
(2011) 04 GUJ CK 0079

In the Gujarat High Court

Case No : Special Civil Application No. 5604 of 2011

S.K. Impex Partnership Firm

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 04 GUJ CK 0079

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : S.P. Majmudar and Vimal A. Purohit, for the Appellant; Pranav Dave, AGP for Respondents 1 - 4, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—RULE. Shri Pranav Dave, learned AGP waives service of notice of rule on behalf of the Respondents.

2. In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties, the present petition is taken up for final hearing today.

3. By way of this petition under Articles 226 and 227 of the Constitution of India the Petitioner has prayed for an appropriate writ, order or direction quashing and setting aside the impugned order passed by the revisional authority i.e. Secretary (Appeals), Revenue Department, State of Gujarat dated 15/04/2011 in Revision Application No. 25/2011 by which the revisional authority has dismissed the stay application submitted by the Petitioner to stay the order passed by the Collector, Kutch dated 11/03/2011 during pendency and final disposal of Revision Application No. 25/2011.

4. Shri Mihir Thakore, learned Senior advocate appearing on behalf of the Petitioner has vehemently submitted that while passing the impugned order, the learned revisional authority has not properly appreciated the manner in which

possession of the land in question was alleged to have been taken. It is submitted that the learned revisional authority ought to have appreciated that the hearing before the Collector was concluded on 13/07/2010 and the order came to be passed by the Collector on 12/03/2011 and on the very next day and without giving an opportunity to the Petitioner to challenge the aforesaid order, the Collector has alleged to have taken the possession on Sunday and even necessary mutation entry was made in the revenue record giving effect to the order dated 12/03/2011 i.e. on non working Saturday. It is submitted that the aforesaid was only with a view to see that no sufficient opportunity is given to the Petitioner to challenge the aforesaid order and obtain appropriate order from the higher forum. It is submitted that as such only symbolic possession has been taken over by the Collector and physical possession is still with the Petitioner, and, therefore, it is requested to direct the Respondent to restore the possession on any condition that maybe imposed by this Court.

5. Shri Pranav Dave, learned AGP appearing on behalf of the Respondent authorities is not in a position to justify the action on the part of the Collector to take the possession of the land in question on Sunday and making necessary entry in the revenue record on Saturday i.e. on a non-working Saturday. However, he has submitted that on merits the order passed by the Collector is just and proper as the Collector, Kutch has found that there was breach of condition of grant/allotment by giving on lease the land in question to other person. However, he is not in a position to satisfy the action on the part of the Collector in taking over the possession on Sunday and making necessary entry in the revenue record on a non-working Saturday. In view of the above, he does not invite any further reasoned order.

6. Shri Mihir Thakore, learned Senior advocate appearing on behalf of the Petitioner has submitted that if the Petitioner is returned the symbolic possession and is permitted to put their own lock, which may be sealed by the Collector, during pendency of the Revision Application the Petitioner would be satisfied and they do not invite any further reasoned order as any observation made by this Court may come in the way of the either parties at the time of hearing of the Revision Application by the revisional authority, however he has requested to direct the revisional authority to finally decide and dispose of the Revision Application at the earliest and within the stipulated time, which deems fit in the interest of justice.

7. Heard the learned advocates appearing on behalf of the respective parties and considering the facts narrated hereinabove and the stand taken by the learned advocates appearing on behalf of the respective parties recorded hereinabove, the present succeeds in part. The impugned order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 15/04/2011 in Revision Application No. 25/2011 is hereby quashed and set aside the Collector, Kutch is hereby directed to restore the possession of the land in question/premises in question to the Petitioner within a week from today, which may be treated as a

symbolic possession and the Petitioner to put the lock on the same in the presence of the Officer of the office of the Collector, Kutch and the same shall be sealed by the Officer of the Collector, Kutch. However, the same shall be by way of interim arrangement without prejudice to the rights and contentions of the parties in the main petition. In the facts and circumstances of the case, the revisional authority is hereby directed to finally decide and dispose of the aforesaid Revision Application at the earliest and preferably within a period of six months from the date of receipt of the present order in accordance with law and on its own merits and without, in any way, being influenced by the present interim arrangement.

8. With this, the present petition is allowed. Rule is made absolute to the aforesaid extent. No cost.