
(2010) 10 GUJ CK 0151

In the Gujarat High Court

Case No : Special Civil Application No. 2539 of 1998

Vipul B. Shah and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 10 GUJ CK 0151

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

Bench : Single Bench

Advocate : Mehul H. Rathod, for the Appellant; N.K. Raval, AGP for Respondents 1-4 and Renu Chaudhary, for Y.N. Oza, for Respondent 5, for the Respondent

Judgement

K.S. Jhaveri, J.—This Court on 31.03.1998 had passed the following order:

Leave to add City Survey Superintendent, Deesa and Gordhangi G. Mali as Respondents Nos. 4 & 5 respectively. Notice returnable on 7th April, 1998. If the Respondent No. 3 passes an order adverse to the Deesa Municipality the same shall not be implemented for a period of one week from the date of communication. Direct Service is permitted. To be heard with Spl. C.A. No. 1939/1998.

2. This Court in Special Civil Application No. 1939 of 1998 had passed the following order:

The Petitioners, two residents of Deesa, have filed this petition for challenging the grant of land in Deesa town for the purpose of construction of town hall and library by the Deesa Municipality. The said action is being challenged on the ground that the land in question was meant to be a playground for children and, therefore, the Municipality be restrained from putting up any construction thereon.

2. In response to the notice issued by this Court, affidavit in reply is filed by the Chief Officer, Deesa Municipality pointing out that the Petitioners have made

various incorrect statements and the petition is not filed bona fide. It is specifically stated that Petitioner No. 1 is publishing a weekly newspaper and since the Municipality is not giving advertisements in the same, in order to pressurize the Municipality the present petition is filed.

3. On merits, the affidavit in reply has given a detailed history of the project under challenge. The land in question is shown in the development plan as land reserved for the purposes of the Municipality and is placed in the Commercial zone. Earlier the land was granted by the Government to the Municipality for the purpose of garden for only 15 years from 1968, but thereafter the grant was not renewed. The project of construction of a shopping centre was to be commenced in the year 1987 and the Central Government sanctioned a loan of Rs. 50.38 Lacs for the said project under a scheme called "Integrated Developmental of Small and Medium Towns". The project was for the construction of shops. Even in the year 1993, the land in question was ordered to be granted to the Municipality for the purpose of constructing a shopping centre, but the Municipality could not make arrangements at that time to pay the purchase price to the Government. Therefore, the Government had on 3.1.1996 decided to auction the land for the commercial purpose, but on account of the consistent demand of the Municipality for constructing town hall and public library from the funds which may be obtained out of auction of the shops, the Government decided on 10.10.1997 to grant the land to the Municipality to construct the shopping centre. The price was fixed at Rs. 18,43,846/-. Upon payment of the said price to the Government by 9.12.1997, the Government issued the order granting the land to the Municipality on 13.12.1997. It is pointed out that since the land in question is in commercial zone, after getting grant of the land from the Government, the Town Development and Town Planning Committee of the Municipality sanctioned the building plans.

4. At the hearing of the petition, Mr. Mehul Rathod, learned Counsel appearing for Deesa Municipality has stated that recently the Municipality put the property constructed on one floor to public auction which has fetched a sum exceeding Rs. 1 Crore and it is submitted that the Deesa Municipality has been acting bona fide and in public interest and any interference by this Court at this stage would destroy the entire project which is ultimately going to benefit the people of Deesa at large. Mr. Rathod has further stated that in the Development Plant, the land is not reserved for the purposes of the garden or playground and that there are other lands in the development plan which are reserved for the purposes of garden/playground which are not going to be disturbed by the Municipality. However, the Petitioners have approached this Court without making any bona fide inquiries on these lines, but have come forward making reckless allegations against the Municipality and Respondent Nos. 4 and 5.

5. Having heard the learned Counsel for the parties, this Court is of the view that the aforesaid public project of construction of a town hall and a public library and construction of shops for getting funds for the aforesaid project and for

augmenting public revenue does not call for any interference and that too at the instance of the persons whose bona fides are under a serious cloud.

6. This petition under Articles 226 & 227 of the Constitution is, therefore, summarily dismissed. Notice is discharged.

7. In the facts and circumstances of the case, the Petitioners are directed to pay Respondent No. 1 - Municipality costs of this petition which are quantified at Rs. 5,000/- (Rupees five thousand only).

3. In view of the aforesaid order, this petition also stands disposed of on the same line. However, Ms. Renu Chaudhary, learned Counsel appearing for Respondent No. 5 states that Respondent No. 5 has expired in the year 2005. Hence, petition qua Respondent No. 5 stands abated. Rule is discharged. Interim relief if any, stands vacated.