

(2011) 08 GUJ CK 0046
In the Gujarat High Court

Case No : Letters Patent Appeal No. 2670 of 2010 in Special Civil Application No. 7709 of 2010 and Civil Application No. 13971 of 2010

Shri Sai Gram Seva Mandal Vankol APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 73A, 73AA

Citation : (2011) 08 GUJ CK 0046

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Bm. Mangukiya and Bela A. Prajapati, for the Appellant; Krina Calla, AGP. for Respondent 1 and A.D. Oza, for Respondent 2, for the Respondent

Judgement

J.B. Pardiwala, J.

1 In this appeal, the Appellant-original Petitioner seeks to challenge judgment and order dated 12.07.2010 passed by the learned Single Judge in Special Civil Application No. 7709 of 2010 whereby, the learned Single Judge rejected the petition of the Appellant Petitioner.

2 Facts relevant for the purpose of deciding this appeal is as under :

2.1. The Petitioner is a charitable trust registered under the Bombay Public Trust Act. In June 2009, the Petitioner-trust applied for opening a new secondary school in the name of Shri Saibaba Madhyamik Shala, Situated at village: Vankol, Po. Dungari, Taluka: Jhalod, District: Dahod in response to the advertisement issued by Respondent No. 2 i.e. Gujarat Secondary and Higher Secondary Education Board. The Respondent-Board refused to accord permission to the Petitioner-trust to start anew secondary school substantially on the following grounds:

i. Building proposed to be used for opening of the school is not suitable for running the school and the building is constructed for residential purpose.

ii. The proposed school building is not health oriented with no proper facility of air and light and no separate provisions for sanitary have been made for girls and;

iii. The land proposed to be used for playground is governed by the provisions of Section 73A and 73A Aof the Bombay Land Revenue Code and the same is not owned, occupied and in possession of the trust.

2.2 It appears that the order passed by the Board rejecting the application was challenged in appeal before the State Government and the State Government also dismissed the appeal confirming the order 01.09.2009 passed by the Board. It is at that stage that the Appellant-trust preferred Special Civil Application No. 7709 of 2010. The learned Single Judge having noticed all the deficiencies, which were found by the Respondents, refused to grant any relief to the Appellant-Petitioner and rejected the petition.

3. We have heard learned advocate Mr. B.M. Mangukiya appearing for the Appellant and learned A.G.P. Mrs. Krina Calla appearing for the Respondents.

4. Learned advocate Mr. Mangukiya would submit that in none of the objections raised by the Respondent authorities, there is any substance. He would submit that there are no deficiencies as alleged by the Respondents. He further submitted that the land is not governed under the provisions of Section 73A or 73AA of the Bombay Land Revenue Code and the land is of the ownership of the chairman of the trust and he is agreed to part with the land for the purpose of the activities of the trust.

5. Per contra, learned A.G.P. Ms. Calla submitted that both the authorities have recorded concurrent findings as regards the deficiencies noticed in the infrastructure of the trust and having noticed all these deficiencies, the learned Single Judge also rightly rejected the petition. The learned A.G.P. submitted that the Appellant is not entitled to any relief. The learned A.G.P. has relied upon the affidavit filed by Deputy Secretary, Education Department, Sachivalaya, Gandhinagar wherein the following averments have been made:

4. I state that the Appellant does not fulfill certain requirements as are necessary to be granted permission for secondary school. While rejecting the application of the Appellant the authorities have specifically stated in their orders the shortcomings as a result of which the Appellant was not granted permission for secondary school from June, 2009. The same shortcomings have clarified specifically as under:?

1. As per the requirements Classrooms should be measuring minimum 400 sq.ft. whereas same are not available in the building proposed for the school.

2. The building proposed for the new school is not fit for a school. It seems that this building is meant for residence. Therefore, the same could not be said to be a proper building for proposed school.

3. The hygienic condition of this building is not satisfactory. The building does not have adequate and satisfactory separate urinal facilities for girls.

4. The land for the playground of the school falls u/s 73 AA of the Bombay Land Revenue Code. Therefore, the chances of this land to be converted into non-agricultural land are very remote. Moreover, this land carries a mortgage of Rs.2,50,000/- to Bank of Baroda.

6. The learned A.G.P. has relied upon the affidavit filed by the Secretary of the Gujarat Secondary and Higher Secondary Education Board, Gandhinagar wherein, the following averments have been made:

8. I say and submit that the Appellant Trust is not fulfilling the requisite criteria and, therefore, the application made by the Appellant Trust came to be rejected vide order dated 1.9.2009, which is self-explanatory. I say and submit that before passing the order dated 1.9.2009, the Board has given opportunity to the Appellant to comply with the infirmities/deficiencies noticed for opening new School vide letter dated 17.6.2009. The Appellant Trust has miserably failed to comply with the said formalities and, therefore, having left with no option, the order dated 1.9.2009 came to be passed by the Board, whereby the application made by the Appellant Trust for opening School w.e.f. June 2009 is rejected. I say and submit that the Board has assigned five reasons for not permitting the Appellant Trust to open the Secondary School. The said reasons are as under:?

a. The class rooms are not measuring 400 Square Feet as is required as per Regulation No. 9(13)(2).

b. The building, where the Appellant Trust wants to open the School is not suitable for School.

c. The building, where the Appellant intends to open the School is of residential purpose, which is evident from the documents produced on record.

d. The Appellant has not produced the document showing the availability of health/sanitary facilities in the proposed School building as required under Regulation 9(13)(1). The School building should be having appropriate health/sanitary facilities and ventilation as are required under Regulation 9(13)(1) and the Trust should also have sufficient, satisfactory facilities for girl students, especially when the Trust intends to open School for co-education.

e. The land meant for ground is of 73/A and 73/A Aof Form and there is no likelihood of NA Permission being granted. Accordingly the land cannot be permitted for the ground meant for School.

9. Thus, on the aforesaid counts, the application filed by the Appellant Trust came to be dismissed. I say and submit that being aggrieved by the aforesaid order, the Appellant filed appeal before the Education Department and the Education Department vide order dated 18.1.2010 dismissed the said appeal concurring with the order passing by the Board. The Education Department has

followed the requisite procedure and has also offered reasonable opportunity to the Appellant. The Education Department has also assigned several reasons for not accepting the appeal and has dismissed the appeal by concurring with the order dated 1.9.2009 passed by the Board. Thus, there are concurring findings of facts being recorded by the authorities while rejecting the application for opening up new School and while dismissing the appeal. I say and submit that the authorities have formed subjective satisfaction, which is not vitiated by error of facts or law. I say and submit that the application filed by the Appellant Trust for opening up new School has rightly been rejected by the impugned order. Both the authorities have considered the pros and cons of the matter and after affording sufficient opportunities to the Appellant the impugned orders are passed. The orders impugned are not vitiated by any error of law or facts and, therefore, this Hon''ble Court maybe kind enough to dismiss the appeal by upholding the order passed by the authorities.

7. Taking into consideration all the relevant aspects of the matter, we are of the view that the learned Single Judge has not committed any error, much less an error of law, in rejecting the writ petition warranting any interference at our hands in this appeal. We find no merit in this appeal and the same is hereby ordered to be dismissed with no order as to costs. Civil Application stands disposed of accordingly.