SUPREME COURT OF INDIA

Asikali Akbarali Gilani

Vs.

Nasirhusain Mahebubbhai Chauhan & Ors.

C.A.No.10122-10123/2016

(T.S.Thakur and A.M.Khanwilkar,JJ.,)

07.10.2016

JUDGMENT

A.M.Khanwilkar.J.,

SLP (Civil) No.24281-82/2013

1. Leave granted.

2. These appeals challenge the judgment and final order passed by the Division Bench of the High Court of Gujarat at Ahmedabad dated 11th July 2013 in Writ Petition (PIL) No.144 of 2011 and Writ Petition (PIL) No.13 of 2013.

3. The respondent No.1 had filed a Writ Petition as Public Interest Litigation for issuance of direction against respondent No.3 to 5 (State Authorities) to remove the illegal encroachment and structure erected by the appellant on a Municipal Land behind Urdu Kumar Shala No.7 and on the public road going from Bharwadi Road and the surrounding area. The High Court on the basis of the information furnished, noticed that besides the structure referred to in the Writ Petition, there were in all 869 leases given by the Municipality to different persons without authority of law and on which constructions have been put up without any formal lease executed in favour of concerned persons/occupants nor the approval of the State Government in terms of Section 65 of Gujarat Municipality Act, 1963 was obtained. The Division Bench after analysing Sections 65, 80 and 146 of the Act and the decisions in *Parasram Manjimal & Ors. V. The Kalol Municipality, Kalol*[1] *, Dipak Kumar Mukherjee v. Kolkata Municipal Corporation & Ors*[2]*. , Sri K.Ramadas Shenoy v. The Chief Officers Town Municipa.l Council, Udipi & Ors*[3]. And *Friends Colony Development Committee v. State of Orissa & Ors.*[4] held that ordinarily public streets must be used by the Municipality as public streets for the public right of way and cannot be let out or allowed to be used for any other purpose. It held that the Municipality is a trustee and must, therefore, ensure that public streets are not encroached upon. Further, the Municipality cannot lease out any portion of the public street. The High Court in paragraph 9 of the impugned judgment, noted the concession given by the counsel for the Municipality that none of the resolutions granting lease rights to

private person(s) were approved by the General Board of the Municipality and that the subject structures were allowed to be constructed in absence of any formal sanction given by the Competent Authority in that behalf. Paragraph 9 of the impugned judgment reads thus:
"In the present case, Mr. Sanchela, the learned advocate appearing for the Municipality has conceded that none of the Resolutions was approved by the General Board of the Municipality and not only that, but no plans for the construction have also been sanctioned. It has been conceded by Mr. Sanchela, the learned advocate that innumerable constructions have come up all over the town as a result of such grant of land indiscriminately in flagrant violation of the provisions of the Act."

4. The High Court, accordingly, issued directions to the Collector in the following terms:

> "14. In such circumstances, we are left with no other alternative but to direct the Collector to exercise power in terms of Section 258 of the Act, by taking possession of the property after removing the illegal occupants of the same and demolition of the existing structure. We further find that the cases do not come even under sub-section (2) of Section 65 of the Act, and thus, the illegal occupants or the lessees cannot have any protection under the law.
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> 15. Let the matter appear after two months, when the Collector will report compliance of this order."

5. This decision is the subject matter of the present appeals. The appellant would contend that the Writ Petition was filed out of political vendetta. Further, the Municipality had granted plot to the appellant pursuant to the resolution passed by the Executive Committee of the Municipality on 19th March 1988 allotting 50 x 50 land on the basis of rent at Rs.50/- on specified terms. It is contended that the direction given by the High Court to the Collector transcends beyond the mandate of Section 258 of the Act. It is also contended that persons affected by the directions given by the High Court, therefore, have approached the High Court by way of civil applications.

6. The respondent-Municipality and the State Authorities have supported the view taken by the High Court. The learned counsel for the State also pointed out that no previous permission of the State Government was taken by the Municipality before granting 869 stated leases to concerned persons, which was imperative in terms of Section 65(2) of the Act. It was contended that mere passing of a resolution by the Executive Committee of the Municipality is not enough; and in any case no structure can be permitted on public streets in terms of Section 146 of the Act.

7. We have heard the learned counsel appearing for the parties at length. It is indisputable that no formal lease has been executed in favour of the appellant or similarly placed persons for allotting the subject plot of land. Further, no prior permission was obtained from the State Government before allotting any portion of the municipal land or public property, much less on the land earmarked as public street. The High Court, in paragraph 2 of the impugned judgment, has encapsulated the substance of the matters in issue, which reads thus:

"The sum and substance of the allegation contained in these applications is that by virtue of the Resolution passed by the Executive Committee of the Virangam Municipality, 869 different leases have been given to different persons even authorizing them to make construction, but no formal lease-deed has been executed, nor have this decision been approved by the State Government in terms of Section 65 of the Gujarat Municipalities Act, 1963[the Act, hereinafter]."

8. The fact that a resolution has been passed by the Executive Committee of the Municipality or a letter of allotment is issued by the Municipality, cannot legitimize the occupation of a public property in absence of a formal lease deed executed in that behalf and moreso in respect of a land falling within the public street. It is indisputable that the respondent-Municipality has been making such allotments since 1956 without any prior approval of the State Government. The break-up of such allotments made year wise by the respondent-Municipality has been given as under:

Year	No.
1956	3
1962	9
1963	3
1969	20
1970	60
1971	130
1972	96
1973	82
1974	15
1975	3
1976	17

Year	No.
1977	15
1978	42
1979	22
1980	32
1981	1
1982	8
1983	3
1984	24
1985	15
1986	30
1987	40

Year	No.
1988	58
1989	5
1990	4
1991	4
1992	18
1993	32
1996	3
1998	34
2000	32
2007	9
Total	869

Note: * The number of tenants that are provided property on rent by executive committee resolutions.

9. We have no hesitation in accepting the argument of the State Authorities that no right can enure in favour of the allottees/occupants of the structure on a public property, in respect of which no formal lease deed has been executed and that too when no prior approval of the State Government for such allotment and grant of lease has been obtained by the Municipality. Understood thus, the direction issued by the High Court in paragraphs 14 and 15 of the impugned judgment, does not merit any interference.

10. The argument of the appellant that the direction given by the High Court transcends beyond the mandate of Section 258 will be of no avail. Section 258 of the Gujarat Municipalities Act, 1963 reads thus:

> "258(1) If, in the opinion of the Collector, the execution of any order or resolution of a municipality, or the doing of anything which is about to be done or is being done by or on behalf of a municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof and where the execution of any work in pursuance of the order or resolution of the municipality is already commenced or completed direct the municipality to restore the position in which it was before the commencement of the work".

11. On a plain reading of this provision, it is evident that the Municipality is obliged to restore the public property as it had originally existed, if such direction is issued by the Collector. The direction given by the High Court to take possession of the concerned property and remove illegal occupants therefrom and to demolish the unauthorized structure is not in derogation of the said provision; and particularly when the Collector is expected to exercise that power by following due process.

12. Indeed, the Collector may have to take action on case to case basis in relation to the stated 869 leases or unauthorized occupation of the concerned public property and structures put up thereon without a sanctioned plan. However, considering the fact that some of the structures may be in existence for quite some time and have been tolerated for all these years, it may warrant a humane approach to be taken by the State Authorities. For that the State Government must evolve a comprehensive policy, if already not in existence; and thereafter the Collector may proceed to take action in respect of such unauthorized occupation and encroachment on the public property.

13. If such a policy is already in place then the Collector may proceed in conformity with the existing policy.

14. However, if a new policy is required to be formulated, it may provide for rehabilitation of the unauthorized occupants to alternative location, if the unauthorized structure in occupation of a given person has been tolerated for quite some time or has been erected before the cut off date to be specified in that regard. If the structure has been erected after the cut off date, no right of rehabilitation would enure to the occupant(s) of the unauthorized structure(s) on the public property; and such structure(s), in any case will have to be removed in terms of the direction given by the High Court. The State Government may formulate an appropriate policy within six months from today, if already not in existence.

15. The State Government will be free to consider the request of the occupants of unauthorized structures on the subject public property including to ratify the resolution passed in their favour by the Executive Committee of the respondent-Municipality, provided it is in conformity with the expounded policy. If that request is accepted, the Government will be free to provide for such terms and conditions, as may be permissible in law.

16. The Collector may examine the claim of the occupants of the concerned unauthorized structure(s) standing on the subject public property on case to case basis and take suitable action as may be permissible in law.

17. If the occupation of the subject public property is not in conformity with the policy of the State Government and the structure cannot be tolerated there under, the Collector must then proceed to take action against such structure(s) within two months in accordance with law, for complying the directions given by the High Court.

18. We dispose of these appeals in the above terms with no order as to costs.

Judgment Referred.

[1]*AIR 1972 Guj.54*
[2]*Civil Appeal No.7356/2012 decided on 8th Oct.2012*
[3]*(1974)2 SCC 0506*
[4]*(2004) 8 SCC 0733*