earlier resolution No. 158 dated 15-6-1971 because the Chief Officer's report about closing the street was not implemented before passing

that earlier resolution. Then comes the last resolution No. 485 dated 29-1-1972 noting the proceedings u/s 146 of the Act, having been undertaken and also noting the fact that no citizen had objected to the notice dated 15-10-71 issued by the municipality inviting objections. The resolution then purported to note that the said public street was closed and lastly it resolved to sell the land to the petitioner trust. In pursuance of that resolution the sale consideration was accepted and the sale deed was already executed.

4. The matter came to the notice of the Collector and he issued a notice both to the petitioner and the Junagadh Municipality. The Collector came to hold that there was no proceeding taken out for destructing that portion. He held that what was invited by the public notice was only objections from the public as to whether any citizen had any objection to the sale being effected by the municipality, and that the municipality had acted unlawfully. The Collector passed the following operative order. It reads as follows when translated:

Junagadh Municipality's a resolution No 458, dated 29-1-72, deciding to give the disputed land to Shri Pravinchandra Vallabhdas the Manager of Dasa Sorathia Vanik Caste, is cancelled.

5. Thereafter, the State Government passed order-annexure-I dated 10-5-1974 purporting to act u/s 262 of the Act. It takes for its basis the Collector's order declaring the above-mentioned resolution No. 458 as annulled and then the order proceeds to direct that the said encroachment on that land should be got removed by giving reasonable notice and that if the said direction was not complied with, an officer be appointed u/s 262(2) of the Act and get the said encroachment removed at the cost of Junagadh municipality.

6. It is a common ground that while passing this order-annexure I, the petitioner-trustee or any other trustee of the trust was not extended an opportunity of having his or their say in that regard.

7. On behalf of the petitioner, Mr. Vakharia, the learned advocate urged that the Collector had no authority at law, particularly u/s 258 of the Act to cancel the resolution. Section 258(1) of the Act reads as follows:

258(1) If, in the opinion of the Collector, the execution of any order or resolution of a Municipality, or the doing of anything which is about to be done or is being done by or on behalf of a municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof and where the execution of any work in pursuance of the order or resolution of the municipality is already commenced or completed direct the municipality to restore the position in which it was before the commencement of the work.

On thread-bare analysis the section would resolve itself into the following facets:

(1) if the execution of any order of the municipality or (2) if the execution of the

resolution of the municipality or (3) the doing of anything which is about to be done by the municipality or (4) the doing of anything which is being done by the municipality, (a) is causing or (b) is likely to cause injury or annoyance to the public or (c) is likely to lead to the breach of peace or (d) is unlawful, the Collector may take any of the actions:

(A) he may suspend the order or resolution;

(B) prohibit the doing of the thing which is about to be done or his being done or

(C) if the thing is already commenced or completed he may direct the municipality to restore the position which was there before commencing of that doing.

In other words Section 258(1) to a major extent deals with the arresting or stoppage of some work which is in the process of being done. Suspension or prohibition presupposes obviously that something remains to be done which requires to be arrested before it reaches its culmination. The last part of the section, however, deals with the situation where the thing is completed before the Collector can intervene to arrest its being or progress. He, in such a completed matter, is competent to direct the restoration of the position ante. Section 258, therefore, does not confer on the Collector any power to cancel the resolution. In the case on hand, as already noted above, the resolution of the municipality was already executed and implemented. Whatever was required to be done viz. the execution of the sale deed, the parting with the possession in favour of the petitioner, was already done. There was nothing that remained to be prohibited or suspended. The only conceivable step that could be taken by the Collector u/s 258 was to give a direction to the municipality to restore the original position. But perhaps not being versed in law nor having assistance of proper legal aid, the Collector purported to do something which he had no power to do. It is to be emphasized that the public officers unlike citizens, can do only those things which are permitted by law though the citizens are competent to do every thing except that which is prohibited by law. While executing the powers that are specifically conferred, the public officers no doubt can do incidental things also which may not have been specifically provided for. But as far as the main things are concerned, they must point their finger on some specific provision of law before they can go ahead with their intended orders.

8. Mr. Patel for the respondent Nos. 1 to 5 however very vehemently urged that the implicit in the provision of Section 258 is the Collector's power to adjudicate the resolution of the municipality unlawful. But this is only for the purpose of exercising any one of the three powers conferred by section viz. (1) the power to suspend the execution, or (2) the power to prohibit the doing of something about to be done or being done or (3) for the purpose of issuing the directions to establish the position ante. It is not an independent declaratory power, so to say. In the view that I have taken in respect of the ambit and scope of Section 258, fortunately there are judicial precedents of this High Court as well as of the

Supreme Court. As back as on 6th December, 1965 in the Special Civil Application No. 662 of 1962, the Division Bench of this Court, consisting of the then Chief Justice Shri J. M. Shelat and Justice Shri P.N. Bhagwati (as he then was) had laid down the scope of an analogous provision viz. Section 174 of the Bombay District Municipal Act, 1901. The Division Bench has observed as follows:

All that Section 174 empowers the Commissioner to do is to suspend the execution of an order or resolution of a Municipality or to prohibit the doing of anything which is about to be done or is being done by or on behalf of the municipality. But where a resolution for grant of leases of plots is carried out by the Municipality by actually granting the leases to various lessees and the leases so granted are valid and binding leases howsoever imprudent they may be, the Commissioner cannot acting u/s 174 require the Municipality to take back possession of the plots from the lessees in violation of its legal obligations under the leases. If the resolution is not carried out, the Commissioner can certainly intervene and suspend the execution of the resolution and restrain the Municipality from granting leases of the plots pursuant to the resolution but the Municipality cannot be required to act in breach of its legal obligations once the resolution is carried out and the leases are granted by the municipality to various lessees. Such a direction apart from being a direction to commit an illegality would not be within the connotation of the expression "suspend the execution of the resolution". The resolution being already carried out by the grant of the leases, there would be no continuing operation or effect of the resolution which can be arrested by the issue of a direction u/s 174. The operation and effect of the resolution would be exhausted by the grant of the leases by the Municipality and there would be nothing to suspend u/s 174.

9. The Supreme Court in the case of Municipal Board, Kannauj Vs. The State of Uttar Pradesh and Others, came to examine the scope of Section 34(1-B) of the U.P. Municipalities Act 1916. The section is quoted verbatim in the body of the judgment and is part materia with Section 258 of the Act. The Supreme Court also in that connection observed:

All that could be done u/s 34(1-B) is to prohibit the execution or further execution of the resolution or order, or the doing or continuance by any person of any act in pursuance of or under cover of such resolution or order. Where the resolution or order does not require any acts to be performed or steps to be taken for the execution or further execution of the resolution Or order of the Board or of its officer, there is really nothing to prohibit. Sub-section (I-B) read with Sub-section (4) does not apply to any resolution or order which exhausts itself after it is passed or made.

10. It is, therefore, crystal clear that the impugned order-annexure "H" is beyond competence of the Collector and on this ground it is liable to be set aside. If under law it is open to the Collector to act under the last part of Section 258 of the Act, and issue direction to restore the position ante, he may do so after following proper procedure. This judgment neither recommends nor

declares his competence to do so in that connection.

11. This brings me to the Government order-annexure 1. This order takes for its basis the order-annexure "H" issued by the Collector. It proceeds on the assumption that as per the Collector's order-annexure "H" the resolution in question was non-existent. In view of my judgment above, the position is otherwise. On that count the order-annexure 1 "is liable" to be set aside and is therefore, in fact set aside. If the Government think that they have got power u/s 262 to pass appropriate orders, they may do so in consonance with law, and this judgment would not be a bar to the initiation of any proceedings, if they are otherwise within their competence. The order-annexure "J" being consequential order obviously cannot stand and it shall also be declared as having been set aside. The result is that the petition is allowed. The orders annexures "H", "T" and "J" are hereby set aside. Rule is accordingly made absolute with no order as to costs.