

(2017) 01 GUJ CK 0219
In the Gujarat High Court
Case No : 15075 of 2003

Suvidha Association & 1

APPELLANT

Vs

State of Gujarat & 5

RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

Bombay Land Revenue Code, 1879, Section 211, Section 108(6) - Power of State Government and of certain revenue officers to call for and examine records and proceedings of subordinate officers; and to pass orders thereupon. - Preparation of statistical and fiscal records.

Bombay Provincial Municipal Corporation Act, 1949, Section 79-A

Citation : (2017) 01 GUJ CK 0219

Hon'ble Judges : Bela M. Trivedi

Bench : Single Bench

Advocate : M.C. Bhatt, Ankit Shah, Nirav R. Mishra, P.K. Jani, Venugopal Patel, A.J. Patel, H.S. Munshaw

Judgement

1. By way of present petition, the petitioners have challenged the impugned order dated 29.08.2003 passed by the respondent No. 2 - Collector (Annexure "A"), whereby the Collector had allowed the Revision Application being No. 1591 of 1993 filed by the respondent No. 4 and 4.1, under Section 211 of the Bombay Land Revenue Code (hereinafter referred to as "the said Code") and directed to enter the name of the Government as the owner, in place of the Bhavnagar Municipal Corporation in the property card in respect of City Survey No. 7344 to 7352, and further not approving the entry in respect of the said land granted on lease to the petitioner Association by the Bhavnagar Municipal Corporation. The Collector has also directed to initiate the proceedings against the petitioner under Section 79-A of the Code.

2. Though the case has a checkered history, few facts necessary for deciding the present petition are that the petitioner Association was constituted under the provisions contained in the Bombay Non-trading Corporations Act, 1959. The

land in question bearing City Survey No. 7344 to 7352 at Gogha Darwaja, Bhavnagar originally belonged to the erstwhile native state of Bhavnagar, which had leased out the said land to one Maganlal & Company for building a theatre and a cafe in the year 1937 for a period of 99 years subject to the terms and conditions mentioned in the lease agreement. In the year 1943, the said Maganlal & Company sold out their leasehold rights in the land to Sir C.B. Mehta and Lady Tapibai Mehta. On 08.04.1945, Smt. Madhukanta wife of Ramniklal Shah made a trust in the name of Madhukanta Ramniklal Shah Trust of her properties for the benefit of her daughter Janki and of Janki's daughter Pragna and son Jai i.e. the present respondent No. 4 and 4.1. The state of Bhavnagar by its Resolution No. 37 dated 19.01.1948 transferred the right to sell the land to Bhavnagar Municipality. On 02.09.1954, the Madhukanta Ramniklal Trust acquired the leasehold rights in the land and thereafter purchased the superstructure existing on the said land by executing a registered sale deed. On 28.09.1992, the trustees of the said trust and Ramniklal sold out their respective shares in the said properties to the petitioner Association. On 18.11.1992, the Association approached Bhavnagar Municipal Corporation seeking transfer of the suit property in the name of petitioner Association in the municipal record and for getting the lease deed executed for the subject land and also for obtaining permission to change of use of the subject land, vide application dated 05.11.1992.

3. Since the petitioner Association wanted to develop the land by demolishing the existing superstructure and putting up construction of commercial complex, the respondent No. 4, 5 and other beneficiaries of the trust had filed a suit being Special Civil Suit No. 184 of 1992 in the Court of Civil Judge (S.D.), Bhavnagar against the executants of the registered sale deed dated 28.09.1992 seeking declaration that the said sale deed executed in favour of the petitioner was invalid and for consequential reliefs. In the said suit, the trial Court did not grant any temporary injunction in favour of the said respondent trustees - plaintiffs as per the order dated 17.04.1993, and therefore, the respondent trustees had filed an Appeal from Order being No. 143 of 1993 along with the Civil Application No. 1368 of 1993 before this Court. This Court vide the order dated 26.04.1993 (Annexure "C") issued certain directions, pursuant to which the petitioner Association deposited an amount of Rs. 5 lacs in the trial Court and furnished the bank guarantee for Rs. 5 lacs, and the petitioner Association was permitted to develop the said property subject to obtaining necessary permission from the competent authority. The said Appeal from Order came to be disposed of vide the order dated 01.10.2002 (Annexure "D").

4. The respondent Nos. 4 and 5 thereafter submitted a Revision Application before the respondent No. 2 - Collector under Section 211 of the said Code read with 108(6) of the Rules, in which the respondent No. 2 - Collector issued a notice to the petitioners calling upon them to show cause as to why change report/mutation entry made by the City Survey Superintendent should not be cancelled. The Collector, however, subsequently directed the respondent Nos. 4

and 5 to approach the Bhavnagar Municipal Corporation on the ground that the Bhavnagar Municipal Corporation was the competent authority to take proper decision in the matter of transfer of the subject land, vide the communication dated 17.05.1994 (Annexure "G"). The Municipal Corporation thereafter rejected the application of the petitioner for transfer of lease vide the order dated 26.08.1993 and decided to initiate the proceedings against the petitioner under the Gujarat Public Premises (Unauthorized Occupation) Act, 1965. However, the State Government by its order dated 10.10.1994 directed the Administrator of the Municipal Corporation to drop the eviction proceedings and register the transfer. Accordingly the Municipal Commissioner vide its order dated 16.11.1994 (Annexure "H") permitted the transfer of the lease subject to the conditions mentioned therein. Subsequently the Bhavnagar Municipal Corporation also executed lease deed in favour of the petitioner Association, which was registered on 28.03.1995. The Municipal Corporation also permitted the petitioner to change the use of the subject land for residential and commercial purpose by the order dated 30.03.1995.

5. Being aggrieved by the said order, the respondent Nos. 4 and 5 and the said Jankiben filed Special Civil Application being No. 2825 of 1995 challenging the decision of the Bhavnagar Municipal Corporation transferring the lease in favour of the petitioner Association and permitting the Association to utilize the land for residential and commercial purposes. The said petition was dismissed summarily by the Court vide the order dated 10.04.1995 (Annexure "K"). The said order of Single Bench was challenged by the respondent Nos. 4 and 5 by filing the Letters Patent Appeal being No. 282 of 1995, which also came to be dismissed by the Division Bench of this Court vide order dated 02.07.1997 (Annexure "L").

6. It appears that in the meantime, Mr. Jitendra Modi, husband of the respondent No. 4, filed a Public Interest Litigation being Special Civil Application Nos. 7051 of 1995 and 7418 of 1995, challenging the permission dated 16.11.1994 granted by the Municipal Corporation permitting the transfer of the leasehold rights in the land to the petitioner Association, the execution of lease deed and the permission to change the user of purpose other than running a theatre and cafe. The Division Bench by the judgment and order dated 27.12.1996 dismissed both the petitions. The petitioners of the said petition had filed a Special Leave Petition (Civil) being No. 4953 of 1997 before the Supreme Court which also came to be summarily rejected vide the order dated 10.07.1997 (Annexure "N").

7. Again the said Jitendra Modi in the name of his daughter Janki, filed a Special Civil Application being No. 4651 of 2001 seeking prayer to quash and set aside the transfer of lease in favour of the petitioner Association and also the building and development permission granted by the Bhavnagar Municipal Corporation. The said petition also came to be dismissed by this Court on 20.08.2001 (Annexure "P"). The said order was also challenged by filing the Letters Patent Appeal being No. 1590 of 2001. However, the said Letters Patent Appeal was also dismissed vide the order dated 27.12.2001 (Annexure "Q"). The said order

passed by the Division Bench was further challenged before the Supreme Court by preferring the Special Leave Petition being No. 9686-9687 of 2002. The Supreme Court also dismissed the said Special Leave Petitions vide the order dated 14.02.2003 (Annexure "R").

8. Despite the afore stated position, the Collector at the instance of respondent Nos. 4 and 5 issued notice to the petitioner Association in the revisional proceedings filed under Section 211 of the said Code and thereafter passed the impugned order on 29.08.2003 (Annexure "A") at stated herein above. The petitioners, therefore, have filed the present petition challenging the said order.

9. The learned Senior Advocate Mr. M.C. Bhatt for the petitioners taking the Court to the various orders passed by this Court in earlier petitions preferred by the respondent Nos. 4 and 5 and others submitted that all the issues raised in the said Revision Application were already decided by this Court in earlier petitions, and therefore the Collector had no authority to reopen the said issues and initiate the proceedings of summary eviction against the petitioner Association under Section 79-A of the said Code. According to him, the Collector had clearly exceeded his jurisdiction under Section 211 of the Code, by passing the impugned order.

10. However, the learned Additional Advocate General Mr. P.K. Jani appearing for the State submitted that the subject land belonged to the Government and not to the Bhavnagar Municipal Corporation, and therefore, the said corporation did not have any authority to execute the lease deed in favour of the petitioner Association. Supporting the order passed by the Collector, he further submitted that the Collector had rightly appreciated the evidence on record and drawn the conclusion that the State was the owner of the land in question and the city survey entry was liable to be cancelled. The learned advocate Mr. A.J. Patel appearing for the respondent No. 4 and 4.1 has supported the submissions made by the learned Senior Advocate Mr. M.C. Bhatt for the petitioners.

11. Having regard to the submissions made by the learned advocates for the parties and to the documents on record, more particularly the impugned order passed by the Collector, it clearly transpires that though all the issues raised in the Revision Application filed by the respondent Nos. 4 and 5 before the Collector were decided by this Court in various Writ Petitions filed by the respondent Nos. 4 and 5 and others, the respondent - Collector had tried to reopen the said issues and overreach the orders of the Court, and recorded the findings contrary to the findings recorded by this Court.

12. As stated herein above, the respondent Nos. 4 and 5 and Miss Janki, daughter of respondent No. 4 had filed the Special Civil Application No. 2825 of 1995 challenging the decision of Bhavnagar Municipal Corporation transferring the lease in favour of the petitioner Association and permitting the Association to utilize the land for residential and commercial purpose, however, the said petition was dismissed by the Single Bench vide the order dated 10.04.1995 by holding

inter alia that though the title of the land had vested in the Government, the Bhavnagar Municipal Corporation had the authority to collect the rent of plots leased in the town planning area of Bhavnagar, and therefore, it cannot be said that the Municipal Corporation had acted arbitrarily or against the public interest in transferring the lease in favour of the petitioner Association by executing the lease deed. The said order was challenged before the Division Bench by filing the Letters Patent Appeal, however, the same remained final as the Letters Patent Appeal was dismissed for default.

13. It is also pertinent to note that the very issue as to whether the permission granted to transfer the leasehold rights in respect of the property bearing city survey No. 7344 to 7352 admeasuring 3248.88 sq. mtrs. by the Bhavnagar Municipal Corporation in favour of the petitioner association vide the order dated 16.11.1994 was proper or not and the issue whether the action of the Bhavnagar Municipal Corporation in executing the lease deed in favour of the petitioner Association in respect of the said property, and in permitting the change of user thereof for the purpose other than running a theatre and a cafe was proper or not, were the subject matter of the public interest litigation in the Special Civil Application No. 7051 of 1995 and 7418 of 1995, and the Division Bench while dismissing the said petitions vide the order dated 27.12.1996 had made following observations :- "The question in reality to ask is, whether the State Government's intervention was necessary when the leasehold rights are transferred in favour of 3rd respondent Suvidha Association. Indeed, going by the ratio of the judgment of the Supreme Court in the case of Bhavnagar Municipality v. Union of India and others, AIR 1990 SC 717 (supra) it is clear that the title to the land which belonged to the Ex-Ruler of Bhavnagar has been vested in the State Government with merger of the Bhavnagar Princely State with the Union of India. However, the Supreme Court has upheld the Resolution No.37 dated 19.1.1948, whereby the right of management, namely, to recover rent and to recover education cess, etc. has been conferred on the Municipality and the same was confirmed by the Ex-Government of the State of Saurashtra when it came into being after several Princely States of Saurashtra had accepted the merger with the Union of India.

It is, therefore, clearly open to the Municipal Corporation to have permitted transfer. We also do not find that there is any uniqueness in the present transfer as we have already indicated elsewhere in the judgment that since the time of creation of original lease in 1937, there has already been three transfers from time to time and that too permitted by the then Municipality. Merely because today the Municipal Corporation has permitted transfer it is futile to hold that such an action is some thing unusual or that the permission of the State Government is sine qua non for transfer of leasehold rights. The second question to answer is, whether the permission granted for change of user is also against the spirit and scope of the powers of the Municipal Corporation. The genesis of the thrust in the petitions is that user was permitted only for a cinema theatre and a cafe, but nevertheless the fact remains that the lease was for a period of

99 years. In any case, in the petitions it is not the case of the petitioners that the lease has come to an end or the same is liable to be terminated. The insistence is that cinema theatre cannot be allowed to be demolished and in its place multi-storeyed building cannot be allowed to be erected. It is otherwise well-known that change of user is within the domain of the Municipal Corporation. We were, however, shown a document dated 2.9.1954 executed by the Trustees of Smt.Madhukanta Ramniklal Shah Trust and the Chief Officer of the Bhavnagar Municipality under which it is clear that in addition to a theatre and a cafe there were some shops already in existence. The Municipal Corporation has taken a decision to transfer and on permitting transfer allowed the change of user.

Relying upon Section 79 of the Bombay Provincial Municipal Corporations Act, it was contended by Shri Nanavati that when the properties belonging to the Municipal Corporation are being let out it is necessary to invite offers. It was further contended that there may be large amount of takers and in the interest of Revenue for the Corporation the properties of the Corporation are to be let out by holding public auctions. The idea projected is that in public auctions best offers are accepted which is always in the interest of the public at large and the offers made by the parties are based upon market value of the property.

We are unable to accept this contention on behalf of the petitioners. In our view, this contention is to be mentioned only to be rejected. The fact remains that the property has been already let out for a period of 99 years and the said period will expire some time by the end of the year 2035. It is, therefore, not understood as to how the Municipal Corporation could invite offers or put the property to auction during the subsistence of lease. Secondly, it needs to be cleared by this Court that whatever interest created in favour of Suvidha Association is nothing, but transfer of leasehold rights which can only be upto the end of year 2035, as the lease made in favour of the original lessee for 99 years expires on that day. It is, therefore, futile to consider that when the lease is for 99 years, merely because the theatre existing thereon is now demolished, open land is required to be put to auction inviting bids from the members of the public."

14. From the afore stated order, it is clear that the Division Bench had dealt with both the issues in detail and recorded the findings thereon. Thereafter, the petition being Special Civil Application No. 4651 of 2001 filed by Janki Jitendra Modi, raising the same issues was also dismissed by the Court on 20.08.2001 by observing that the said petition was filed abusing the process of law. The Letters Patent Appeal being No. 1590 of 2001 filed against the said order was also dismissed by the Division Bench on 27.12.2001 by observing that there was no substance in the appeal. The Special Leave Petition being No. 9686-9687 of 2002 also came to be dismissed vide the order dated 14.02.2003.

15. Despite the afore stated orders passed by this Court which had remained confirmed upto the Supreme Court, the respondent - Collector had the audacity to pass the impugned order raising the same issues whether the Bhavnagar Municipal Corporation had the authority to execute the lease deed and grant the

permission to change the user of the land, and holding inter alia that the Bhavnagar Municipal Corporation did not have the authority to transfer the lease in favour of the petitioner Association and to grant the permission to change the user of the land, as the State Government was the owner of the subject land. Such conduct on the part of the respondent - Collector deserves to be strongly deprecated. When the Division Bench had specifically dealt with the said issues as stated herein above, the Collector did not have any power or authority to reexamine the said issues and cancel the subject entry made in the city survey record in favour of the petitioner Association in respect of the said lease deed executed by the Bhavnagar Municipal Corporation. As held by the Division Bench in the Special Civil Application No. 7051 of 1995 and 7418 of 1995, though the land had vested in the Government, the Bhavnagar Municipal Corporation had the powers to execute the lease deed and grant permission to change the user of the land. Hence, though the Government was the owner of the subject property, the Bhavnagar Municipal Corporation did have the powers to execute the lease deed and grant the permission to change the user of the said property to the petitioner Association. Thus, the impugned order passed by the Collector is not only arbitrary and illegal, but has been passed in utter disregard of the orders passed by this Court.

16. Further, the impugned order containing the direction to initiate the proceedings against the petitioner under Section 79-A of the Code is also arbitrary and without jurisdiction. When the Collector was exercising powers under Section 211 for examining the subject entry made in the city survey record, he had no authority to examine the legality of the lease deed executed by the Bhavnagar Municipal Corporation, nor had he the authority to examine the legality of the order passed by the said corporation permitting the permission to change the user of the land. It is also pertinent to note that the very application dated 20.03.1993 filed by the respondent Nos. 4 & 5 was already rejected by the then Collector vide the communication dated 17.05.1994 (Annexure "G") stating inter alia that the Bhavnagar Municipal Corporation was required to take appropriate decision on their application, however the respondent Collector after ten years again considered the same application of the respondent Nos. 4 and 5 for exercising the powers under Section 211, and for passing the impugned order.

17. In the afore stated circumstances, the impugned order passed by the Collector being arbitrary, perverse, illegal and in utter disregard of the orders passed by this Court, the same deserves to be quashed and set aside and is accordingly set aside.

18. The petition is allowed accordingly. Rule is made absolute. Petition allowed.