

(2016) 04 GUJ CK 0027

In the Gujarat High Court

Case No : Special Civil Application No. 17360 of 2011

Specialty Papers Ltd.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 19, Article 226, Article 227, Article 300 (A)

Land Acquisition Act, 1894 — Section 44, Section 44 (A), Section 44(A)

Citation : (2016) 04 GUJ CK 0027

Hon'ble Judges : Anant S. Dave and R.P. Dholaria, JJ.

Bench : Division Bench

Advocate : Satyam Y. Chhaya, Advocate, for the Appellant; Vacha Desai, AGP, for the Respondent

Final Decision : Allowed

Judgement

Anant S. Dave, J.—1. The challenge in this writ petition under Articles 226 and 227 of the Constitution of India read with Article 300 (A) of the Constitution of India is the order dated 7.10.2011 passed by respondent No. 2-District Collector, Valsad, whereby it is ordered that subject land admeasuring 14,179 sq. mtr. of the total land mass, was ordered to be resumed by the Government on the ground of breach of conditions of the allotment, namely, the subject land is not used for the purpose for which it is allotted and the petitioner company has violated condition No. 6 of the agreement.

2. Certain facts stated in the petition are not in dispute and reproduced hereinbelow:

"2.1 The petitioner Company is registered under the provisions of Companies Act. As per the provisions contained in Land Acquisition Act, 1894 (hereinafter referred to as the Act), more particularly, provisions contained in Part VII of the Act, the land admeasuring 60440 sq. mtr. of village Morai, Talluka Pardi, District Valsad bearing S. No. 94 paiki to 99 paiki and 101 paiki was acquired for the

purpose of the petitioner Company.

2.2 An agreement was executed between the State of Gujarat, under the name of his Excellency Governor (Second Part), and the petitioner Company (One Part). The said agreement was entered into containing certain conditions, between the State of Gujarat and the petitioner Company for the proposed acquisition at the relevant point in time. After completion of all necessary formalities and proceedings enumerated under the Act read with the Rules, the land in question was acquired and ultimately the same was granted in favour of the petitioner Company for construction of paper mill. Sanad was also issued on 31.03.1963 in favour of the petitioner Company.

2.3 The petitioner Company paid requisite amount of charges for the acquisition and necessary permission for non-agriculture use under the Bombay Land Revenue Code was obtained for putting the land for the purpose for which the same was granted and thereafter the land in question was put to use for paper mill.

2.4 In view of a financial constraint, an application for change of use was filed by the petitioner company to the Government for releasing and/or permitting change of use qua 40,000 sq.mtr. of land. As per the information available with the petitioner at the relevant point of time, positive proposals were made in favour of the company by the lower authorities and even market value was fixed by the competent authority which was required to be paid by the petitioner company at the time of permission of change of use.

2.5 Subsequently, 27745 sq.mtr. of land was mortgaged with the State Bank of India (Ghatkopar Branch, Mumbai) and an amount of Rs. 22,60,00,000/- was obtained by way of loan by the petitioner company. Before obtaining above referred land and before creating charge of State Bank of India, for 27745 sq.mtr., necessary permission from the Government was obtained and the same was granted. Thus, an application for change of use for 40,000 sq.mtr. of total land was subsequently reduced by the petitioner company and the petitioner company confined its prayer for change of use qua 14169 sq.mtr. out of total land granted to the company.

2.6 Even the subsequent application for reducing the prayer qua 14169 sq.mtr. of land was also initially positively considered by the authority.

2.7 From the documents availed by the petitioner, it becomes more than clear that his case was positively considered and even market price was fixed by the competent authority for granting permission for change of use. The said documents would also suggest that the petitioner had deposited the amount as directed by the authority for performing its part of obligation for obtaining permission as per the contract.

2.8 The application filed by the petitioner remained pending for more than 10 years before the respondent-authorities and no final decision had been taken by

the State Authority.

2.9 A show cause notice being show cause notice No. 1235/09 was issued by respondent No. 2 whereby the petitioner was informed that since the petitioner had already put the land in question to use for a purpose other than which it was granted alleging a construction of a mosque upon the premises so also of a prevalence/practice of activities in the name and style of Star Marbles, in view of Section 44 of the Act, the petitioner had committed a breach and hence, the petitioner was asked to show cause as to why the land should not be confiscated. The aforesaid notice was issued by respondent No. 2 was replied by the petitioner.

2.10 Without considering the contentions raised and submissions made in the reply and without appreciating contents of the reply, again, another show cause notice was issued.

2.11 The petitioner submitted another reply in which the same had raised its contentions with regards the legality of the said action and had justified its stand with regards the allegations made in the show cause notice. In the very same reply the petitioner had also relied upon a report of the authorities dated 16.4.2010 notice of which was not served upon the petitioner so also a panchnama drawn dated 6.2.2010 which was also subsequently obtained.

2.12 Without considering the contentions raised and submissions made by the petitioner and without considering the scope of jurisdiction, respondent No. 2 passed the impugned order in purported exercise of power u/s. 44(A) of the Act, whereby the land admeasuring 14169 sq.mtr. has been ordered to be confiscated on the premise that the petitioner has committed breach of conditions. Hence, the present petition."

3. While assailing the order passed by respondent No. 2-District Collector, Valsad, learned advocate for the petitioner contended that order impugned is an unreasoned order and in breach of the principle of natural justice and basically even for conclusion reached about land is not used by the petitioner for the purpose for which it is allotted, panchnama is relied on alongwith photographs. It is further submitted that in fact the application was preferred by the petitioner in view of certain financial constraints for change of use as early as in the year 1999 qua 40,000 sq.mtr. of land but specifically 27,245 sq.mtr. of land was mortgaged with the State Bank of India for availing loan for the amount of Rs. 22,66,00,000/- (Twenty Two Crores Sixty Six Lakh) and before creating the charge of State Bank of India necessary permission from the Government was also obtained. Thus, according to learned advocate for the petitioner initial request for change of use for 40,000 sq.mtr. of land was reduced and restricted qua 14,169 sq.mtr. of land only after depositing the amount a directed by the authority. The application was pending for process and taking a final decision for about 10 years.

4. Learned advocate for the petitioner, therefore, would contend that exercise undertaken by the authority as envisaged under Section 44 (A) of the Land

Acquisition Act 1894, which restricts transfer/alienation of the subject land by any mode, namely, sale mortgage lease, etc. without obtaining permission of the appropriate Government only when the petitioner asked for the permission to sale the land, the concerned authority simultaneously initiated proceedings for assuming the land for alleged breach of Clause 6 of the conditions of agreement which amounts to unreasonable, arbitrary and discretionary exercise of powers. Further, the order impugned reflects non application of mind and one of the mandatory conditions so noticed by this Court at the time of issuing Rule namely, proviso to condition 6 by which for the breach alleged, the concerned authority is duty bound to give an opportunity for making good breach or to comply with any direction by the Government within the time specified in the said notice for compliance therewith. Unless requirement of proviso to Clause 6 is followed, no order of resuming land could have been passed by the authority and therefore, order impugned is bad and illegal and deserves to be quashed and set aside.

5. It is submitted that the land in question on which alleged structures are illegally or irregularly erected for which no material is available for taking the decision that the land in question is not used for the purpose for which it is allotted. It is further submitted that no dispute arises about paper mill constructed and made operative in the year 1964 and onwards only because some land remained vacant, no order of resuming the land without complying with proviso to Clause 6 of the conditions could have been passed.

6. It is submitted that under no circumstances while processing the application preferred by the petitioner seeking approval of the appropriate Government as required under Section 44(A) of the Land Acquisition Act, 1894 order of resuming the land or confiscating the land could have been passed that too without there being any material or following the procedure in accordance with law by following principles of natural justice and without giving opportunity to the petitioner to make alleged breach good. Therefore, it is submitted that order impugned deserves to be quashed and set aside.

7. Ms. Vacha Desai, learned AGP relied on record of the case including the affidavits filed by the competent authority in support of her arguments that two proceedings were pending before the competent authority, namely, whether to grant approval to the application preferred by the petitioner seeking to sell part of the land under Section 44(A) of the Act, 1894 and breach of condition No. 6, namely that land is not used for the purpose for which it is acquired or is used for any other purpose or committing breach of any of the conditions. For above purpose, it is not in dispute that separate notice was given to the petitioner and he was heard. Accordingly, it was found that on the subject land various shades for storage of scrap and waste papers and for residential use are constructed and machineries for cutting and polishing marbles and small structure like mosque to offer prayers were found on the land and therefore, sufficient material exists for the competent authority to resume the land or confiscate the same for which procedure is followed. It is submitted that even after interim order is passed by

this Court the alleged encroachment and irregular or illegal structure remained on the land and therefore, in absence of merit, the petition deserves to be rejected.

8. In the rejoinder, Mr. Satyam Y Chhaya, learned advocate for the petitioner would contend that communications issued by the Department of Revenue, State of Gujarat had directed to initiate proceedings for breach of Section 44(A) of the Act, while rejecting the application preferred by the petitioner under very provision of the Act. That the manner in which action impugned is taken speaks volume about arbitrariness on the part of the Government and accordingly the petition deserves to be allowed.

9. Having heard learned counsel appearing for the parties, on perusal of record of the case and basically procedure undertaken by the authority for the breach of condition No. 6 as well as under Section 44(A) of the Act 1894, we deem it necessary to produce the order dated 25.2.2013 passed by the Division Bench of this Court which reads as under:

"1. We have heard Mr. Mihir Joshi with Mr. Satyam Chhaya for the petitioner and Mr. Prakash Jani, learned Govt. Pleader for the respondents.

2. It prima facie appears that at the time when the land was allotted after acquisition, condition No. 6 provided as under:

6) In case the said land is not used for the purpose for which it is acquired as hereinbefore recited or is used for any other purpose or in case the Company commits a breach of any of the conditions hereof, the said land together with the buildings, if any, erected thereon, shall be liable to resumption by the Government subject however, to the condition that the amount spent by the company for the acquisition of the said land or its value as undeveloped land at the time of resumption, whichever is less (but excluding the cost or value of any improvement made by the Company to the said land or any structure standings on the same land) shall be paid as compensation.

Provided that the said land and the buildings, if any, erected thereon shall not be so resumed, unless due notice of the breach complained of has been given to the Company and the Company has failed to make good the breach or to comply with any directions issued by the Government in this behalf, within the time specified in the said notice for compliance therewith.

3. The aforesaid shows that the proviso to the aforesaid condition expressly provides that the land and the construction shall not be resumed unless due notice of the breach complained of is given to the Company and the Company has failed to make good the breach or to comply with the directions issued. In spite of the express condition, it appears that the first show cause notice dated 12.03.2009 is for resumption of land and second show cause notice dated 17.05.2010 also does not speak for the aforesaid aspect.

4. The final order is passed straightway for resumption of the land without giving

any opportunity to the petitioner Company to make good of the alleged breach or otherwise.

5. The matter was adjourned when it was heard on 20.02.2013 on the ground that whether the State would like to consider the matter by giving opportunity to the petitioner Company to make good the alleged breach or not and thereafter, to proceed in accordance with law. However, today Mr. Jani, learned Govt. Pleader has shown inability on the said aspect.

6. It prima facie appears that the alleged action for resumption of the land is running counter to the agreed condition for giving opportunity for making good the alleged breach and therefore, straightway, the order for resumption prima facie cannot be maintained.

7. Hence, Rule.

8. By interim order, status quo as prevailing over the land in question qua possession and revenue record shall be maintained with the observation that the petitioner shall also make the alleged breach good within a period of three months."

10. Thus, it transpires that while issuing Rule in writ petition a Division Bench of this Court has referred to condition No. 6 of allotment of Acquisition of Land for the Company namely, for industrial purpose and also referred to proviso therein no order of resuming land as well as construction be passed unless due notice of the breach complained of is given to the Company and the Company has failed to make good the breach or to comply with the directions issued. No such opportunity was given to the petitioner. On perusal of first show cause notice dated 12.3.2009 and even second show cause notice dated 17.5.2010 and even order impugned also do not reflect that what transpires before the authority at the time of hearing and whether any representation or submission made by the petitioner are considered before taking the decision. Further in the above interim order a Division Bench directed the petitioner to make good the alleged breach within three months for which affidavit is filed and it is stated that as on date, no such construction of permanent nature remained on the subject land.

11. The affidavit filed on behalf of the competent authority, however, referred to certain structure erected over the land for parking place trading of marbles plastic scrap, storage, etc. but indisputably, following facts emerged on the record, namely, (i) no opportunity was given to the petitioner to make alleged breach good for the authority as per proviso to condition No. 6 of the allotment of the land after acquisition; (ii) in an application under Section 44(A) of the Act, preferred by the applicant before the competent authority seeking sale of the part of the land while taking the decision to reject such application, directions were given to the Collector by the State Government to initiate proceedings for breach of conditions of allotment as well as under Section 44(A) of the Act, 1894; (iii) in the impugned order reference is only made about issuance of notices dated 12.3.2009 and 17.5.2010 but the authority has failed to take into

consideration any of the reply or submissions on the part of the petitioner; (iv) the order impugned simultaneously rejects an application seeking permission under Section 44(A) of the Act, 1894 and also resumes the land for breach of condition No. 6 and no opportunity was again given to the petitioner for making the breach good. Thus, exercise of power by respondent No. 2 of resuming the subject land is in breach of Section 44(A) of the Act, Condition No. 6 of the letter of allotment and in violation of principle of natural justice, hence it is illegal.

12. No cogent material appears on record to show that the land in question is still used for the purpose other than the purpose for which it is allotted and the petitioner has not complied with condition imposed by this Court while issuing Rules namely, making the alleged breach good within a period of three months.

13. Even if some construction is noticed by the authority for which no explanation is sought for from the petitioner. The action taken by the respondent authority of resuming the land vide impugned order dated 7.10.2011 passed by respondent No. 2 is unjust, unreasonable, arbitrary and in colorable exercise of power and in violation of Articles 14 and 19 of the Constitution of India and being illegal and void, deserves to be quashed and set aside and accordingly quashed and set aside. The respondent No. 2 shall restore the possession of the subject land viz. 14,169 sq.mtr. to the petitioner forthwith. However, if the petitioner would like to alienate/transfer or sell the land in question, it will be open for him to take appropriate action in accordance with law. In such a case, competent authority shall decide the above issue after following the procedure. However, this order will not come in the way of the competent authority to take appropriate action in case if any breach of any of the conditions of allotment or provisions of the Act, 1894 is noticed henceforth, after following the due procedure in accordance with law.

14. In view of the above, petition is allowed. Order impugned is quashed and set aside. No costs. Direct service is permitted.