

(2016) 01 SC CK 0072

In the Supreme Court Of India

Case No : Civil Appeal No. 360 of 2016 (Arising from the SLP (Civil) No. 527 of 2015)

State of Gujarat and Others

APPELLANT

Vs

Shree Ratnakar Enterprise

RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Citation : (2016) AllSCR 684 : (2016) 2 ApexCourtJudgments(SC) 181 : (2016) 122 CutLT 174 : (2016) 332 ELT 389 : (2016) 2 JCR 127 : (2016) 1 JT 308 : (2016) 5 RCRCivil 269 : (2016) 2 RecentApexJudgments(RAJ) 357 : (2016) 1 Scale 386 : (2016) 13 SCC 186 : (2016) 5 WB

Hon'ble Judges : V. Gopala Gowda and U.U. Lalit, JJ.

Bench : Division Bench

Advocate : Hemantika Wahi, Jesal Wahi and Puja Singh, Advocates, for the Appellant; Abhijeet Sinha, Mohit Paul, Ayush Agrawal and Adit Pujari, Advocates, for the Respondent

Final Decision : Allowed

Judgement

U.U. Lalit, J.—1. Leave granted.

2. This appeal challenges the judgment and order dated 08.01.2014 passed by the Division Bench of the High Court of Gujarat in Letters Patent Appeal No. 218 of 2012 arising out of the dismissal of Special Civil Application No. 16050 of 2011 by the Single Judge of the High Court.

3. The facts in the present matter are as under:

(a) The Respondent preferred an application before the Appellant State for grant of lease of land admeasuring 1500 acres out of Survey No. 141 of Village Mundra, Taluka Mundra, District Kutch for the purposes of manufacturing salt. That application came to be rejected by the District Collector on 05.06.1993 on the ground "Land not available as asked for". The rejection of the application was challenged in Revision before the Additional Chief Secretary, Revenue

Department who remanded the matter back to the Collector for fresh consideration. Thereafter, the Collector again rejected the application vide order dated 18.12.1999 on the ground that the land available with the Government was scattered over various places and land to the tune of 1500 acres as requested was not available in one place. That order was again challenged by filing Revision on 02.02.2005 i.e. more than five years after the rejection of application on 18.12.1999. The revisional authority refused to condone the delay in preferring the Revision and by its order dated 27.04.2005 affirmed the order of rejection passed by the Collector. A copy of the order dated 27.04.2005 was marked to the concerned parties.

(b) Thereafter, a proposal for setting up of Special Economic Zone at Mundra was taken up for consideration. The Central Government vide its order dated 24.05.2009 provided for setting up of Special Economic Zone at Mundra. The notification in question pertained to lands including Survey No. 141 of Village Mundra. The coastal lands required for the Special Economic Zone were surrendered by various persons to the Government in order to enable setting up of the Special Economic Zone.

(c) Almost six years after the disposal of Revision on 27.04.2005, the Respondent preferred Special Civil Application No. 16050 of 2011 in the High Court of Gujarat praying inter-alia that the order dated 27.04.2005 be quashed and appropriate direction be issued to allot land as prayed for by the Respondent. It was submitted that the Respondent had recently become aware about the order passed on 27.04.2005.

(d) That Special Civil Application was rejected by Single Judge of the High Court vide judgment and order dated 28.11.2011. It was observed that the rejection of Revision in 2005 was challenged by filing Special Civil Application in the year 2011 and that the Respondent itself had remained indolent in pursuing its remedy; that because of such delay and laches no indulgence could be shown in favour of the Respondent; that no violation of any fundamental right or any legal right was shown by the Respondent; and that there was no infirmity in the order passed by the revisional authority.

(e) The decision of the Single Judge was challenged by filing Letters Patent Appeal No. 218 of 2012 before the Division Bench of the High Court. During the pendency of this Appeal, an affidavit was filed on behalf of the Appellant-State that no land was earmarked for salt production from Survey No. 141 but over the years lands situated near coastal area were allotted to various applicants for salt production and that said lands were surrendered by said persons to the Appellant-State after the demand for land for Mundra Special Economic Zone came up. The Division Bench by its judgment and order dated 08.01.2014 allowed the appeal. It was observed that there was no delay on part of the Respondent as it was prosecuting the matter since the year 1992 and that the delay was actually on part of the Appellant-State. The Division Bench further observed that since the Respondent had applied in the year 1992 its priority ought to be maintained and

that the Collector must ensure that the land for salt cultivation be allotted to the Respondent from any survey number within a period of three months from the receipt of the order.

4. The Appellant State has preferred this Appeal challenging the decision of the Division Bench of the High Court submitting inter-alia that after the establishment of Special Economic Zone at Mundra, no land was available which could be allotted to the Respondent, that the Respondent could not claim the land as a matter of right for production of salt and that there was no infirmity in the order passed by the revisional authority. It was further submitted that the Appellant-State had allotted small pieces of land for salt production and no person was ever allotted 1500 acres of land for production of salt. This Court was pleased to issue notice in the matter, whereafter the Respondent filed affidavit in reply. It was submitted that if 1500 acres of land was not available in Survey No. 141, whatever was available could be allotted from other survey numbers but the application of the Respondent could not and ought not to have been rejected.

5. We heard Ms. Jesal Wahi, learned Advocate who appeared in support of the Appeal and Mr. Abhijeet Sinha, learned Advocate who appeared for the Respondent. After concluding the hearing on 07.12.2015, liberty was granted to the parties to file written submissions, if any, within two weeks. The Respondent filed an application for direction submitting inter-alia that it wished to rely on the policy of the State Government dated 31.12.1981 governing the matter in issue and that it be granted hearing to address this Court on such document. The Respondent further prayed for extension of time to file its written submission.

6. We have gone through the record. At no stage the alleged policy dated 31.12.1981 was either referred to or relied upon. No submission was ever advanced to project the entitlement or the extent thereof under this policy. The original application simply made a demand that the Respondent be allotted 1500 acres of land from Survey No. 141 of Village Mundra. It is true that certain allotments were made from and out of Survey No. 141 of Village Mundra but after the setting up of Special Economic Zone at Mundra all those applicants have surrendered their lands. The stand of the Appellant-State is very clear and categorical that there was no land available at Village Mundra. Further, the application having been rejected by the District Collector on 18.12.1999, Revision was preferred more than five years later. This Revision was rejected on the ground of delay and was taken up in challenge before the High Court again after a delay of five years. In the circumstances the Single Judge of the High Court was right in observing that the Respondent had remained indolent in pursuing its remedy and that because of delay and laches on its part, no indulgence could be shown. In our considered view, the Division Bench was not justified in reversing the judgment and order passed by the Single Judge, nor was it right in directing the Collector to allot to the Respondent land for salt production from any other survey number.

7. In the circumstances this appeal is allowed. The judgment and order of the

Division Bench of the High Court is set-aside and that was passed by the Single Judge of the High Court is restored. Application for directions preferred by the Respondent after conclusion of hearing is rejected. No order as to costs.

8. Hon"ble Mr. Justice Uday Umesh Lalit pronounced the judgment of the Bench comprising Hon"ble Mr. Justice V. Gopala Gowda and His Lordship.

9. Delay condoned.

10. Leave granted.

11. The appeal is allowed in terms of the signed non-reportable judgment.

12. Pending application(s), if any, stand(s) disposed of.