

(2012) 11 GUJ CK 0001
In the Gujarat High Court
Case No : Second Appeal No. 119 of 1997

State of Gujarat and Another	Vs	APPELLANT
Mangrol Municipality		RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Criminal Procedure Code, 1973 (CrPC) — Section 100

Citation : (2013) 2 GLR 1621

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : Manan Maheta, A.G.P, for the Appellant; Mehul S. Shah with Amar D. Mithani, for the Respondent

Final Decision : Dismissed

Judgement

C.L. Soni, J.—This appeal under Sec. 100 of the CPC is between the State and the Municipality. The appellant State and its authorities are the original defendants against whom, the respondent Mangrol District Municipal had filed Regular Civil Suit No. 26 of 1979 for declaration and permanent injunction. The case of the plaintiff is that the Municipality is constituted under the Bombay District Municipal Act, 1901 (hereinafter referred to as "the Act" for convenience). The State Government (Government of Saurashtra) issued Notification dated 7-7-1955, whereby the State Government transferred all vacant plots situated within the limits of plaintiff-Municipality. Under the provisions of Sec. 50 of the Act and by virtue of notification issued thereunder, the plaintiff-Municipality became owner of all the plots of land situated within its local limit. It is further case of the plaintiff that one of the plots was given to the State Road Transport Corporation for using the same for bus stand. Such giving of plot to the State Transport Corporation was by way of temporary occupation. When the suit plot fell vacant, the possession was handed over by the Corporation to the Mamlatdar on 1-5-1978 instead of plaintiff. The plaintiff, therefore, wrote a letter dated 26-5-1978 to defendant No. 2 asking to handover

possession of the suit plot to the plaintiff. But, the claim of the plaintiff was denied on the ground that the suit plot was never vested or transferred to the plaintiff Municipality, and therefore, question of handing over the possession of the suit plot did not arise. The plaintiff has thus filed suit seeking declaration that the suit plot stands transferred to the plaintiff-Municipality vide Government Notification dated 7-7-1955 and the suit plot vests with the Municipality without being specially reserved by the State as required under the provisions of the Act, The plaintiff also sought relief for handing over the possession to the plaintiff and also restraint order against the State from parting with possession of the suit plot except in favour of the plaintiff. The plaintiff also prayed for release of the money received by the State from the S.T. Corporation for the use of the suit plot by the S.T. Corporation.

2. The suit was resisted by the defendants by filing written statement at Exh. 14 stating that by Notification dated 7-7-1955, all plots were transferred to the plaintiff except the suit plot which was handed over to the S.T. Corporation vide letter dated 25-6-1955 by the Collector, which was kept reserved for the S.T. Corporation and as such the suit plot was not vacant plot on the date of the said notification. It is further stated that the suit plot was leased to the S.T. Corporation and the S.T. Corporation on vacating the same, handed over the possession of the suit plot to the Government and the Collector has legally allotted portion of the plot to Fisheries Department and the Fisheries Department is already given possession of the suit plot on 6-1-1979 and the suit plot being of the ownership of the Government, the plaintiff has got no right to claim the suit plot.

3. On the basis of the pleadings, the trial Court framed following issues at Exh. 24:

(1) Whether the plaintiff proves that the suit plot stands transferred to plaintiff-Municipality vide Government Notification dated 7th July, 1955 and as such it vest in it?

(2) Whether the plaintiff proves that it is entitled to ask accounts from the defendants and for the release of money received from the State Transport Corporation for the use and occupation of the suit land?

(3) To what reliefs, if any, is the plaintiff entitled?

(4) What order and decree?

Learned trial Judge answered the said issues as under:

(1) In the negative.

(2) In the negative.

(3) To no relief.

(4) As per the final order below.

4. Before the trial Court, on behalf of the plaintiff, oral evidence was led and copies of the Notification and other documents were also produced on record. The trial Court on appreciation of the evidence came to the conclusion that the suit plot was not transferred to the plaintiff and the same was reserved for giving to the S.T. Corporation for the purpose of making S.T. stand and it cannot be said that the suit plot was open plot, and therefore, the suit plot could not be said to have been transferred to the plaintiff by virtue of the notification. The trial Court thus dismissed the suit of the plaintiff by judgment and decree dated 30-12-1988.

5. The plaintiff, therefore, challenged the said judgment and decree by filing Regular Civil Appeal No. 24 of 1990. The learned Appellate Judge on independent appreciation of evidence available on record came to the conclusion that at the time of issuance of the Notification dated 7-7-1955, the suit plot cannot be said to have been transferred to the S.T. Corporation and by virtue of the provisions of Sec. 50(2) of the Act, the plaintiff-Municipality could be said to have acquired the suit plot as the same was within the limits of the Municipality. Learned Appellate Judge thus allowed the appeal of the plaintiff and declared that the suit plot stands transferred to the plaintiff-Municipality by virtue of the Government Notification dated 7-7-1955. Learned Appellate Judge, however rejected the prayer of the plaintiff for accounts from the defendants. The defendants were ordered to handover the possession of the suit plot to the plaintiff. It is this judgment and decree dated 5-4-1997 passed by the learned Second Extra Assistant Judge, Junagadh which is under challenge in this appeal before this Court.

6. This appeal was admitted by order dated 23-2-1998 on the following substantial question of law:

Whether the lower Appellate Court committed error of law in misinterpreting the Government Notification dated 7-7-1955 and consequently holding that the respondent-Municipality is the owner of the land in dispute?

7. I have heard learned Advocates for the parties.

8. Learned Assistant Government Pleader Shri Manan Maheta for the appellants submitted that Notification dated 7-7-1955 issued under Sec. 50(2) of the Act was for transferring all the vacant plots and since the suit plot was not vacant plot, the suit plot could not be said to have stood transferred to the plaintiff. He submitted that though it is not mentioned in the notification that the suit plot was specially reserved by the Government but from admitted evidence on record, it has been well established that the suit plot was already reserved for handing over to the S.T. Corporation for the purpose of making S.T. stand and the suit plot was then in fact transferred to the S.T. Corporation on lease for S.T. stand and on getting vacant possession of the suit plot, the S.T. Corporation had in fact constructed S.T. stand. He submitted that the trial Court correctly appreciated the evidence which established the fact that before issuance of notification, the State Government had already taken decision to sell out the suit plot to the S.T.

Corporation, but since the S.T. Corporation was not ready to purchase and requested to lease out the suit plot, request of the S.T. Corporation was accepted, and ultimately, the suit plot was handed over to the S.T. Corporation. He submitted that though actual leasing out of the suit plot to the S.T. Corporation was after notification issued by the State Government, but prior to the notification, decision for giving the suit plot was already taken and pursuant to such decision, the suit plot was given to the S.T. Corporation though not on sale basis but on lease basis and the S.T. Corporation then occupied and enjoyed the possession of the suit plot for S.T. bus stand for long period of 20 years i.e. upto 1978.

8.1. Learned Assistant Government Pleader submitted that the trial Court has also further considered the evidence and recorded findings that after the S.T. Corporation handed back the possession of the suit plot to the Government, the Collector vide order dated 22-12-1978, at Exh. 36, granted part of the suit plot admeasuring 651 sq.yds. to the Fisheries Department of the State Government and the possession was handed over to the said department. Learned Assistant Government Pleader therefore, submitted that the trial Court having not committed any error either on appreciation of the evidence or of misconstruction of the documentary evidence on record, and if having reached to the correct findings of facts, based on which, the conclusion was recorded that by Notification dated 7-7-1955, the suit plot was not transferred to the plaintiff Municipality, learned Appellate Judge was not justified in interfering with the judgment and decree passed by the trial Court.

8.2. Learned Assistant Government Pleader also submitted that the suit is for declaration that by virtue of the notification, the suit plot stands vested with the plaintiff. He submitted that for such suit, cause of action for the plaintiff had already arisen when the suit plot was transferred to the S.T. Corporation. He submitted that the plaintiff is responsible for delay in filing the suit, especially when the suit plot was allowed to be held for more than 20 years by the S.T. Corporation and by the Fisheries Department after the S.T. Corporation returned the suit plot in the year 1978. Learned Assistant Government Pleader thus, submitted that the suit was in fact time-barred, and therefore, learned Appellate Judge was not justified in allowing the appeal of the plaintiff.

8.3. Learned Assistant Government Pleader further submitted that on the above proved facts, learned Appellate Judge has committed serious error by misinterpreting the Government Notification dated 7-7-1955 and by holding that the plaintiff-Municipality is owner of the disputed plot. He thus urged to allow this appeal on the above substantial question of law and to quash and set aside the judgment and decree passed by the learned Appellate Judge.

9. In reply to the above-said arguments of learned Assistant Government Pleader, learned Advocate Mr. M.S. Shah appearing with learned Advocate Mr. A.D. Mithani for the respondent-plaintiff, submitted that when the Notification dated 7-7-1955 was issued, the suit plot also stood transferred because on the

day of the notification, the suit plot was not transferred to the S.T. Corporation either by way of sale or by lease. Mr. Shah submitted that by deeming fiction, under the provisions of Sec. 50 of the Act, the suit plot with all other vacant plots stood transferred to the plaintiff, and therefore, even if possession of the suit plot was given to the S.T. Corporation on lease basis, title to the suit plot of the Municipality did not wipe out and the S.T. Corporation has just held the suit plot as lessee without any further rights whatsoever and when the S.T. Corporation handed back the possession of the suit plot to the Government, the plaintiff became entitled to possession of the suit plot by virtue of the said notification. He submitted that simply because, the plaintiff did not take any objection for permitting S.T. Corporation to enjoy the suit plot on lease basis, that by itself would not take away the rights of the plaintiff to enjoy the title and possession of the suit plot after the S.T. Corporation handed over the possession of the suit plot to the Government.

9.1. Learned Advocate Mr. Shah submitted that learned trial Judge has misdirected himself by coming to the conclusion that the suit plot was sold away to the S.T. Corporation and by coming to further conclusion that even if the suit plot was not sold to the S.T. Corporation, the issue of allotment of suit plot to the S.T. Corporation was under consideration before issuance of the notification and the same was subsequently leased out to the S.T. Corporation, and therefore, it could be said that on the day of the notification, the suit plot was reserved by the State Government, and therefore, the suit plot was not transferred with other open plots under the said Notification.

9.2. Learned Advocate Mr. Shah submitted that what was required to be considered by the learned trial Judge was legal effect of issuance of notification under the provision of Sec. 50 of the Act in respect of all open lands within the limits of the Municipality and if there was no specific reservation for any of the open plots in the limits of the Municipality, by virtue of notification and the provision of law, the suit plot was to be taken as transferred to the plaintiff. Learned Advocate Mr. Shah submitted that use of the phrase, "not being specially reserved" in Sec. 50 of the Act emphatically conveys a clear intention of the legislature that unless there is special reservation for any land provided in the notification, the same cannot be inferred. Mr. Shah submitted that such reservation has to be part of the said notification and no action under consideration or order of any State authority de hors the notification can be taken as providing for reservation for any land as per Sec. 50 of the Act. Learned trial Judge, therefore, was not right in coming to the conclusion that when notification was issued, the suit plot could be said to have been reserved by the Government, and therefore, it could not be said to have been transferred by notification.

9.3. Learned Advocate Mr. Shah submitted that the learned Appellate Judge has on well appreciation of the oral as also documentary evidence available on record, and on interpretation of Sec. 50 of the Act, rightly come to the conclusion

that the suit plot was never reserved by the Government when the notification was issued and that title in the suit plot was not actually transferred in favour of the S.T. Corporation at the time of issuance of the notification, and simply because, the request of the S.T. Corporation was under consideration, that by itself is no ground to come to the conclusion that there was a reservation for suit plot when the notification was issued by the State Government.

9.4. Learned Advocate Mr. Shah submitted that what is required to be considered is net effect of issuance of the notification under the provisions of Sec. 50 of the Act and not the facts as regards consideration of the request for giving the suit plot to the S.T. Corporation. Mr. Shah submitted that even if the request of the S.T. Corporation was approved, for giving suit plot on lease for the purpose of making S.T. stand, that could be a temporary arrangement and such could never be treated as either transfer of the title of the suit plot in favour of the S.T. Corporation or making special reservation by the State Government in favour of the S.T. Corporation. He thus, submitted that the plaintiff-Municipality had already acquired right, title and interest in the suit plot by virtue of the notification and the Appellate Court having rightly construed the provisions of the Act, on the basis of the admitted evidence, no substantial question of law has arisen for consideration of this Court. He, therefore, urged to dismiss this appeal.

9.5. As regards contention of learned Assistant Government Pleader about delay in filing the suit, learned Advocate Mr. Shah submitted that title in respect of the suit plot having stood transferred in favour of the plaintiff, lease, if any, in favour of the S.T. Corporation was a permissible use by the S.T. Corporation, which would never take away the right, title and interest of the Municipality in the suit plot. He submitted that the S.T. Corporation was in possession till 1978, and therefore, there was no cause for the plaintiff to file suit for the purpose of getting possession of the suit plot from the S.T. Corporation. Learned Advocate Mr. Shah further submitted that no such objection was ever raised before the Court below and even there was no issue framed by the Courts below on the point of limitation. In support of his argument, learned Advocate Mr. Shah relied on the judgment in the case of Porbandar Nagarpalika Vs. State of Gujarat and Others, and pointed out that the very provision of the Act was under consideration.

9.6. Learned Advocate Mr. Shah pointed out that S.T. Corporation when handed over the possession of the suit plot to Mamlatdar instead of giving it to the plaintiff, real cause for the plaintiff had arisen for seeking declaration that under notification, title in respect of the suit plot was already transferred in favour of the plaintiff, and therefore, the S.T. Corporation ought not to have given back the possession of the suit plot to the Government. He thus submitted that there was no delay in filing the suit by plaintiff.

10. Having heard learned Advocates for the parties, having perused the judgment and decree passed by the Courts below with Records and Proceedings, it appears that following are the proved facts:

(1) Disputed plot admeasures 1328.4 sq.yds.

(2) In respect of the demand of the suit plot by the S.T. Corporation, the Collector, by order dated 25-6-1955, Exh. 34, passed order giving approval for allotting the land to the S.T. Corporation at the rate of Rs. 3/- per sq.yd.

(3) Secretary to the Government of Saurashtra, Revenue Department issued Notification dated 7-7-1955, whereby in exercise of the powers under sub-sec. (2) of Sec. 50 of the Act, the Government was pleased to transfer to the plaintiff-Municipality all vacant plots situated within the limits of Municipality and belonging to the Government.

(4) Collector passed order dated 31-3-1956, Exh. 37, giving the disputed plot on lease for 7 years, to the S.T. Corporation as the S.T. Corporation did not show willingness to get the land on payment of the price of the land but demanded suit plot on leasehold right.

(5) By letter dated 9-4-1956, Exh. 30, Mamlatdar, Mangrol informed the plaintiff that the suit plot was given to the S.T. Corporation as per the order dated 31-3-1956 passed by the Collector.

(6) The S.T. Corporation had handed back the possession of the suit plot to the Government on 1-5-1978.

(7) After plot admeasuring 1328.4 sq.yds. was handed back to the Government by the S.T. Corporation, portion of plot admeasuring 657-5-6 sq.yds. was ordered to be allotted to Fisheries Department by order dated 22-12-1978 (Exh. 36) and the possession thereof was handed over to the said Department by the Circle Officer, Mangrol on 6-1-1979.

11. At this stage, notification issued by the State Government at Exh. 71 is required to be reproduced:

Sub:- Transfer of vacant plot to Mangrol Municipality.

Government of Saurashtra Revenue Department (L.S.G.) No. R.D./LSG/10-2(17)-55-56.

Rajkot, 7th July, 1955

Government Notification.

Whereas under sub-sec. (1) of Sec. 50 of the Bombay District Municipal Act (No. 3 of 1901) as adopted and applied to the State of Saurashtra, (hereinafter referred to as "the said Act"), the Mangrol Municipality (hereinafter referred to as "the said Municipality") may acquire and hold property both movable and immovable within and without the limits of the said Municipality.

2. Now, therefore, in pursuance of sub-sec. (2) of Sec. 50 of the said Act, the Government is pleased to transfer to the said Municipality all vacant plots situated within the limits of the said Municipality and belonging to the

Government.

By order and in the name of the Rajpramukh of the Saurashtra,

Sd/- Secretary to Government of Saurashtra Revenue Department (L.S.G.)

12. From the above facts, it appears that before notification at Exh. 71 was issued under sub-sec. (2) of Sec. 50 of the Act, transferring all vacant plots within the limits of Municipality, to the Municipality by the State Government, there was no order transferring the suit plot in favour of the S.T. Corporation. Prior to issuance of the notification, there was only a decision by Collector approving the decision taken by the Revenue Department for giving suit plot to the S.T. Corporation. But, the S.T. Corporation showed its unwillingness to accept the suit plot by making payment of the price of the plot and demanded the plot on lease. Therefore, there was no allotment of the suit plot in favour of the S.T. Corporation and such position continued till issuance of the Notification dated 7-7-1955 at Exh. 71. It was only after the said notification was issued transferring all vacant plots situated within the limits of Municipality, to the Municipality by the Government, a decision was taken by the Collector, Junagadh dated 31-3-1956 at Exh. 37, giving approval to lease out the suit plot to the S.T. Corporation for a period of 7 years. Thus, till the decision was taken as on 31-3-1956, no rights in favour of the S.T. Corporation were ever transferred and as stated above, in between two decisions dated 25-6-1955 at Exh. 34 and dated 31-3-1956 at Exh. 37 by the Collector, the State Government had already issued notification under Sec. 50 of the Act. The question, is therefore, what is effect of such notification and whether by virtue of such notification, the suit plot stood transferred on the day of the notification in favour of the Municipality or not.

13. Before considering the above question, Sec. 50 of the Act is required to be referred. It is reproduced hereinbelow:

50.(1) Every Municipality may acquire and hold property both movable and immovable, whether within or without the limits of the municipal district.

(2) All property of the nature hereinafter in this Section specified, and not being specially reserved by the (State Government) shall be vested in and belong to the Municipality, and shall, together with all other property, of what nature or kind soever, not being specially reserved by the [State Government], which may become vested in the Municipality, be under their direction, management and control, and shall be held and applied by them as trustees, subject to the provisions and for the purposes of this Act; that is to say-

(a) all public town-walls, gates, markets, slaughter-houses, manure and night soil depots, and public buildings of every description;

(b) all public streams, tanks, reservoirs, cisterns, wells, springs, aquaducts, conduits, tunnels, pipes, pumps and other water-works, and all bridges, buildings, engines, works, materials and things connected therewith or appertaining thereto, and also any adjacent land (not being private property)

appertaining to any public tank or well;

(c) all public sewers and drains, and all sewers, drains, tunnels, culverts, gutters and water-courses in, along side or under any streets, and all works, materials and things appertaining thereto, as also all dust, dirt, dung, ashes, refuse, animal matter, or filth, or rubbish of any kind collected by the Municipality from the streets, houses, privies, sewers, cesspools or elsewhere;

(d) all public lamps, lamp-posts, and apparatus connected therewith, or appertaining thereto;

(e) all lands transferred to them by the [Government] or by gift or otherwise, for local public purposes;

(f) all public streets, and the pavements, stones and other materials thereof and also all trees, erections, materials, implements and things provided for such street:

[Provided that lands transferred to the Municipality by the State Government under clause (e) shall not, unless otherwise expressly provided in the instrument of transfer, belong by right of ownership to the Municipality but shall vest in them subject to the terms and conditions of the transfer, and on the breach of any of the said terms or conditions, the lands with all things attached thereto, including all fixtures and structures thereon, shall revert in the State Government and it shall be lawful for the State Government to resume possession thereof.]

14. In the case of Porbandar Nagarpalika Vs. State of Gujarat and Others, relied on by learned Advocate Shri Shah for the plaintiff, learned Single Judge of this Court had an occasion to deal with the case in the context of the very provision of Sec. 50 of the Act. Observations from Para 7 of the said case, which are relevant for our purpose, are reproduced below:

7. Considering the provisions of Sec. 50 of the Act and the two notifications, it will have to be held that all open plots of land situated within the Municipal limits of petitioner-Nagarpalika vest in and belonging to it, and therefore, it has a right to dispose of the same by sale, lease, etc. of course, subject to the provisions and for the purposes of the Act. So long as they continue to vest in the petitioner-Municipality, neither the State Government nor the Collector would have power to deal with such open plots of land. Therefore, even when the learned Assistant Government Pleader is right in his submission that open plots of land situated within the Municipal limits of the petitioner-Nagarpalika do not vest in it absolutely, his further submission that the Government and its Officers have, therefore, a right to dispose of such plots, cannot be accepted.

Though, in that case, the Court did not think it proper to disturb the allotment of land by the Collector in favour of the public bodies for public purpose because of long lapse of time. However, on interpretation of Sec. 50 of the Act, the Court has come to the conclusion that on issuance of the notification under Sec. 50 of the Act, all open plots of the land situated within the Municipal limits shall stand

vested in the Municipality and so long as such vesting continues, neither the State Government nor the Collector would have power to deal with such open plots of land. This judgment of learned Single Judge, as pointed out by learned Advocate for the respondent, was carried in appeal and the Hon'ble Division Bench of this Court has confirmed the view taken by the learned Single Judge vide its order dated 14th October 1991, copy thereof is made available to the Court for perusal. From the said order, following observations are required to be referred:

Under Notification dated June 24, 1955 the Government transferred to the Porbandar Municipality all the vacant plots situated within the limits of said Municipality and belonging to the Government except plots described in the Schedule to the notification for local public purposes. The land in dispute would be covered by the said notification, dated June 24, 1955. This land was within the Municipal limits of the Porbandar Municipality on June 24, 1955. In other words, the said land did not come to be included within the limits of Porbandar Municipality on account of extension of its limits after said notification was issued. That being the position, the said land vested in the Municipality. The Collector, therefore, had no authority to dispose of the land. It was Porbandar Municipality alone which has the authority to deal with the land. The learned Single Judge in our opinion was, therefore, right in holding that the action of the Collector in disposing of the said plot of land bearing S. No. 10/4/1 of Porbandar city was illegal and without authority. We, therefore, do not see any reason to interfere with the order passed by the learned Single Judge. No other point is raised in this appeal.

14.1. The SLP against the above order was dismissed as found from the copy of order dated 14-12-1992 passed by the Hon'ble Supreme Court in Special Leave to Appeal No. 7209 of 1992, placed on record by learned Advocate Mr. Shah.

14.2. From the language of the provision of Sec. 50 of the Act, especially sub-sec. (2), I find substance in the submission of learned Advocate Mr. Shah that to infer reservation in respect of any plot in absence of special reservation provided in the notification, would be against the intention of the legislature as regards special reservation while transferring vacant land under sub-sec. (2) of Sec. 50 of the Act. In fact, word, "specially", prefixing the word "reserved" in sub-sec. (2), connote mandate of legislature that no State authority can think about any kind of reservation unless the notification provides for special reservation for such plot. Therefore, in absence of any reservation, specifically provided in the notification, no State authority can retain and withhold plot covered under the notification for any purpose under guise that question for allotment of such plot was under consideration.

15. Thus, considering the provision of Sec. 50(2) of the Act and in view of the above declaration of law, the effect of the notification issued under Sec. 50 of the Act, transferring all open plots within the limits of Municipality to the Municipality by the State Government is that all rights and title in the plots covered by the

notification stand transferred in favour of the Municipality for the purposes as provided in the said provision. On transfer of such open plot to the Municipality, the State Government, including the Collector will have no right or power to deal with such plot.

16. Considering the legal effect of notification issued under the provisions of Sec. 50 of the Act and applying the same to the facts of the case, the only conclusion could be that on issuance of Notification dated 7-7-1955 at Exh. 71, all vacant plots, including the suit plot, within the limits of the plaintiff-Municipality had stood transferred to the plaintiff. The question would then arise, what will be the effect of the order of the Collector giving land to the S.T. Corporation on lease. As already stated above, the land was given to the S.T. Corporation on lease after the notification was issued. Before the order for approving the lease in favour of the S.T. Corporation, there was no order allotting the land in favour of the S.T. Corporation. When the notification was already issued by the State Government, in fact, the Collector had no power to pass any order giving land to the S.T. Corporation on lease. Therefore, such lease in favour of the S.T. Corporation after the notification was not only invalid, but could not take away the rights and title of the Municipality in suit plot which had already stood transferred in its favour by the event of the notification taking place on 7-7-1955. At the best, holding of the suit plot by the S.T. Corporation on lease could be said to have been by the implied permission of the plaintiff-Municipality and if the plaintiff-Municipality had permitted occupation and use of the suit plot by the S.T. Corporation, the plaintiff-Municipality would not be divested of its rights and title in the suit plot. Since, after notification, the plaintiff-Municipality had become entitled to hold rights, title and interest in the suit plot, the State Government and its officers, like Collector and Mamlatdar, were not entitled to get back the suit plot from the S.T. Corporation when the S.T. Corporation did not further require the suit plot in the year 1978. The portion of suit plot was given to Fisheries Department, but same would not be a ground for the State authority to believe that it was competent to hold the suit plot irrespective of issuance of notification. But, when the S.T. Corporation had handed back the possession of the suit plot, it was incumbent upon the State authorities to give possession of such suit plot to the plaintiff. Having not received the suit plot from the State authorities after the same was handed over by the S.T. Corporation, in my view, the plaintiff was justified in claiming possession of the suit plot by seeking declaration that by virtue of the notification, the plaintiff-Municipality had acquired rights, title and interest in the suit plot and the defendants be directed to handover the possession of the suit plot to the plaintiff.

17. In view of the above, I am of the view that the Appellate Court has not committed any error of law of misinterpreting the Government Notification dated 7-7-1955, and consequently, holding that the plaintiff Municipality is entitled to the suit plot. The substantial question of law formulated by this Court is thus answered accordingly.

18. In view of the above discussion, especially when I have taken the view that the S.T. Corporation held the suit plot as lessee, it was the plaintiff Municipality which was entitled to get back the suit plot. However, since the suit plot was given back by the S.T. Corporation in the year 1978 and instead of giving possession of such plot to the plaintiff, the State authority had allotted portion of the suit plot in favour of the Fisheries Department, the plaintiff was justified in filing the suit at that very stage. Therefore, it cannot be said that the suit of the plaintiff was time-barred and there was no cause of action for the plaintiff to file such suit. In my view, the cause of action had arisen to the plaintiff only when the suit plot was released by the S.T. Corporation and when portion from the suit plot was allotted to the Fisheries Department. Therefore, the question raised by learned Assistant Government Pleader about the delay is also answered accordingly though such is not the substantial question of law formulated by this Court while admitting the appeal.

19. In view of the above, the appeal is required to be dismissed. Hence, the same is dismissed accordingly. Record and proceedings be sent back to the concerned trial Court.