

(2011) 04 GUJ CK 0200

In the Gujarat High Court

Case No : Special Civil Application No. 4942 of 2011

Virendra Nathalal Jungi

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 04 GUJ CK 0200

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Nirav C. Thakkar, for the Appellant; Pranav Dave, AGP for Respondent 1, for the Respondent

Judgement

M.R. Shah, J.—Rule. Mr. Dave, learned AGP waives service of notice of Rule on behalf of the Respondent State. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

2. By way of this petition under Articles 226 & 227 of the Constitution of India, the Petitioner has prayed for an appropriate writ, direction and order quashing and setting aside the order dated 5.3.2011 passed by the Secretary (Appeals), Revenue Department, State of Gujarat passed in Revision Application No. 11 of 2009 by which the application for stay of the order passed by the Collector, Porbandar dated 31.5.2008 has been dismissed by the Revisional Authority.

3. It is not in dispute and it is an admitted position that the Petitioner has encroached upon the land admeasuring 1584 sq. mtrs. out of land bearing Survey No. 74 paiki situated at village Javar Tal & Dist. Porbandar for industrial purpose/ commercial purpose. That thereafter, the Petitioner submitted application for regularization of such encroachment, which has been rejected by the Collector, Porbandar by order dated 31.5.2008 for the reasons stated in the said order. Being aggrieved and dissatisfied with order passed by the Collector, dated 31.5.2008, the Petitioner has preferred Revision Application No. 11 of 2009 before the Secretary (Appeals), Revenue Department, State of Gujarat and in the

said Revision Application the Petitioner submitted stay application to stay the order passed by the Collector, Porbandar dated 31.5.2008. That by impugned order dated 5.3.2011 the Revisional Authority has dismissed the said application for stay and hence, the Petitioner has preferred the present Special Civil Application under Articles 226 & 227 of the Constitution of India.

4. Shri Digant Popat, learned advocate for the Petitioner has submitted that by not granting interim relief as prayed for by the Revisional Authority during the pendency of the aforesaid Revision Application the possession of the land in question shall be taken over by the Collector, Porbandar and/ or by the Mamlatdar and consequently the Revision Application would become infructuous. It is submitted that even the stay application was decided after a period of almost one and half years. Shri Dave, learned AGP has submitted that admittedly the Petitioner has encroached upon the government land and is using the said for commercial purpose/ industrial purpose, therefore, as such the Collector, Porbandar has rightly rejected the application of the Petitioner for regularization of the encroachment made by the Petitioner. It is further submitted that even the Petitioner is using the said land without making any payment of mesne profit etc. It is submitted that if accepting the submission on behalf of the Petitioner that by not granting the interim relief the revision application would become infructuous, in that case, the Petitioner may be put to terms to deposit the amount of lease/ mesne profit from the date of encroachment and revision application may be directed to be decided at the earliest and within stipulated time. That on inquiry Shri Dave, learned AGP has submitted that the amount of mesne profit from the date of encroachment of the Petitioner till date would come to Rs. 4,45,000/-. Therefore, it is requested to pass an appropriate order.

5. Shri Digant Popat, learned advocate for the Petitioner has stated at the bar under the instruction from the Petitioner that Petitioner is ready and willing to pay / deposit the aforesaid amount of Rs. 4,45,000/- to be considered as mesne profit for using of the land in question without claiming any equity on the same. It is submitted that on aforesaid payment interim relief may be granted during the pendency and final disposal of the aforesaid revision application.

6. Heard the learned advocates for the respective parties and considering the fact that revision application preferred by the Petitioner being Revision Application No. 11 of 2009 which has been preferred against the order passed by the Collector, Porbandar dated 31.5.2008 is still at large before the Revisional Authority and the same is yet to be finally decided and disposed of by the Revisional Authority. Therefore, if the interim protection is not granted to the Petitioner, in that case, the Petitioner shall be removed from the land in question as by the impugned order passed by the Collector the prayer of the Petitioner for regularization of the encroachment has been rejected and therefore, the revision application may become infructuous. However, at the same time, the Petitioner cannot be permitted to use the land in question without making any payment for the use of land in question, which may be treated as mense profit. Under the

circumstances, on payment of aforesaid amount of Rs. 4,45,000/- to be deposited by the Petitioner with the Collector, Porbandar, which shall be non refundable, interim protection can be granted to the Petitioner.

7. Considering the aforesaid facts and circumstance of the case and for the reasons stated above, the impugned order dated 5.3.2011 passed by the Secretary (Appeals), Revenue Department, State of Gujarat passed in Revision Application No. 11 of 2009 is hereby quashed and set aside and parties are directed to maintain status quo as on today during the pendency of the aforesaid revision application pending before the Revisional Authority on the following terms and conditions.

(a). That the Petitioner shall deposit / pay a sum of Rs. 4,45,000/- with the Collector, Porbandar within a period of three weeks from today, which may be treated as mesne profit for the use of land in question by the Petitioner, which shall be non-refundable and same shall be without prejudice to the rights and contentions of the parties in the main revision application. If the Petitioner fails to pay the aforesaid amount of Rs. 4,45,000/- within stipulated time as stated above the interim protection granted by this Court by present order shall be treated to be vacated.

(b). That the Petitioner shall not transfer and or alienate the disputed land in question in any manner whatsoever during the pendency of the aforesaid revision application by the Revisional Authority.

(c). That by payment of aforesaid amount, it cannot be construed that this Court has passed any order in favour of the Petitioner with respect to land in question and the aforesaid payment shall be for use of the land in question by the Petitioner till the revision application is finally decided and disposed of.

(d). That the revisional authority to finally decide and dispose of the aforesaid revision application in accordance with law and on merits without in any way being influenced by the present order and/ or deposit of the aforesaid amount by the Petitioner at the earliest but not later than 30.10.2011 Rule is made absolute to the aforesaid extent. No costs.