
(1997) 03 GUJ CK 0038
In the Gujarat High Court

Swaminarayan Mandir

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1997) 2 GLR 923

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—The petitioner, by this petition, has challenged the order of respondent No. 1, at Annexure-B dated 7th February. 1983 wherein the sale of the land in dispute made in favour of the petitioner by the Gram Panchayat and approved by the Collector has been set aside.

2. The facts of the case, in brief, are that land admeasuring 46.82 sq.mt. situated adjacent to the petitioner's temple at Gomti Road belongs to the Panchayat. As per the case of the petitioner, the petitioner made application on 22-6-1980 to respondent No. 4 to give the said land to the petitioner so that it can be put to use for religious purpose. It has been given out by the petitioner that the said land which is situated on the western side of the Gomti Road and on the eastern side of the temple was of no use to anybody and that the land is absolutely "padtar". The land is said to be used by the children of the neighbours as an open latrine which created nuisance and lot of dirt. The said application of the petitioner was found favour with the Gram Panchayat. Under Resolution dated 29th July, 1980 the land was resolved to be given to the petitioner at the rate of Rs. 20/- per sq.mt. Under letter dated 9th August, 1980 the Gram Panchayat called upon the petitioner to deposit Rs. 469.20 Ps. being 50% of the price of the land so as to enable it to proceed further in the matter. The petitioner did deposit the aforesaid amount. Thereafter the respondent Gram Panchayat wrote letter to the District Collector requesting for approval or sanction of the sale of the land in dispute to the petitioner u/s 98 of the Gujarat

Panchayats Act, 1963 (sic. 1961). The District Collector, Jamnagar, by his letter dated 12th November, 1980 granted approval to the sale of the land admeasuring 39.86 sq.mts. to the petitioner. Thereafter the sale deed was executed in favour of the petitioner by the Gram Panchayat on 27th November, 1980 and possession was also handed over to the petitioner. Respondent No. 3 and one Narendrasinh C. Gokana made application to the Secretary, Panchayat, Health and Urban Development Department of the State of Gujarat, raising objection against the sale of the land by respondent No. 4 to the petitioner. The said application was forwarded to the Mamlatdar for inquiry. Respondent No. 3 then filed revision application u/s 305 of the Act before the Additional Development Commissioner at Gandhinagar, which came to be dismissed on 26th February, 1982 on the ground that he has no jurisdiction to entertain such revision application. Respondent No. 3 filed revision application before the State Government, respondent No. 1 herein, on 21-3-1982. The revision application was accepted by respondent No. 1 under its order dated 2-2-1983. That order has been challenged by respondent No. 4 Gram Panchayat by filing Special Civil Application No. 3921 of 1983 which came to be dismissed by this Court on 21st October, 1984. However, that petition was dismissed for non-prosecution and not on merits. Hence this Special Civil Application by the petitioner.

3. Shri P.J. Vyas, learned Counsel for the petitioner contended that respondent No. 1 has no jurisdiction to hear the revision application on 30th August, 1982, the date on which the arguments were heard therein. The power of the Government to hear the revision application was given to respondent No. 1 Secretary to Government, Panchayat, Housing and Urban Development, under notification dated 3rd November, 1982, after the day on which the hearing had taken place. It has next been contended that it is a land vested in the Gram Panchayat and it has all the powers to sell the land to the petitioner. Respondent No. 3 has no locus standi to file any revision application. It has next been contended that the Government has no power and authority to confer powers u/s 321 of the Act with retrospective effect as it has been done in the present case under Annexure-F.

4. Mr. H.L. Jani, learned Counsel for respondent Nos. 1 and 2 on the other hand supported the order passed by respondent No. 1, which is impugned in this petition.

5. I have given my thoughtful consideration to the submissions made by the Counsels for the parties. The impugned order Annexure-B has been passed by respondent No. 1 on 7th February, 1983, much after the notification Annexure-F conferring the power of revision to him by the Government. That notification is dated 3rd November, 1982, which reads as under:

The Secretary to Government, Revenue Department (Appeals) shall also function as ex-officio Secretary to Government, Panchayat, Housing & Urban Development Department, Sachivalaya, Gandhinagar in order to exercise the powers conferred u/s 98 of the Gujarat Panchayats Act.

Under Annexure-F dated 1st February, 1983 the powers have been conferred with effect from 21-9-1981, and the earlier notification dated 3rd November, 1982 was ordered to be treated as cancelled ab initio.

6. So, on the facts as discussed above, there is no dispute that the matter has been decided by respondent No. 1 only after both the notifications Annexure-C and Annexure-F. The day on which the judgment has been given in the revision application, respondent No. 1 had the power of revision in the case. In the reply to the Special Civil Application respondent No. 1 has come up with the case that as the power of the Government was given to respondent No. 1 with effect from 21st September, 1981, he has all the powers to decide the matter and the hearing has also taken place after 21st September, 1981. It cannot be said to be a case where respondent was totally lacking jurisdiction in the matter. The plea of the petitioner is that on the day on which the arguments were heard, respondent No. 1 had no jurisdiction. But on the day on which he passed the order, admittedly he had jurisdiction even if the retrospective date conferring jurisdiction is, for the time being, ignored. So, as stated earlier, there is no total lack of jurisdiction of respondent No. 1 in the matter. Otherwise also, the challenge to the order Annexure-B by the petitioner on the ground of jurisdiction is not sustainable as I do not find any failure of justice to the petitioner in the present case. The Counsel for the petitioner is also unable to satisfy this Court how any failure of justice has been resulted to the petitioner on the ground that on the day on which arguments on the revision application were heard by respondent No. 1, he was not having the power of review u/s 305 of the Act. The Apex Court has held that exercise of powers under Article 226 of the Constitution, where the order has been challenged on the ground of jurisdiction, is not warranted even if the contention had some substance, there being no failure of justice. Reference in this respect may have to be made to the decision of the Supreme Court in the case of *Rajvi Amar Singh Vs. The State of Rajasthan*, ; and in the case of *Balvantrai Chimanlal Trivedi, Manager, Raipur Mafg. Co. Ltd., Ahmedabad Vs. M.N. Nagrashna and Others*, . So the first contention of the petitioner is devoid of any merits.

7. Now, I may deal with the second contention raised by the learned Counsel for the petitioner. Section 96 of the Act provides that for the purposes of the Act, the State Government may subject to such conditions and restrictions as it may think fit to impose, vest in a Panchayat open sites, waste, vacant or grazing lands or public roads, streets, bridges, ditches, dikes and fences, wells, river-beds, tanks, streams, lakes, nallas, canals, water-courses, trees or any other property in the gram or nagar, as the case may be, vesting in the Government. Sub-section (2) of Section 96 of the Act provides that subject to any conditions and restrictions imposed by the State Government under Sub-section (1) and with the previous sanction of the Collector, a Panchayat may discontinue or stop up any such public road or street vested in the State Government, but which is no longer required as public road or street and may lease or sell any such land theretofore used for the purposes of such public road or street. Proviso to Sub-section (2) of Section

96 reads as under:

Provided that one month before it is decided to stop up or discontinue such public road or street, the Sarpanch or Chairman as the case may be, shall, by notice signed by him and affixed in the part of the public road or street which is proposed to discontinue or stop up, and published in such other manner as is prescribed, inform the residents of the gram or nagar as the case may be, of the said proposal and consider any objections in writing made thereto; the notice shall indicate the alternative route, if any, which it is proposed to provide or which may already be in existence.

Admittedly before selling this land to the petitioner the procedure as provided in the proviso to Sub-section (2) of Section 96 of the Act has not been followed by the Gram Panchayat. In para 6 of the reply to the Special Civil Application, respondent No. 1 stated that the land in question is situated on the eastern side of the temple and is a public road for going to Gomti Ghat situated on the southern side. In this paragraph itself it has been further stated that the procedure prescribed under Sub-section (2) of Section 96 of the Act has not been followed by the Panchayat and as such the approval granted by the Collector is illegal. Reference may also have to be made to the pleadings of respondent No. 1 as continued in para 12 of the affidavit, which reads as under:

With reference to para 12 of the petition I say that the contentions raised therein are not true and therefore, I deny the same. I submit that the provisions of Section 96(2) are the mandatory provisions and are required to be strictly observed. I further submit that before disposal of the public land it is provided under the said provisions to issue public notice and to invite objections before the sale of such land. That the land in question is a land of public road which is used by the public at large. That by selling such land the public has been deprived of their rights of way without any notice and therefore, the order of the Collector has been rightly set aside.

8. Copy of the reply was given to the Counsel for the petitioner by respondent No. 1 on 13th September, 1988, but the petitioner has not filed any rejoinder to the same. The factual averments made by respondent No. 1 in Paras 6 and 12 of the reply stands uncontroverted. The petitioner has not controverted the fact that the land in dispute was a public road, which is being used by the public for going to Gomti Ghat. Public roads and streets are to be maintained as they are used by the public at large. It is true that Sub-section (2) of the Act empowers the Gram Panchayat to close public road or street, but the power can be exercised only subject to certain conditions laid down in the Act. The respondent Gram Panchayat had fallen in error merely because the petitioner had approached for sale of this land for religious purpose. The Gram Panchayat has not considered that the land is a public road or street and it is an amenity used by the public at large. The Collector has also not considered this aspect and he has granted approval to the sale of the land made in favour of the petitioner by the Gram Panchayat. While dealing with the matter of sale of land which is a

public road, much more care and caution was required on the part of the Gram Panchayat and the District Collector, which, in the present case, has altogether not been taken care of by both the authorities. The sale of the land in dispute which is public road or street is void ab initio. Further, the procedure as laid down u/s 96(2) of the Act has also not been followed. The public for whose benefits and amenities this public road or street was there have not been heard, and behind their back the Gram Panchayat has sold this land to the petitioner. The petitioner is a temple and it may have taken the land for religious purpose. But at the same time, being a temple it is equally concerned with the convenience and amenities of the public at large of the area. When this land was a public street and a thoroughfare for the public to go to Gomti Ghat, it should have refrained itself from demanding for the sale of the land. Though I am not presently concerned in this case to decide whether the public need will prevail over the religious requirement of the temple or not. Respondent No. 1 has certainly not committed any error or illegality in setting aside the order of the Collector approving the sale of the land in dispute in favour of the petitioner.

9. The matter needs consideration from another angle also. In case the order of respondent No. 1 at Annexure-B is quashed by this Court sitting under Articles 226/ 227 of the Constitution of India, then it will amount to restoring the order of the Collector approving the sale of the public road/street in favour of the petitioner. As stated earlier, the sale was void ab initio and approval of the sale made contrary to the provisions of Section 96(2) of the Act suffers from the same infirmity. This Court sitting under Articles 226/ 227 of the Constitution of India will not perpetuate the illegality.

10. In the result this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated. The petitioner is directed to pay Rs. 2,000/- by way of cost of this petition to respondent Nos. 1 and 2. Counsel for respondent Nos. 1 and 2 submits that he has no objection if the amount of cost is ordered to be deposited by the petitioner with the Bar Council of Gujarat in the account of Advocates' Welfare Fund. Order accordingly. The petitioner is directed to deposit the amount of cost in the office of the Bar Council of Gujarat in the account of Advocates' Welfare Fund within a period of three months from the date of receipt of this order. Copy of this order be sent to the Secretary, Bar Council of Gujarat. It will be open to the Secretary, Bar Council of Gujarat to take appropriate action in case the amount of cost is not deposited by the petitioner within the stipulated period. The petitioner is further directed to produce before this Court the receipt of deposit of the amount with the Bar Council of Gujarat.