

(2013) 10 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 11996 of 1994

Sureshbhai Ratilal Modi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0040

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : H.M. Jadeja, for the Appellant; Rakesh R. Patel, Ld. AGP for the Respondents No. 1-2, Mr. Arpitakapadia, Advocate for the Respondent No. 4 and Notice Served by DS for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—The petitioner, an applicant in Revision Application No. TEN.BA.316/87 in the Gujarat Revenue Tribunal, has approached this Court by way of this petition preferred under Article 226 & 227 of the Constitution of India with following years:

(a) Quashing the Judgment and Order passed by the Deputy Collector refusing to extend the time as confirmed by the appellate authority in Revision Application No. TEN BA-316 of 1987.

(b) Directing the Revenue Authorities to extend the time and/or to grant fresh permission of N.A. use holding that the petitioner was not at all in fault in not complying with the condition.

(c) Any other order that may be deemed just, fit and proper under the circumstances of the case, may be passed in the interest of justice.

Thus, what is essentially under challenge is the order dated 2/2/1994 passed by Gujarat Revenue Tribunal, where under the revision application of the petitioner was rejected after elaborately advertng to facts and circumstances of the case

under which the Tribunal was compelled to reject the same. Being aggrieved and dissatisfied with the order of the Tribunal dated 2/2/1994 the present petition is preferred on the grounds mentioned in the memo of the petition. The facts as could be seen from the petition deserve to be set out here under in order to appreciate the controversy in question.

The petitioner obtained permission from concerned Pranth Officer, Bharuch, under its order dated 5/7/1982 for use of land in question which was intended to be purchased by the petitioner on the conditions mentioned in the permission. The letter of permission is produced at Annexure-A to the petition. Said letter contain conditions that before converting the use of the land in question, the requisite permission u/s 65 of the Bombay Land Revenue Code was to be obtained and all other permissions that may be required for putting the land to its use be also obtained. The sale deed was to be executed within two months from the date of permission and last condition was to the effect that in case of breach of any of the conditions the permission would automatically liable to be revoked. As per the say of the petitioner, he applied for the N.A. Permission on 13/1/1983 as the six months time was getting over by 4/3/1983. Said N.A. Permission was not granted on account of subject land being reserved as per the Revenue record. The petitioner was successful in obtaining extension of said period of six months which was ultimately expiring on 28/2/1987. The petitioner's application for extension of time was rejected for no reason much less any justifiable reason and petitioner therefore was compelled to approach this Court by way of this petition under Article 226/227 of the Constitution of India.

2. Learned advocate appearing for the petitioner contended that obtaining N.A., and other permissions for putting up residential premises was not within his power and purview. He was to only apply and when the application was not processed or processed and rejected on a ground much thereafter it becomes non-est, then, it was incumbent upon the authorities to take that into consideration and grant extension as the application was required to be granted as there was no bar of Rule 36(1A) of The Bombay Tenancy & Agri. Lands Rules, 1956.

3. Petitioner's advocate further contended that Tenancy Rules 36(1A) do provide for extension of period for obtaining permission, however with outer time limit of five years. In the instant case five years was getting over only on 15/8/1987 and thereafter it was indeed unfortunate that this fact was not appreciated by concerned authority and on 28/2/1987 the permission is treated to have been non-est and therefore to that extent there was non application of mind and therefore the petition is required to be allowed.

4. Learned advocate relying upon the decision of this Court in case of Ghelabhai Nagarji Desai (Decd.) through his Heirs and LRs. and Another Vs. State of Gujarat and Others, contended that after recording tendency on the part of the Government officers in delaying issuance of N.A. Permission, issued appropriate

direction to the concerned authority for considering the case of the petitioner. Present case, as per the say of the petitioner's advocate is also similar to the facts of the aforesaid case and, therefore, the State is required to be directed to act accordingly.

5. Learned advocate for the petitioner relying upon another decision of the Bombay High Court in case of Ashwin Prafulla Pimpalwar and etc. Vs. State of Maharashtra and Others, contended that even on the ground of legitimate expectation the petitioner's prayer ought not to have been rejected by concerned authorities. The extension of time when it was permissible under relevant rules the authority could not have held it to be non-est. Therefore on this ground also the petition is required to be allowed.

6. Petitioner's advocate further contended that before 15/8/1987 i.e. outer limit of possible extension of time the impediment in the way of the authority of reservation by State authority is removed as could be seen from entry No. 1212 in respect of subject land which is made on 10/8/1987. Therefore all these factors should have weighed with the authorities.

7. Learned AGP appearing for the State contended that this petition is required to be dismissed as no right much less any fundamental right is involved which would entitle the petitioner to seek any writ or direction to the authorities.

8. Learned AGP contended that the reliance placed upon Rule 36(1A) of the Tenancy Rules is of no avail as the rule cannot be construed to be rule creating absolute right in the petitioner so as to take away the discretion inuring in the authority. Learned advocate for the petitioner has not pointed out anywhere in the petition as to whether the authority concerned was in fact apprised of all these facts which have now been sought to be relied upon, namely; removal of reservation etc.

9. Learned AGP further contended that the non grant of N.A. cannot be said to be an illegal act. Petitioner's advocate at this stage has very fairly admitted that this petition does not contain any challenge to non-granting of N.A. u/s 65 of Bombay Land Revenue Code and after having received the rejection order on 7/3/1983 when there was reservation lifted on 10/10/1987 another application for N.A. was moved and even the second application for N.A. was also rejected. However learned advocate fairly submits that rejection of N.A. Applications under 65 of the Code is surely not subject matter of this petition.

10. This Court is of the considered view that this petition is required to be dismissed for the following reasons:- (a) The plain and simple reading of the original order of permission produced at Annexure-A on page-9 in the compilation dated 5/7-8-1982 is unequivocally clear qua its purport and intent when there is a unequivocal stipulation in the order itself with respect to it being automatically ending on account of any breach of the conditions within the stipulated time, then, by operation of that condition one can say that the order elapsed when the conditions were not fulfilled even within the extended time

limit.

(b) It is required to be noted that the order as it stood at the relevant time limit which was expiring on 4/3/1983, the application of N.A. u/s 65 of Revenue Code came to be rejected on 7/3/1983 itself, meaning thereby, there was absolutely no any scope for reviving the permission dated 5/7-8/1982 as it was to expire on 4/3/1983. Assuming without holding for the sake of examining that there would have been an application for extension of time and time would have been also extended, then also, the rejection of first N.A. Application on 7/3/1983 itself is not under challenge in any manner and, therefore, there was absolutely no justification for the petitioner to contend that the authority committed error in treating the original permission to have elapsed.

(c) It is also required to be noted that the reliance placed upon the decision of this Court in case of Ghelabhai Nagarji Desai (Decd) Through His Heirs & Lrs. & Anr. (supra), as well as the Full Bench of Bombay High Court in case of Ashwin Prafulla Pimpalwar and etc (supra) is also of no avail to the petitioner inasmuch as the facts governing the present petition would clearly indicate that they were different and at the relevant time on account of reservation the authority did not grant permission u/s 65 of Revenue Code, and that ground being not assailed in any manner, the first order of rejection itself in my view is incapable of being assailed, the subsequent events could not have been of much avail unless & until there would have been formal order atleast of continuing the prayers. As it is stated herein above, assuming the permission continued till it was treated to have elapsed on 28/2/1987, then also the fact remains to be noted that by way of operation of conditions embedded in the order, first without it being revived there could not have been any subsequent order as could be seen from the reasons of the authority on page-13 dated 6/2/1988.

(d) The Court is, therefore of the view that, the petitioner has no case for interference. The petition though it is also filed under Article 226 of the Constitution of India, same is required to be treated as having the one filed under Article 227 of the Constitution of India only, as the Tribunal is not joined as party as required for maintaining this petition under Article 226 of the Constitution as observed by Full Bench of this Court in (The) Bhagyodaya Co-operative Bank Limited Vs. Natvarlal K Patel and Another, pg. 89. The petitioner has not shown any plausibility of bringing petition also under Article 226 of the Constitution as the order of the Tribunal was essentially under challenge as it is stated herein above.

In view of the aforesaid discussions, the petition is required to be dismissed and is accordingly dismissed. Rule discharged. Interim relief, if any, granted earlier shall stand vacated. However, there shall be no order as to costs.