

(2022) 04 GUJ CK 0016

In the Gujarat High Court

Case No : R/Special Civil Application No. 19514 Of 2019

Somiben Arvindbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 04 GUJ CK 0016

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Ramnandan Singh, Nikunj Kanara

Final Decision : Disposed Of

Judgement

Dr. A. P. Thaker, J

1. The petitioner has preferred this petition under Article 226 of the Constitution of India for the following reliefs:

“(A) Your Lordships may be pleased to admit and allow the present petition.

(B) Your Lordships may be pleased to issue writ of mandamus or any other appropriate writ, order or direction, and be pleased to quash and set aside the impugned order dated 11/13.9.2019 passed by the respondent District Collector, Bharuch rejecting the representation dated 23.8.2019 which was filed pursuant to the order passed by this Hon’ble Court on 20.8.2019 in Special Civil Application No. 14061 of 2019 by holding that the order passed by the District Collector is unjust, improper and not tenable.

(C) Your Lordships may be pleased to direct the respondent authorities including the District Collector, Bharuch to allot some other piece of land for construction of Jhagadia Police Station in place of land bearing City Survey No. 476, situated in village Sultanpura, Taluka Jhagadia, District: Bharuch either by his own order or by directing the District Valuation Committee to fix the rate of land and after

charging the evaluated amount from each petitioner, pieces of land be allotted to the petitioners for construction of shops, etc. on the land bearing City Survey No. 476 in village Sultanpura, Taluka Jhagadia, District Bharuch or on any other land which is owned by Government.

(D) Your Lordships may be pleased to direct the respondent authorities to allot the land to the petitioners at Jantri price in such a way that they can construct shops on land bearing City Survey No. 476, situated in village Sultanpura, Taluka Jhagadia, District: Bharuch by considering that they have been doing business for more than 20-25 years and these are the only source of their bread and butter for themselves and their families. Even some portion of the land of City Survey No. 476 could be allotted for construction of Police Station and rest of the portion can be given to the petitioners as entire land bearing City Survey No. 476 was not allotted for construction of Jhagadia Police Station.

(E) Alternatively, Your Lordships may be pleased to direct the respondent authorities to allot some other piece of land to all the petitioners at Jantri price in the near vicinity so that the petitioners can still have their earning and continue to do small business of selling vegetables, fruits and some other small business.

(F) Your Lordships may be pleased to pass any other order, direction or relief, which may be deemed fit in the facts and circumstances of the present case."

2. The brief facts of the petition, as emerged from the petition memo, are as under:

2.1 It is contended that the petitioners are poor persons and doing their business on open land bearing City Survey No. 476 by constructing sheds or small shops or by keeping their lorries on the said piece of land situated in village Sultanpura, Taluka; Jhagadia, District Bharuch for more 20 to 25 years. It is contended that they are paying market rates time to time which was being collected by Sultanpura Group Gram Panchayat and some of them are having electricity connection and paying electricity bills regularly. It is contended that property in question was in the name of the Deputy Collector, Rajpipla in the year 1997, which was declared as Khalsa land i.e. Government land, in the year 1998 by the order of the City Survey Superintendent and various entries were made thereof.

2.2 According to the petitioner, somewhere in the year 2008, the District Collector, vide order dated 16.9.2008 allotted the land to the District Police Superintendent for construction of Jhagadia Police Station and kaccha entry was mutated in revenue record on 20.9.2008 which was certified on 19.11.2008. It is contended that various notices were issued by Police Inspector, Jhagadia Police Station directing the petitioners to remove their sheds, shops and lorries without any authority of law. Therefore, they approached this court by filing Special Civil Application No. 14061 of 2019, which came to be disposed of on 20.8.2019, directing the petitioners to make detailed representation to the respondent District Collector, Bharuch on or before 23.8.2019 and the District Collector, Bharuch was directed to decide the same after giving opportunity of hearing to

the petitioners on or before 13.9.2019 and they were also directed that till the representation is decided, the notices impugned in the petition shall not be implemented. According to the petitioner, however, before service of the order passed by this Court, the police authorities with the help of local body demolished and removed all the shops and lorries on 20.8.2019 itself. It is contended that they made representation to the District Collector and after hearing them, the District Collector by impugned communication has rejected the representation of the petitioner, holding that the land in question is private property.

2.3 It is contended by the petitioners that the Collector has erred in observing that land bearing Survey No. 195 is a private land. According to them, there is a mistake in writing the survey number, as in fact, it is Survey No. 415 as there was change of Survey No. 195 to 415. It is also contended that there is other lands available and, therefore, the petitioners may be provided the said land and the petitioners are ready and willing to pay the amount as per Jantri by purchasing the Shop. According to them, since the petitioners were earlier holding the land in question for their shops or lorries, there is no question of purchase of other land and, therefore representation of the petitioners ought to have been allowed by the Collector.

The petitioners are ready to pay requisite price, which would be demanded by the Government. It is contended that there are various pieces of land which are in the name of Gujarat Government, very much available in the near vicinity which could be allowed for the purpose of construction of the Police Station and in the view of the matter, the petition may be allowed.

3. Heard Mr. Ramnandan Singh, learned advocate for the petitioner and Mr. Nikunj Kanara, learned AGP for the respondent State. Perused the material placed on record.

4. Mr. Ramnandan Singh, learned advocate for the petitioner has vehemently submitted that the petitioners are ready and willing to pay price at Jantri rate if they are allotted land available in the vicinity. He has submitted that in view of the direction issued by this Court in Special Civil Application No. 14061 of 2019, the petitioners have made representation before the Collector, however, the Collector has not considered it on the sole basis that Survey No. 195 is a private property and the other lands cannot be given for commercial purpose without public auction. He has also submitted that there are other open land available in the vicinity. He has submitted that there is a question of livelihood of family of the petitioners. He has submitted that the petitioners' case may be considered sympathetically by the authority. He has relied upon the decision of *Intajamuddin Yasinbhai Ansari and Ors v. State of Gujarat and Ors*, reported 2009 (2) G.L.H 679 for his proposition that if there is unauthorized occupation of Government lands – persons from lower economic strata, before directing them to vacate the land, some accommodation needs to be provided to them. He has prayed to allow the petition.

5. Per contra, Mr. Nikunj Kanara, learned AGP for the respondent State has submitted that the land in question was allotted to the Police Station and as there was encroachment by the petitioners and others, the same came to be removed. He has submitted that the order passed by the learned Collector is proper one and does not require any interference of this Court. He has submitted that the decision relied upon by the learned advocate for the petitioners is not applicable to the present facts as the petitioners are already removed from the land in question.

6. Per contra, Mr. Ramnandan Singh, learned advocate for the petitioners has submitted that the petitioners are seeking land for their livelihood purpose and not for commercial purpose. He has submitted to pass appropriate order in favour of the petitioners.

7. Having considered the submissions made by both the parties and the material placed on record, it is an undisputed fact that land in question was belonging to the Government and the Government has allotted it to the Police Department for construction of Jhagadia Police Station. It is admitted fact that notices were issued to the petitioners which were challenged by the petitioners by way of filing Special Civil Application No. 14061 of 2019, which came to be disposed of with direction to the authority to consider the representation of the petitioners. It is also admitted by the petitioners themselves in the Memo of Petition that prior to hearing of the representation, the shops and lorries were already removed from the land in question. It is also admitted fact that the learned Collector has passed the impugned order rejecting the representation on two grounds that in view of the Government Resolution, a land for commercial purpose cannot be granted without public auction and the petitioners are claiming portion of the land of Survey No. 195, which is a private land. Now, so far as the land bearing Survey No. 195 is concerned, it is specifically stated by the petitioners that there was change of Survey Number from Survey No. 195 to Survey No. 415, and that land is not of the private land but a Government land. This fact has not been denied by the government by filing appropriate affidavit. It is also admitted that the petitioners are doing small business like that of selling of vegetables / fruits, etc. by keeping small sheds and lorries. Therefore, if that activities are considered, it cannot be termed as large scale commercial activities and, therefore, if the vocation of the petitioners are considered then it is of small retail business then the other government lands can be considered for allotment of appropriate portion of land, available in the vicinity to the petitioners, on the condition that the petitioners shall pay appropriate prices, as may be decided by the Government. At the same time, the petitioners cannot insist that they will pay price according to their own calculation. Therefore, if some direction is issued to the concerned authority, on the aforesaid line, it will meet the ends of justice.

8. In view of the above, the impugned order of the Collector is hereby quashed and set-aside. The Collector, Bharuch is hereby directed to reconsider the representation of the petitioners keeping in mind the aforesaid observations of

this Court and to consider the allotment of government land, if any available, in the vicinity on the condition that the petitioners shall pay the requisite price thereof, as may be decided by the Government in accordance with the law.

With these directions, the petition stands disposed of.

Notice discharged.

No order as to costs. Direct Service permitted.