

(2014) 01 GUJ CK 0083

In the Gujarat High Court

Case No : Letters Patent Appeal No. 218 of 2012 in Special Civil Application No. 16050 of 2011 with Civil Application No. 1478 of 2012 in Letters Patent Appeal No. 218 of 2012

Shree Ratnakar Enterprise

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Citation : (2014) 01 GUJ CK 0083

Hon'ble Judges : Vijay Manohar Sahai, J;K.J. Thaker, J

Bench : Division Bench

Advocate : Vimal A. Purohit, for the Appellant; Utkarsh Sharma, A.G.P., for the Respondent

Final Decision : Disposed Off

Judgement

Vijay Manohar Sahai, J.—By way of this appeal, the original appellant has challenged the order dated 28.11.2011 passed by the learned Single Judge of this Court, whereby the learned Single Judge has dismissed the petition. Facts in brief, are that the appellant intended to obtain 1500 acres of land of survey No. 141 of village: Mundra, Taluka-Mundra for producing salt. The request in writing was made to the Collector, who under his cryptic order dated 5.6.1993 rejected the same on account of non-availability of the land capable of being granted. This order was assailed before the higher authority, who was of the view that the order passed by the Collector was not reflecting the exercise of mind and hence the matter was remanded vide order dated 31.1.1996. After the matter was remanded, appellant requested the concerned District Land Record Officer for carrying out measurement and requisite fees were also paid. This happened in the year 1997. Thereafter, nothing was heard as per the say of the appellant and the appellant, therefore, was constrained to approach the Special Secretary once again, who in turn issued direction to the District Collector vide its communication dated 15.7.2002 and the appellant received communication

thereafter indicating that the order had been passed on 18.12.1999 rejecting the application. This application was thus rejected and hence this order was sought to be challenged by way of Revision Application being Revision Application No. 9 of 2005, whereunder, the Revisional Authority did not accept the say of the appellant and rejected the Revision Application confirming the order of the Collector dated 18.12.1999 for the reasons stated therein. Against the said order the present appellant preferred a petition before the learned Single judge. The learned Single Judge vide impugned judgment rejected the said petition. Hence, this appeal.

2. Learned advocate for the appellant submitted that the learned Single Judge has grossly erred in not appreciating the fact that the respondent No. 1 ought to have appreciated the aspect that learned advocate on record at the relevant time had communicated vide telegram dated 20.4.2005 that since he is engaged in parliament session he would be unable to attend the hearing and therefor, adjournment ought to have granted in the interest of justice. He further, submitted that the present respondent No. 1 vide its own earlier order dated 31.01.1996 directed the respondent No. 2 to allot the land on lease to the petitioner for manufacturing of salt. Therefore, he requested this Court present respondent No. 1 also ought to have taken a strict stand and ought not to have rejected the revision application on flimsy ground.

3. Learned advocate for the respondent has supported the impugned judgment and submitted that the learned Single Judge after considering the evidence on record has passed the impugned order. He therefore, submitted that no interference is called for by this Court.

4. On 20.3.2012, this Court (Coram-Hon. Mr. Justice V.M. Sahai and Hon. Mr. Justice A.J. Desai) has passed the following order:--

Notice returnable on 23rd April, 2012. Direct service is permitted.;

Thereafter, on 08.01.2013, this Court (Coram: Hon. Mr. Justice V.M. Sahai and Hon. Mr. Justice S.G. Shah, J.J.) has passed the following order:

Three weeks time is allowed to AGP to obtained instructions. List this matter on 31st January, 2013.;

On 22.4.2013, this Court (Coram: Hon. Mr. Justice V.M. Sahai and Hon. Mr. Justice Mr. S.G. Shah) has passed the following order:

Ld. Counsel for the appellant has requests for time to comply with the order passed on 20.3.2013 by this Court. Time, as prayed for, is granted. S.O. to 28.06.2013.;

On 26.11.2013, this Court (Coram: Hon. Mr. Justice V.M. Sahai and Hon. Mr. Justice A.G. Uraizee) has passed the following order:

Learned counsel Mr. Vimal Purohit for the appellant and learned AGP Mr. N.J. Shah are directed to file affidavits bringing on record the policy decisions of the

State Government under which the land is being allotted in prescribed format as mentioned in Annexure-"H" to the writ petition. The policy shall be filed before this Court on 10th December, 2013. List on 11th December, 2013.;

On 11.12.2013, this Court (Coram: Hon. Mr. Justice V.M. Sahai and Hon. Mr. Justice A.G. Uraizee) has passed the following order:

Learned AGP Mr. Shah states that the affidavit-in-reply is ready and he will be serving the same on the appellant and will be filing in office by tomorrow. Therefore, list this appeal on 20th December, 2013. In the meantime, appellant to file affidavit in rejoinder.

and on 20.12.2013, this Court (Coram: Hon. Mr. Justice V.M. Sahai and Hon. Mr. Justice A.G. Uraizee) has passed the following order:

Learned counsel for the appellant as well as the learned counsel for the respondents shall comply with Chapter IV, Rule 53 of the Gujarat High Court Rules, 1993 and file translated copies of all vernacular documents of the Letters Patent Appeal by the learned counsel for the appellant and Mr. N.J. Shah, learned AGP to file affidavit-in-reply. List on 08.01.2014.

5. We have heard learned counsel appearing for the parties and perused the material on record. It appears from the record that the appellant has filed an application on 22.4.1992 for allotment of land for cultivation of salt. The appellant was not allotted land by the Collector in the year 1993 on the ground that no land is available. From the additional affidavit-in-reply filed by the State Government at page 154 paragraph-8, it is clear that the collector has granted land for the purpose of cultivating salt in the year 1992 on the same Survey No. 141. However, subsequently Survey No. 141 was taken over by the State Government for special economic zone of Mundrapur.

6. By the impugned order passed by the learned Single Judge, the learned Single Judge has dismissed the writ petition on the ground of delay. In our opinion, there was no delay as the appellant was prosecuting since the year 1992. As a matter of fact, there was no delay on the part of the appellant. The delay was on the part of the respondents in not allotting the land to the appellant. The appellant cannot be held guilty of any delay and laches. The findings of learned Single Judge as far as delay is concerned, the same is quashed and set aside. In this way of the matter, the order of the learned Single Judge not allotting the land to the appellant cannot be maintained.

7. Since the appellant has applied on 22.4.1992, his priority shall be maintained by the respondents and the collector shall ensure that the land for salt cultivation be allotted to the appellant on any survey number on which salt could be cultivated within a period of THREE MONTHS from the date of certified copy of this order is produced before the Collector-Kachchh.

8. Under the circumstances, this Letters Patent Appeal deserves to be allowed and the same is allowed. The judgment and order of the learned Single Judge

dated 28.11.2011 passed in Special Civil Application No. 16050 of 2011 is quashed and set aside. Direct service is permitted. Since, the appeal is allowed, Civil Application shall not survive and the same stands DISPOSED OF, accordingly.