

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 19861 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

SHREE HINDVANI AANJNA PATEL KELAVNI MANDAL
Versus
STATE OF GUJARAT & 3 other(s)

Appearance:

MR VAIBHAV A VYAS(2896) for the Petitioner(s) No. 1
MR HARDIK SONI, AGP for the Respondent(s) No. 1
RULE SERVED BY DS for the Respondent(s) No. 2,3,4

CORAM:HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

Date : 23/06/2022

ORAL JUDGMENT

1. In this petition, which is filed under Article 226 of the Constitution of India, the petitioner trust has challenged the order dated 10.11.2000 passed by the Collector, Banaskantha as well as order dated 03.11.2006 passed by the State Government in

Revision Application.

2. Heard learned advocate Mr. Vaibhav Vyas for the petitioner and learned Assistant Government Pleader Mr. Hardik Soni for the respondents.

3. Learned advocate for the petitioner submits that the petitioner trust is a public trust registered under the provisions of the Bombay Public Trust Act, 1950. The said trust is working with the object of promoting education in the rural area. For attaining the said object, the petitioner has set-up a school viz. Shri Adarsh High School at Deodar in Banaskantha District. It is submitted that prior to allotment of the land in question to the petitioner trust the same land was vested in Deodar Gram Panchayat. The petitioner approached the Gram Panchayat with a request to allot two acres of land out of Block No.49, which was a large block of Government open land situated adjoining to the school. The said land was required for the expansion of school premises and for the purpose of being used as a playground for the students who were studying in the said school. Pursuant to the request made by the petitioner, the concerned Gram Panchayat passed a resolution and decided to return the said land to the State Government so that the same can be allotted to the petitioner trust, on condition that 60 feet wide road shall be left between the school and the land in question. The said resolution was passed on 20.07.1989.

4. Learned advocate thereafter contended that the respondent Collector thereafter passed an order dated 04.09.1991 and allotted one Acre (40 Are) of land free of revenue to the petitioner trust for construction of school building under the provisions of Rule 32 of the Gujarat Land Revenue Rules, 1972. At the same time, the respondent Collector also granted lease of one Acre (40 Are) of land in favour of the petitioner trust for being used as a playground by the school children for a period of 15 years at a nominal rent of one rupee per year on certain terms and conditions. Learned advocate for the petitioner has referred the said order of grant of land in question to the petitioner, copy of which is placed on record at page 28 of the compilation.

5. Learned advocate for the petitioner further submits that thereafter the petitioner trust was given the possession of the said land vide possession receipt dated 12.05.1992 and immediately after taking over the possession of the land in question, the petitioner trust paid necessary fees for survey of the land by District Inspector of Land Record (DILR). It is also submitted that the petitioner trust spent about Rs.2 lakh in carrying out the leveling of the said land in order to make it suitable for construction and for being used as a playground by the school children. Compound wall was also constructed.

6. Learned advocate Mr. Vyas for the petitioner

thereafter submitted that the respondent Collector issued a show cause notice on 27.12.1999 to the petitioner trust wherein it has been alleged that the petitioner trust has violated condition Nos. 10 and 12 of the of the order of allotment of the land and therefore show cause as to why the said allotment should not be cancelled and the land should not be forfeited. It is submitted that petitioner gave reply to the said notice on 15.02.2000. However, the respondent Collector informed the petitioner vide communication dated 27.06.2000 that the reply given by the petitioner is not acceptable. Thereafter the respondent Collector passed an impugned order dated 10.11.2000 forfeiting the allotment of land to the petitioner. Learned advocate Mr. Vyas has referred the said impugned order, copy of which is placed on record at page 13 of the compilation.

7. At this stage, learned advocate Mr. Vyas submitted that the petitioner challenged the aforesaid order by filing Revision Application before the respondent State Government. The Revisional Authority rejected the said revision application vide impugned order dated 03.11.2006 and thereafter the respondent Mamlatdar issued notice in April, 2007, whereby, the petitioner was asked to handover the possession of the land in question to the Circle Officer and therefore at that stage the petitioner has filed this petition.

8. Learned advocate for the petitioner would

contend that while issuing notice in the present matter, this Court has granted ad-interim relief in terms of para 8(D), whereby, both the impugned orders passed by the respondent authorities are stayed and therefore as on today the petitioner is in possession of the land in question.

9. Learned advocate Mr. Vyas appearing for the petitioner assailed both the aforesaid orders mainly on the ground that in the show cause notice issued by the respondent Collector, it has been alleged that the petitioner has violated condition nos. 10 and 12 of the order of allotment, whereas, while passing the order in Revision Application, the Revisional Authority has considered the fact that the petitioner has violated condition nos. 2 and 6 of the order of allotment. Thus, it is contended that for the alleged violation of condition nos. 2 and 6, no show cause notice was issued by the respondent Collector and therefore the petitioner was not given any opportunity to give explanation for the same. Hence, only on this ground both the impugned orders be quashed and set aside.

10. Learned advocate Mr. Vyas would further contend that in fact the respondent Gram Panchayat while passing the resolution dated 20.07.1989 imposed a condition that 60 feet wide road shall be left between the school and the land in question and therefore the petitioner has kept 60 feet wide road between the school and the land in question. It is

further submitted that petitioner has not violated even condition nos. 10 and 12 of the order of allotment as alleged by the Collector in the impugned order. It is also submitted that at the relevant point of time, due to scarcity of water in the region for 10 years, there was a situation of drought and therefore the petitioner trust was not in a position to get the funds from the members and therefore the construction of the school building was not started and completed within the stipulated time. Now, the financial condition of the trust has been improved and the petitioner trust is in a position to construct the school building. It is also submitted that the land in question is being used for the purpose for which it was granted to the petitioner trust. Learned advocate would further submit that necessary fees for measurement of the land in question was also paid by the petitioner at the relevant point of time. Learned advocate also contended that there is no encroachment made by the petitioner trust on the Government land as alleged. Learned advocate has referred the relevant averments made in the affidavit-in-rejoinder filed by the petitioner in support of the aforesaid contention.

11. Learned advocate, at this stage, submitted that the land in question was granted to the petitioner for a period of 15 years and the said period was over in the year 2006. Petitioner, therefore, has immediately filed an application before the respondent authority for renewal of the lease.

However, because of the pendency of the present petition, the respondent authority has not considered the said application. Learned advocate further submits that approximately 1600 students are studying in the school run by the petitioner trust and the land in question is being used for the purpose of playground. The trust has also started a self-finance arts college in the year 2016 wherein also approximately 500 students are studying, who are also using the land in question as a playground. It is further submitted that if the application for grant of lease/renewal of lease is considered by the respondent authority, the petitioner trust will construct school building within the time that may be prescribed by the respondent authorities. Learned advocate for the petitioner, therefore, urged that both the impugned orders be quashed and set aside.

12. On the other hand, learned Assistant Government Pleader Mr. Soni has opposed this petition and referred the averments made in the affidavit-in-reply filed on behalf of the concerned respondent authority. It is submitted that the land in question was allotted to the petitioner on certain terms and conditions. It was noticed by the respondent Collector that the petitioner has encroached upon the Government land and not carried out the measurement of the land in question and therefore after a period of almost 7 years from the date of allotment of the land, a show cause notice was issued to the petitioner. The respondent Collector, after

considering the reply submitted by the petitioner, passed the impugned order on the ground that the petitioner has violated condition nos. 10 and 12. At this stage, learned AGP Mr. Soni further submits that when the petitioner challenged the order of Collector by filing revision application before the revisional authority, the concerned authority also noticed that petitioner has violated condition nos. 2 and 6 and therefore the revisional authority has rejected the revision application filed by the petitioner. Thus, no error is committed by the respondent authorities while passing the impugned orders and therefore this Court may not entertain the present petition.

13. At this stage, learned AGP would submit that even a period of 15 years is already over and therefore it is open for the petitioner to submit an application for renewal of the lease. As and when such an application is received by the respondent authority, the same will be decided in accordance with law.

14. Having heard the learned advocates appearing for the parties and having gone through the material placed on record, it would emerge that the respondent Collector allotted the land in question to the petitioner trust on certain terms and conditions vide order dated 04.09.1991 pursuant to the resolution dated 20.07.1989 passed by the concerned Gram Panchayat. The land in question was allotted to the petitioner for a period of 15 years. The possession

of the land in question was handed over to the petitioner on 12.05.1992. It is reflected from the record that the petitioner trust has paid necessary fees for survey of the land by DILR and also spent Rs.2 lakh for carrying out leveling of the land in question in order to make it suitable for construction and for being used as a playground. It is also revealed that the petitioner trust has left 60 feet wide road between the school and the land in question as per the resolution passed by the concerned Gram Panchayat. It is pertinent to note that the respondent Collector issued a show cause notice to the petitioner alleging that the petitioner has violated condition nos. 10 and 12 of the order of allotment. It is the specific case of the petitioner that it had not violated any of the conditions including condition nos. 10 and 12, as alleged in the show cause notice. The petitioner filed a detailed reply to the show cause notice. However, the respondent Collector passed the impugned order on the ground that petitioner has violated condition nos. 10 and 12. It is pertinent to note at this stage that when the petitioner has filed revision application before the respondent Government, the revision application filed by the petitioner came to be dismissed on the ground that petitioner has violated condition nos. 2 and 6 of the allotment order. It is not in dispute that the Collector or the revisional authority had not issued any show cause notice to the petitioner alleging that petitioner has violated condition nos. 2 and 6 of the allotment order.

However, the respondent - revisional authority has passed the impugned order whereby the revision application filed by the petitioner has been dismissed on the ground of violation of condition nos. 2 and 6. It is specifically observed by the revisional authority that the petitioner has not constructed the building on the land in question and the petitioner has not used the land for the purpose for which it was allotted. Once again, it is required to be noted that no such allegations are levelled against the petitioner by the Collector while issuing the show cause notice or while passing the order. Thus, it appears that the respondent - Government - Revisional Authority has passed the order beyond the show cause notice.

15. Even otherwise, it is the specific case of the petitioner that petitioner has not encroached upon the Government land and so far as condition No.2 is concerned, the petitioner has given the explanation in the memo of the petition as well as in affidavit-in-rejoinder that because of the situation of drought which was continued in the said area for a period of 10 years, the petitioner trust could not get the funds from the members and therefore the building was not constructed and thereafter this petition is pending since 2007 before this Court and therefore also the petitioner has not carried out any construction after the impugned orders are passed by the respondent authorities. Petitioner has also undertaken that if lease is renewed, the petitioner

will make necessary construction within stipulated time. It is also not in dispute that the petitioner is in possession of the land in question.

16. At this stage, it is also relevant to note that period of 15 years for which the land in question was allotted to the petitioner on certain terms and conditions is over in the year 2006. Petitioner has, thereafter, submitted an application for renewal and the respondent authority has not decided the said application because of the pendency of the present petition. It is also not in dispute that the petitioner is in possession of the land in question.

17. In view of the aforesaid discussion, this Court is of the view that the respondent authorities have committed an error while passing the impugned orders and therefore both the impugned orders are required to be quashed and set aside and accordingly quashed and set aside. The concerned respondent authority is hereby directed to decide the application for renewal of lease submitted by the petitioner within a period of 8 weeks from the date of receipt of copy of this order, in accordance with law.

18. With the aforesaid, petition stands allowed. Rule is made absolute to the aforesaid extent.

(VIPUL M. PANCHOLI, J)

LAVKUMAR J JANI