

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2609 of 1983

Date of decision: 28-11-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

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, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VIDYABEN RAMANLAL GANDHI

Versus

COLLECTOR

Appearance:

MR MD PANDYA for Petitioner

None present for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/11/97

ORAL JUDGEMENT

The petitioner, by this special civil application, prayed for setting aside and/ or quashing the orders at annexure-J and L dated 13th January, 1983 and 31st March, 1983 respectively passed by the Collector, Bharuch and State Government. Under order annexure-J dated 13th January, 1983 grant of lease of the land in dispute made in favour of the petitioner was cancelled and the land was ordered to be resumed; and under the order at annexure-L the State Government has rejected the revision application filed by the petitioner against the aforesaid order.

2. The facts of the case, in brief, are as under:

On 9-1-1975 partner of M/s. Anand Industries of Gandhi Bazar, Bharuch, presented an application to the Collector, Bharuch, for grant of lease of land admeasuring 350 acres comprises of survey No.963-A/1/1 for manufacture of salt. Under order dated 25th April, 1978 the aforesaid land was given on lease to the petitioner firm for 20 years on certain conditions. Possession of the land was delivered to the petitioner on 3-6-1978 and lease deed came to be executed on 15th September, 1978.

3. The petitioner, as per the terms and conditions of the lease, could not start salt manufacturing unless licence for doing the same was granted by the Salt Commissioner, Jaipur, Rajasthan. The petitioner applied for grant of licence on 14th December, 1978. The licence came to be granted in favour of the petitioner on 2nd June, 1982. Thereafter the petitioner started manufacture of salt in the land in dispute. Meanwhile proceedings were initiated for cancellation of the lease and resumption of land on account of violation of conditions of lease after grant of licence by the Salt Commissioner, Jaipur, for the manufacture of salt. The only ground for cancellation of lease and resumption of the land in dispute is that the petitioner firm had applied for grant of licence to manufacture salt to the concerned authority after three months from the date of agreement of lease. The order of the Collector has been confirmed by the State Government. Hence this special civil application before this court.

4. The respondents have not filed reply to the special civil application. No one is present on behalf of the respondents. The averments made in the petition

stand uncontroverted.

5. Heard the learned counsel for the petitioner.

From the order of the State Government I find that the lease of the land in dispute was made in favour of the petitioner, and resumption of the land in dispute has been made only on the ground of violation of condition No.1(d) of the lease agreement. Condition No.1(d) of the lease agreement reads as under:

"1(d). The lessee shall apply to the Salt Commissioner, Jaipur for the said licence with full particulars as required by the Salt Department within two months from the date of execution of the leased agreement. If the Lessee does not apply within this time limit the lease is liable to be determined and the land resumed by the Government without payment of any compensation."

As per this clause the lessee has to apply to the Salt Commissioner, Jaipur, for the licence within two months from the date of execution of the lease agreement. If the lessee does not apply within this time limit the lease is liable to be determined and the land resumed by the Government without payment of any compensation. There is no dispute that the application for grant of licence was made to the Salt Commissioner by the petitioner after delay of one month, i.e not within two months from the date of execution of the lease agreement. However, only on this ground the lease could not have been cancelled and the land could not have been ordered to be resumed. The underlying object of the provision contained in Condition No.1(d) of the lease agreement is that the lessee may not keep the land unutilised for years together. It is obligatory for the lessee to apply within the period stipulated therein for grant of licence for manufacture of salt, and as per the terms and conditions of the lease manufacturing activity could not be started unless licence has been granted for doing the same by the Salt Commissioner, Jaipur, Rajasthan. I do not find from the provisions contained in condition No.1(d) of the lease agreement nor it can be said that there is no discretion left with the authorities than to cancel the lease and resume the land. In case the application is not filed within the time stipulated in the lease agreement, there is no prohibitory provision that in no case the delay which has occurred in applying for the licence can be waived.

6. The respondents have not considered the basic

facts of the case. The application for grant of licence was made by the petitioner to the Salt Commissioner on 14th December, 1978, and that authority has taken more than three years to grant the licence to the petitioner. The lease was executed on 15th September, 1978. Till grant of licence by the Salt Commissioner for manufacture of salt, no action was taken by the respondents for cancellation of the lease and resumption of the land. After grant of licence, however, action has been taken. Thus there is inordinate delay on the part of the respondents in taking the action, more so after the licence has been granted. In fact, though the petitioner made delay in making application by one month, the licensing authority has taken more than three years to initiate the proceedings. Therefore the action of the respondents to cancel the lease as well as for resumption of the lease cannot be said to be reasonable and justified. The matter should have been considered objectively and the authorities should not have taken decision on technical ground.

7. It is not out of context to state here that the petitioner started manufacture of salt long back and for all these years the petitioner is manufacturing salt on which there is no dispute. The lease is for 20 years and that period is going to expire on 14th September 1998. This court has protected the petitioner by grant of interim relief. Looking to the gravity of the breach of one of the conditions of lease, which has been committed by the petitioner, it cannot be said to be a breach of the nature which warrants cancellation of lease as well as resumption of the lease. It is a case where the Collector, Bharuch, as well as the State Government have taken too technical approach in the matter.

8. Net result of the aforesaid discussion is that the orders impugned in this petition cannot be allowed to stand. In the result this special civil application succeeds and the same is allowed. Orders at annexure-J and L are quashed and set aside. Rule made absolute. Though at one point of time I thought it to be a fit case where cost has to be imposed, but in view of the fact that the respondents have not contested the petition and no body is present on their behalf, the petitioner is left to bear his own cost in this litigation.

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