

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil)...../2013

(CC 20720/2013)

(From the judgement and order dated 06/09/2012 in MCA No.3144/2010,LPA No.1053/2012MCA No.2028/2012 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

CHIEF EXE. OFF.BHACHAU AREA DEV.AUTHORITY Petitioner(s)

VERSUS

DOSHI MANSUKHLAL KHIMJIBHAI & ORS. Respondent(s)

With I.A.1 (C/delay in filing SLP and c/delay in refiling SLP)

Date: 06/12/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Mr. Nachiketa Joshi, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

The petitioner, who is representing Bhachau Area Development Authority (for short, 'the Authority') has filed this petition questioning order dated 06.09.2012 passed by the Division Bench of the Gujarat High Court whereby the Letters Patent Appeal filed by him against order dated 03.08.2012 passed by the learned Single Judge in Misc.Civil Application for Review No. 2028 of 2012 was dismissed.

In the Town Planning Scheme framed by the Authority, final plot No.414 was allotted to respondent No.1. However, possession thereof was not given to respondent No.1 compelling him to seek intervention of the High Court. Special Civil Application No.5191 of 2005 filed by him was disposed of by the learned Single Judge of the High Court vide order dated 2.5.2006 by requiring respondent No.1 to file appropriate application for allotment of alternative plot with a direction to the Authority to take appropriate decision in the matter within six weeks.

In furtherance of the direction given by the learned Single Judge, respondent No.1 submitted detailed representation for allotment of an alternative plot. The representation of respondent No.1 was considered in the Board meeting held on 13.6.2004 and a decision was taken to allot alternative plot to him. The decision of the Board was confirmed in the Authority's meeting held on 19.6.2007 and it was decided to allot final plot No.1347 to respondent No.1. Notwithstanding this, possession of the plot was not handed over to respondent No.1. Therefore, he filed Misc. Civil Application No.3144 of 2010 for revival of Special Civil Application No.5191 of 2005.

In the reply affidavit filed on behalf of the Authority on 14.2.2011, Shri Jagdish Shantilal Chavda, Town Planner of the Authority made the following statement:

"Application I state that all sincere efforts were made to allot another final plot in lieu of Final Plot No.414 and for that, the matter was referred for determination of price to Land Disposal

Committee and time to time the case was taken into consideration. It is stated that even the land is valued by the Land Disposal Committee. The respondent no. 2 further states that even the petitioner herein was intimated about the same in writing in the past and even the minutes of the meeting of Land Disposal Committee as well as the minutes of all the meetings of the Board of Bhachau Area Development Authority dated 13.08.2008, 19.09.2008 and 29.07.2009 were provide to the petitioner. It is stated that the issue remained undecided in the meeting dated 06.01.2010 and ultimately a resolution is passe in the meeting dated 31.01.2011 to send a proposal to the respondent No. 1 for allotment cf Final Plot No.1347 of T.P. Scheme No.1 of Bhachau to the petitioner and the copies of the agents as well as resolution are annexed herewith and marked as Annexure-A. The respondent No.2 submits that the respondent no.1 herein has to take final decision for allotment of final plot no. 1347 to the petitioner in lieu of final plot No.414 of T.P. Scheme No. 1 of Bhachau original allotted to him."

The learned Single Judge considered the application and passed detailed order dated 22.4.2011 by which he directed the State Government, Urban Housing and Urban Development Department to take final decision on the proposal made by the Authority for varying the Town Planning Scheme and, thereafter, allot final plot No.1347 to respondent No.1 in lieu of final plot No.414.

However, instead of complying with the aforesaid order, the petitioner filed Misc. Civil Application Review No.2028 of 2011 for recall of order dated 22.4.2011. The learned Single Judge dismissed that application with cost of Rs.25,000 on the premise that the application was a piece of frivolous litigation filed with the object of harassing respondent No.1.

The petitioner did not feel comfortable with the order of the learned Single Judge and filed LPA No.1053 of 2012, which was dismissed by the Division Bench. However, the cost imposed by the learned Single Judge was set aside.

We have heard Shri Nachiketa Joshi, learned counsel for the petitioner and perused the record. We are convinced that the special leave petition is thoroughly misconceived and deserves to be dismissed at the threshold because the petitioner had not challenged order dated 22.04.2011 passed in Misc. Civil Application No.3144 of 2010 and, in the absence of challenge, that order will be deemed to have become final.

We are further of the view that Misc. Civil Application Review No.2028 of 2012 was thoroughly misconceived and the learned Single Judge and the Division Bench of the High Court rightly dismissed the same by observing that the petitioner had embroiled respondent No.1 in unwarranted litigation.

With the above observations, the special leave petition is dismissed.

The petitioner and the State Government are directed to take all steps necessary for compliance of order dated 22.4.2011 passed by the learned Single Judge in Misc. Civil Application No.3144 of 2010 and deliver possession of final plot No.1347 to respondent No.1 within a period of two months from today.

A copy of this order be sent to respondent No.1 at the address mentioned in the memo of special leave petition.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Assistant Registrar