

## **Bahadursinh Lakhubhai Gohil vs Jagdishbhai M. Kamalia And Ors on 17 December, 2003**

**Equivalent citations: AIR 2004 SUPREME COURT 1159, 2004 AIR SCW 37, 2004 (2) SCC 65, (2004) 14 ALLINDCAS 812 (SC), 2004 (14) ALLINDCAS 812, 2004 (1) SLT 933, 2004 (2) SRJ 485, 2003 (10) SCALE 806, (2003) 10 SCALE 806, (2004) 2 GUJ LR 933, (2005) 1 LANDLR 297, (2004) 4 SUPREME 391, (2004) 1 RECCIVR 503, (2004) 1 UC 569, (2004) 14 INDLD 317, (2004) 4 BOM CR 189**

**Author: S.B. Sinha**

**Bench: Ashok Bhan, S.B. Sinha**

CASE NO.:  
Appeal (civil) 32 of 1999

PETITIONER:  
BAHADURSINH LAKHUBHAI GOHIL

RESPONDENT:  
JAGDISHBHAI M. KAMALIA AND ORS.

DATE OF JUDGMENT: 17/12/2003

BENCH:  
ASHOK BHAN & S.B. SINHA

JUDGMENT:

JUDGMENT 2003 Supp(6) SCR 1023 The Judgment of the Court was delivered by S.B. SINHA, J. : A Public interest litigation was filed by the first respondent herein questioning an action of the respondent-Corporation and its chairman of the Standing Committee insofar as incorporation of the name of the -respondent No. 7 in the municipal register was allowed.

FACT :

An auction was held by the respondent No. 3 herein for granting a vacant land and bearing plot No. 2557 admeasuring 90 x 150 feet (1500 square yards) for a period of 99 years on or about 7.11.1951. One Shri Vajubha (since deceased), the predecessor in interest of the appellant herein became the highest bidder by offering a sum of Rs. 360 being the one time premium. The said Shri Vajubha deposited a sum of Rs. 270 on or about 14.2.1952 and prayed for grant of three months' further time for paying the balance sum of Rs. 90. The respondent No. 3 agreed to the aforementioned offer

by a letter dated 19.2.1952 directing that the said amount must be paid within three months in default, the allotment will be cancelled.

Admittedly the said amount was not deposited. No rent was also paid by him to the respondent Corporation.

One Pandya Minaben Kuberbhai filed a suit in relation to Plot No. 2557 being suit No. 30 of 1990 in the Court of Civil Judge (S.D.). Bhavnagar wherein a written statement was filed by the respondent -Corporation asserting right title and interest as also possession therein.

Late Shri Vajubhai or the respondent No. 7 herein did not take any step in relation to the land in question either for obtaining possession, payment of balance amount of the auction amount or assessment of municipal taxes. Only upon expiry of about 44 years, the respondent No. 7 wrote two letters dated 25.7.1996 and 31.7.1996 to the Commissioner of the respondent No. 3 to enter his name in the lease register expressing his readiness and willingness to deposit the further sum of Rs. 90. The then Home Minister of the State of Gujarat by a letter dated 7.9.1996 instructed the respondent No. 3 herein to incorporate the name of the respondent No. 7 in the register. However, the Estate said applications by a letter dated 26.9.1996. Despite the said rejection, the respondent No. 7 herein by a letter dated 3.10.1996 requested the Chairman, Standing Committee for incorporating his name in the lease register which was rejected by the then Chairman, Mr. Laxman Radheshwar in the following terms :

"It appears from complete examination of papers that claimant Vajubha Hathisinh has not paid amount for the plot he had taken in auction as per the Rules.

It is said that plot No. 2557/A was purchased in 1951 in auction. The claimant was given notice and further time to pay the balance amount but he had not paid the same. Therefore, allotment of plot stands forfeited as per Rules, which he claims after 46 years.

The price of the plot has arisen many times in 46 years and if now the plot is given to the claimant, the Corporation is stand to lose crores of rupees and the Corporation is planning to construct Commercial Complex on this plot. In the circumstances nothing remains to be done and the matter is hereby returned."

The said letter was contained in Annexure I to the writ petition and a copy thereof has been produced before us by Mrs. Sundaram. the learned senior counsel appearing on behalf of the respondent-Corporation. Prior thereto, it appears that a legal opinion was obtained on the subject matter. It further appears that on 8.7.1997 an election was held for the post of Chairman of the Standing Committee and the respondent No. 5 Mr. Mahpatsingh Gohil was elected. Soon thereafter i.e. on 23.7.1997, an agenda was purported to have been circulated for meeting of the members of the Standing Committee to be held on 25th July, 1997 wherein, however, the proposal for consideration of the applications filed by the respondent No. 7 herein did not find place. Despite the same, allegedly a resolution was passed to incorporate the name of the respondent No. 7 in the lease

register; pursuant whereto and in furtherance whereof, the respondent No. 3 herein issued an office order on 30th July, 1997 directing recovery of a sum of Rs. 90 with 24% interest thereon from the respondent No. 7 and to lease out the plot of land to him subject to the following conditions:

- "1. The applicant, has to pay the whole of the amount remaining due together with penal interest at the rate of 24% within 15 days.
2. The final decision in Civil Suit No. 30/90 will be binding.
3. The allotment on lease for 99 years is made for the residential purpose only and all its conditions shall be agreeable and binding to the applicant.
4. Shall have to complete all the proceedings in order to bring his name on record."

It is not in dispute that at least two members of the Standing Committee demanded cancellation of the said Resolution on the ground that the said resolution did not find place in the agenda nor had it been discussed or approved by the Standing Committee. It does not appear that any decision had been taken thereupon. In the meanwhile the respondent No. 7 herein allegedly transferred the said land to the appellants herein for a sum of Rs. 4 lakhs. The public interest litigation was thereafter filed by the respondent Nos. 1 and 2. In the said writ petition, the appellants herein were impleaded as a party respondents.

#### PUBLIC INTEREST LITIGATION :

In the said writ petition, the respondent No. 3 filed a counter-affidavit supporting the case of the respondent No. 7 wherein inter alia it was alleged that the impugned decision had been taken keeping in view the fact that the possession of the plot was handed over to the respondent No. 7. The respondent Nos. 1 and 2 filed an affidavit of service stating that appellant herein refused to accept the same. The appellant, however, wrote a letter to the Registrar, High Court that he did not receive the notice and his letter should be placed on record before the Court.

The matter was taken up for hearing with the consent of the parties and by reason of the impugned judgment dated 26.3.1998, the writ petition was allowed by a Division Bench holding :

"In the above-referred circumstances, we are of the view that the impugned order dated 30th July 1997 passed by the respondent Corporation and Resolution No. 185 passed by the Standing Committee on 25th July, 1997 are illegal and unjust and they are hereby quashed and set aside. As the said resolution is quashed and set aside, as a consequences thereof, legal heirs of late Shri Vajubha shall not get any right in respect of the land in question and their names, if entered in the register of lease maintained by the Corporation, shall be deleted from the lease register and no agreement of lease in respect of the land in question shall be entered into by the

Corporation with the heirs of late Shri Vajubha; Needless to say that respondent No. 6 shall not get any right in respect of the land in question as the legal heirs of late Shri Vajubha are not having any right in respect of the land in question and, therefore, they could not have transferred or as-signed any right to respondent No. 6 in respect of the land in question. The Corporation shall forthwith do the needful to take actual possession of the land if the possession has been given to anyone. The Corporation shall also see that nobody puts up any construction on the land in question."

It was further directed :

"Looking to the fact that the property belonging to the Corpora-tion has been attempted to be disposed of against the interest of the Corporation in an improper and unjust manner, we direct respondent No. 4 to look into the matter and initiate appropriate proceedings against the concerned Councillors of the Corporation under provisions of the Bombay Provincial Municipal Corpora-tions Act, 1949. It is hoped that an appropriate decision to initiate action shall be taken within three weeks from the date of receipt of the order by respondent No. 4."

#### FINDINGS OF THE HIGH COURT :

The High Court considered the matter at great length. It called for and perused the records maintained by the respondent No. 3. It was held that late Shri Vajubha did not make any payment during the extended period of three months, although, in a letter written by the Chief Officer of the Municipality, a reference had been made to the effect that Shri Vajubha was given possession of the plot on the condition that he would make payment to the remaining amount of premium within three months from 16th February, 1952. The High Court called for and perused the records of the matter; but observed that nothing existed on record as to on what date the purported possession had been delivered and in relation thereto not only no document existed but also no office note in the record disclosed the factum of handing over the possession. It was held that :

- (i) Shri Vajubha had not been in actual possession of the plot in question and the plot was lying open;
- (ii) the name of Shri Vajubha was not entered into the lease register nor any deed of lease was executed in his favour;
- (iii) even in Regular Civil Suit No. 30 of 1990, the respondent-Corporation claimed right title interest and possession in itself;
- (iv) the Panchnama date 30th July, 1996 discloses that the plot in question was an open land and there were babul trees standing on the unused plot with heaps of earth;

(v) the respondent-Corporation acted against its own interest by passing the impugned order;

(vi) it also did not take into consideration the value of the land in question which was approximately one crore;

(vii) the Councillors who are holders of public offices were bound to act as trustees of the Corporation; and

(viii) the writ petitioners had locus standi to maintain the writ petition.

#### SUBMISSIONS :

Mr. K.N. Bhat, the learned counsel appearing on behalf of the appellant in assailing the judgment of the High Court would submit :

(i) The High Court committed a manifest error in passing the impugned judgment without hearing the appellant.

(ii) As the Competent Authority for good and valid reason accepted the balance money and entered the name of the respondent No. 7 in the lease register, the High Court should not have interfered therewith.

(iii) As the writ petition does not disclose violation of any substantive or procedural law, nor the impugned judgment disclosed any, it cannot be sustained.

(iv) The High Court committed a manifest error in exercising its power of judicial review keeping in view the fact that its jurisdiction is limited to enquire into the existence of any error in the decision making process and not on merit thereof.

Mr. Sundaram, on the other hand, would submit that :

(i) Having regard to the provisions of Section 17 of the Registration Act, no title passed on to Shri Vajubha or the respondent no. 7 herein;

(ii) the finding of the High Court to the effect that no possession was delivered to the highest bidder or to his successors interest being a finding of fact, no interference therewith by this Court is warranted :

(iii) the applications dated 25.7.1996 and 31.7.1996 having been rejected by the respondent-Corporation by an order dated 26.9.1996 as also by the Chairman, Standing Committee in terms of the report dated 30th June, 1997, the new incumbent of the said office could not have considered the matter afresh in absence of any statutory power to review the said orders:

(iv) the applications dated 25.7.1996 and 31.7.1996, if construed to be applications for grant of fresh lease, the provisions of Section 79 of the Bombay Provincial Municipal Corporation Act, 1949 were required to be complied with, which having not been done, the orders impugned in the writ petition are wholly ill legal and without jurisdiction.

OUR FINDINGS :

It is not in dispute that the property in question had vested with the respondent-Corporation. The respondent-Corporation, therefore, could grant a lease in respect of the premise in question in terms of Section 79 of the Bombay Provincial Municipal Corporation Act, 1949 which stands extended to Gujarat. Section 79 of the said Act reads thus:

"with respect to the disposal of property belonging to the Corporation other than property vesting in the Corporation exclusively for the purposes of the Transport Undertaking the following provisions shall have effect, namely :

(a) \*\*\*

(b) with the sanction of the Standing Committee the Commissioner may dispose of by sale, letting out on hire or otherwise any moveable property belonging to the Corporation, of which the value does not exceed five thousand rupees: and may with the like sanction grant a lease of any immov-

able property belonging to the Corporation, including any such right as aforesaid, for any period exceeding one year or sell or grant a lease in perpetuity of any immovable property belonging to the Corporation the value of premium whereof does not exceed fifty thousand rupees or the annual rental whereof does not exceed three thousand rupees;

(c) \*\*\*

(d) the consideration for which any immovable property or any right

belonging to the Corporation may be sold, leased or otherwise transferred shall not be less than the current market value of such premium, rent or other consideration;"

It stands admitted that Shri Vajubha did not deposit the entire sum of Rs.

360. The letter dated 19.2.1952 which was issued acceding to the request of the auction purchaser to the effect that he be granted three months' time for making payment of balance sum of Rs. 90 was a conditional order insofar as while granting such extension, it was stipulated therein that on failure to do the same, the allotment would be cancelled. As order in writing could have been issued cancelling the allotment and forfeiting the amount of Rs. 270 but once it is held that the said letter

dated 19.2.1952 was a conditional one, a fortiorari upon Shri Vajubha's failure to deposit the amount, the allotment stood cancelled.

Furthermore, it is not in dispute that for the purpose of demise of a premise for a period exceeding one year, a registered document was required to be executed. In absence of execution of such a registered deed, no title could have passed in favour of the auction purchaser. The statutory requirements for grant of lease must be fulfilled so as to confer a legal right on the property upon the auction purchaser. As the statutory conditions, as contained in Section 79 of the Act as also Section 17 of the Indian Registration Act, were not complied with, there cannot be any doubt whatsoever that Shri Vajubha did not derive any title by reason of said auction or otherwise. This Court in *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh and Others*, AIR (1977) SC 2149 in relation to a grant made under Article 299 of the Constitution of India observed:

"8. Re : Contention I : It is now well settled that the provisions of Article 299 of the Constitution which are mandatory in character require that a contract made in the exercise of the executive power of the Union or of a State must satisfy three conditions viz. (i) it must be expressed to be made by the President or by the Governor of the State, as the case may be; (ii) it must be executed on behalf of the President or the Governor, as the case may be, and (iii) its execution must be by such person and in such manner as the President or Governor may direct or authorise. Failure to comply with these conditions nullifies the contract and renders it void and unenforceable. (See decisions of this Court in *State of Bihar v. M/s. Karam Chand Thapar & Brothers Ltd.*, [1962] 1 SCR 827 : AIR (1962) SC 110 : (1962) 2 SCJ 17, *Bikhraj Jaipuria v. Union of India*, [1962] 2 SCR 880 : AIR (1962) SC 113: (1962) 2 SCJ 479 and *State of West Bengal v. M/s. B.K. Mondal & Sons*, [1962] Supp 1 SCR 876 : AIR (1962) SC 779."

This Court clearly held that if the said conditions are not fulfilled, the question of raising any plea of estoppel would not arise. The submission of Mr. Bhat to the effect that the orders impugned in the writ application dated 30th July, 1997 was passed upon obtaining a legal opinion and keeping in view the fact that possession had rightly or wrongly been delivered cannot be accepted. Apart from the fact that the reasons assigned by the High Court are valid and cogent, it is difficult to believe in the peculiar facts and circumstances of the case that possession of the plot in question had been handed over to Shri Vajubha. In the Panchnama prepared on 30th July, 1996 it was stated :

"In the aforesaid plot of panchnama, thorn trees are standing and heap of stone of waste land and heap of waste clay are laying, which, as stated by the holder of plot No. 2556 was laid by them. No any kind of temporary or permanent, incomplete or matured constructure is there in the said plot. In the surrounding of the said plot, except on side of plot No. 2556, no compound wall or wire fencing or hedge of thorn is there/placed/made."

It would be beyond anybody's imagination that a person who has obtained possession of the plot would not use the same for any purpose whatsoever. Furthermore, no document showing exercise of

any act of possession or payment of ground rent has been produced.

In any event, the statutory authorities are bound to pass orders in writing. If possession of the plot had been delivered, the respondent - Corporation was bound to prepare document in respect thereof wherefor at least a receipt was required to be obtained from the auction purchaser showing that such possession had been delivered. If the possession had been delivered, the date on which the same was done could have been found out from the records of the municipal Corporation. As noticed by the High Court, no document exists. Even no noting in the file to that effect has been made. Only because an Officer in one of the correspondence had mentioned that possession had been delivered, the same, in our opinion, as has rightly been held by the High Court, could not have been accepted as a sacrosanct.

Furthermore, there was absolutely no reason as to why only a few weeks before the purported transfer made in favour of the appellants herein the respondent No. 7 would file two applications praying for entering his name in the lease register and showing his readiness and willingness to deposit a sum of Rs. 90. If the contention of the said respondent was to be accepted, he would have pleaded acquisition of title by adverse possession as also waiver of this aforementioned sum of Rs. 90.

It is further beyond anybody's imagination as to how despite rejection of said applications by the respondent-Corporation as also the Chairman of the Standing Committee by orders dated 26.9.1996 and 30.6.1997 respectively, without any fresh application as also fresh materials, the matter could have been again placed before the Standing Committee. Admittedly, the Chairman of the Standing Committee does not have any power to review the order passed by the Commissioner or his predecessor in interest nor there exists any provision for appeal against the orders of the Commissioner or the Corporation. The least it was expected of the Corporation that the respondent No. 7 would file a fresh application brining on records some new facts.

The impugned order dated 30th July, 1997 is passed on a lawyer's opinion who in turn has proceeded on the basis that possession had been delivered to Shri Vajubha. The questions of law which had been raised in the public interest litigation were not considered therein.

The basic legal premise that even a noting in the file would not confer any right upon a person, as adumbrated by this Court in *Bachhittar Singh v. State of Punjab* and *Another*, AIR (1963) SC 395 was not taken note. In the instant case there does not exist even any noting, nor any other document showing delivery of possession.

The purported transaction effecting transfer of the property by the respondent No. 7 in favour of the appellants for a sum of Rs. four lakhs also is a pointer to the fact that such action was taken at the behest of the appellants.

The impugned order was preceded by a direction of the Home Minister on 7.9.1996. A charge in the opinion came into being only upon change in the holder of the office and that too within a few days. Not only the matter had not been admittedly placed on the agenda of the meeting dated 25.7.1997,



the same was considered showing undue haste.

In *Dr. S.P. Kapoor v. State of Himachal Pradesh and Others*, AIR (1981) SC 2181, this Court held that when a thing is done in a post-haste manner, mala fide would be presumed stating :

"33. The post-haste manner in which these things have been done on 3.11.1979 suggests that some higher-up was interested in pushing through the matter hastily when the regular Secretary, Health the Family Welfare was on leave."

It is also well-settled that if any decision is taken by a statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same would be ultra vires. (See *Commissioner of Police, Bombay v. Gordhandas Bhanji*, AIR (1952) SC 16 and *Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi and Others*, [1978] 1 SCC 405. It is, therefore, not a case where the High Court can be said to have committed an error in entertaining the public interest litigation. In our opinion, it has rightly been held that by reason of the impugned order, public interest has been given a complete go-by and a valuable public property was doled out at the behest of those who are duty bound to protect the same.

In *Bangalore Medical Trust v. B.S. Muddappa and Others*, [1991] 4 SCC 54 this Court held that an open space reserved for public park in terms of development scheme cannot be converted into a civil amenity site for the purpose of hospital/nursing home and allotted to a private person or body of persons for- that purpose. Discretion, this Court pointed out, must be exercised objectively, rationally, intelligibly, fairly and non- arbitrarily.

So far as the grievance of Mr. Bhat to the effect that the appellant had not been given an opportunity of being heard is concerned, suffice it to point out that we have ourselves heard the learned counsel at great length. Furthermore, the order impugned in the writ petition was passed in favour of the respondent No. 7 who was present in the Court. Furthermore, even the then authorities of the respondent No. 3 also supported the orders impugned in the writ applications. The appellants herein were given notice but despite knowledge of the pendency of the writ petition, chose not to appear before the High Court despite the same.

We, therefore, are of the opinion that as substantial justice has been done, it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

This appeal is, therefore, dismissed without any order as to costs.