
(2009) 05 GUJ CK 0012

In the Gujarat High Court

Case No : Special Civil Application No. 11414 of 2008

Vaghari Paniben Devabhai

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:

Citation : (2009) 05 GUJ CK 0012

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : N.P. Chaudhary and Tushar Chaudhary, for the Appellant; Maithili Mehta, AGP, for the Respondent

Final Decision : Allowed

Judgement

D. A. Mehta, J.—RULE. Learned AGP Ms. Maithili Mehta waives service of rule on behalf of the respondent No. 1. The petition is taken up for final hearing and disposal considering the scope of controversy between the parties.

2. This petition has been preferred challenging action of respondent - State Government in issuing letters dated 29th July, 2008 (Annexure-L) and 18th August, 2008 (Annexure-M) in backdrop of the following facts and circumstances of the case.

2.1 Admittedly, the petitioner had encroached upon the disputed land. By way of writ petition being Special Civil Application No. 7000 of 1991, petitioner approached this High Court, who vide order dated 28th April, 1992 directed respondent - authorities to regularize the encroachment. Ultimately, after litigation travelling right upto the Secretary, Revenue Department by way of Revision Application, the petitioner succeeded and vide order dated 15th October, 1996 respondent No. 2 herein, the Collector, Patan, directed the petitioner to pay an amount of Rs. 2,35,099.40 as premium at the rate of 425 per Sq.Mt. with penalty at the rate of two and half times. The said amount was paid by the petitioner on 4th November, 1996. Accordingly, vide order dated 7th February,

1997 / 29th September, 1997, the Collector granted the land in question by regularizing the encroachment with various conditions, one of them being of the nature of the land as being of new tenure and of indivisible nature. It was further stipulated that the petitioner would not be able to dispose of or alienate the land in question in any manner whatsoever without prior permission of the Collector. Condition No. 3 stipulated that the land in question was to be used only for the purposes of residence and no other use was permissible. For the present, it is not necessary to refer to other conditions stipulated by the said order of grant.

4. The petitioner sought to change the use of the land in question from residential to commercial. On an application moved by the petitioner, the District Valuation Committee fixed the price by order dated 2nd May, 2000 which came to be challenged by the petitioner before the State Government and, thereafter, before this Court by way of Special Civil Application No. 4244 of 2002. The petition was disposed of by the High Court directing the respondent - authority, more particularly the District Valuation Committee to reconsider the matter while fixing the price of the land in question.

5. The District Valuation Committee fixed the price on 11th March, 2003 after reconsideration at Rs. 4600 per Sq.Mt. The petitioner did not succeed in the Revision Application filed before the Revenue Secretary (Appeals) who confirmed the order on 6th May, 2006. Thereupon, the Collector, vide order dated 1st July, 2006 increased the amount of premium by adding 150% for the reason that a period of three years had elapsed since the order dated 11th March, 2003. Vide communication dated 17th October, 2006, the petitioner expressed her willingness to pay the amount of premium at the prevailing market rate requesting a fresh determination of the price.

6. Accordingly, vide order dated 29th January, 2008, the District Valuation Committee fixed the rate of premium at Rs. 7935/- per Sq.Mt. It appears that the Collector made reference to the State Government. Vide communication dated 29th July, 2008 addressed to the Collector Patan, the State Government directed the Collector to inform the petitioner that as the encroachment was regularized by virtue of order dated 7th February, 1997 but the petitioner has not put up any construction till date, therefore, the Collector was to initiate action for breach of conditions. It was further directed in the said communication that vide resolution dated 6th June, 2003, new tenure land granted for non-agricultural purposes could not be transferred in any manner whatsoever without there being construction on the said land. Therefore, the proposal made by the Collector was rejected. Accordingly, vide communication dated 18th August, 2008, the Collector, Patan informed the petitioner that for the aforesaid two reasons the petitioner could not be granted permission to convert the use of the land from residential to commercial. It is at this stage that the petitioner has approached the High Court.

7. Heard learned advocate for the petitioner. It was pointed out that the petitioner has already filed an undertaking on 2nd December, 2008 to make

payment of premium at the rate determined by the District Valuation Committee as fixed on 29th January, 2008. That in the circumstances, the petitioner must be granted permission to change the use of the land in question as prayed for.

8. On behalf of the respondent - authorities, learned AGP submitted that though it was true that the order of grant made on 7th February, 1997 did not contain any condition for putting up construction within any stipulated period, the same has to be understood in light of similar grants being made and such condition being imposed by virtue of general instructions of the State Government. It was submitted that even if the order of grant did not contain such condition, the sanad that was granted subsequent thereto might be containing such condition and, therefore, no interference was warranted. Lastly, it was contended that the State Government was empowered to undertake revision of all or any order made by the Subordinate Authorities and in exercise of such powers, it was open to the State Government to impose such condition.

9. The only question which was pending before the State Government was as to whether the price fixed by the District Valuation Committee was correct or not considering the application for change of use of land from residential purpose to commercial purpose. Hence, in this proceedings, the role of the State Government was very limited. If the State Government is vested with either revisional powers or powers of general superintendence in relation to orders made by its Subordinate Authorities, such powers have to be exercised in accordance with law under the provisions of the statute which gives such powers to the State Government. Not only that, such powers have to be exercised within a reasonable time and after granting a reasonable opportunity to a person to deal with any issues that are required to be explained by that person. The petitioner cannot be communicated an order which had no bearing to the issue brought before the State Government.

10. The order dated 7th February, 1997 / 29th September, 1997 granting the land in question to petitioner by regularizing encroachment did not stipulate any such conditions which the State Government has sought to read in the order and/or imposed on the petitioner, namely, putting up construction within a period of two years from the date of the order of grant. Therefore, on this count the impugned order cannot be sustained. As a consequence the communication issued by the Collector reiterating the order of the State Government also cannot be upheld. Accordingly, both the communications dated 29th July, 2008 and 18th August, 2008, Annexures - L and M respectively, are hereby quashed and set aside.

11. Needless to state that this will not come in the way of respondent - authorities to act in accordance with law, if the respondent - authorities are entitled to do so in terms of provisions of any statute. Similarly, whether any conditions were imposed while granting sanad and whether there is any violation of any of such conditions, is not an issue, the same having not been raised by any authority at any stage of the present proceedings.

12. In the circumstances, the petition is allowed, subject to what is stated hereinbefore. Rule is made absolute. There shall be no order as to costs.