

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 8283 of 2022

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MADRASA-E-ANWARE RABBANI WAQF COMMITTEE
Versus
SURAT MUNICIPAL CORPORATION

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Appearance:

MR MTM HAKIM with M/S.MAKBUL I MANSURI (2694) and MS SABINA M MANSURI (3631) for the Petitioner
MR KAUSHAL D PANDYA(2905) for the Respondent(s) No. 1
NOTICE NOT RECD BACK for the Respondent(s) No. 2,3

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CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE

Date : 05/05/2022

ORAL ORDER

1. This petition under Article 226 of the Constitution of India is filed with following prayers:-

- “(A) THIS HON’BLE COURT MAY BE PLEASED TO quash and set aside the impugned notice dated 29/12.2021 (Annexure-A) and the order dated 28/03/2022 (Annexure-B) passed by the Respondent No.2-Executive Engineer.
- (B) THIS HON’BLE COURT MAY BE PLEASED TO direct the Respondent Nos.1 and 2 to consider the request for regularization of the construction of the premises of the Petitioner-Waqf.
- (C) Pending admission, hearing, and final disposal of the present application, this HON’BLE COURT MAY BE PLEASED TO stay, execution, and implementation of the impugned notice dated

29/12/2021 and the order dated 28/03/2022 passed by the Respondent No.2-Executive Engineer, in the interest of justice and equity.

(D) Pending admission, hearing, and final disposal of the present application, this HON'BLE COURT MAY BE PLEASED TO direct the Respondent Nos.1 and 2 to consider the request for regularization of the construction of the premises of the Petitioner-Waqf."

2. It is a case where notice under Section 260(1)(a) of the Gujarat Provincial Municipal Corporations Act, 1949 (for short, "the GMPC Act") dated 29.12.2021 and order dated 28.03.2022 under Section 260(2) of the the GPMC Act by respondent No.2 is the subject matter of challenge.

2.1 It is the case of the petitioner that land bearing survey Nos.3936 and 2937 situated in the area of Sangrampura, Dist. Surat was originally owned by one Asiqhussain Abdulhusen and his five brothers and by way of oral gift deed, transferred right, title and share of all six brothers in favour of a registered Waqf represented by the petitioner as its "Muttwali". It is the case of the petitioner that since such transfer, the petitioner-Waqf is running "Madrassa" providing education to Muslim students. Learned Advocate for the petitioner submitted that as the rights given to the Waqf was by way of oral gift, the same could not be entered into the revenue record.

2.2 It is the case of the petitioner that the activity was continuing for running educational institution (Madrassa), the petitioner-Waqf came to be registered on 11.11.2021 and under the registered-Waqf, educational activity has continued.

2.3 It is the case of the petitioner that City Survey Superintendent had issued notice dated 01.10.2021 under Section 61 of the Land Revenue Code for removal of construction on the ground that the petitioner-Waqf is unauthorized occupant of the Government land and has put up illegal construction. Against such notice, the petitioner filed a detailed reply dated 27.10.2021. By order dated 28.10.2021, City Survey Superintendent had declared the petitioner to be in unauthorized occupation and directed to vacate the premises on or before 03.11.2021. It appears that thereafter, by order dated 28.10.2021, the City Survey Superintendent also imposed penalty on the petitioner for unauthorized occupation. The petitioner was also issued notice dated 29.12.2021 on the ground of having illegal construction without any prior permission for development and had constructed ground and first floor.

2.4 Learned Advocate for the petitioner submitted that the petitioner had challenged notices issued by the authorities before the Waqf Tribunal by filing Waqf Suit No.23 of 2022 and prayed for interim injunction. The Waqf Tribunal ordered carrying out of Court Commissioner of the suit property and panchnama was also

carried out. The Waqf Tribunal on 25.01.2022 passed order of granting status quo, which came to be extended from time to time. However, after filing of the reply by the respondent-authorities before the Waqf Tribunal, the order of status quo was not extended by the Waqf Tribunal. However, the Waqf Tribunal directed the petitioner to submit an application for fresh development permission or regularization along with necessary plans before 25.03.2022 and directed respondent Nos.1 and 2 to decide such application in accordance with law. Interim relief of status quo was extended till 31.03.2022 and accordingly, on 14.03.2022, application along with plan was filed before respondent No.3. However, by order 28.03.2022, respondent-Executive Engineer directed removal of construction within 7 days on the ground that the construction of the school (Madrassa) was without prior permission of the competent authority.

2.5 Considering the conduct of the respondent authorities, attention was drawn of the Waqf Tribunal of the order of the respondent-Executive Engineer dated 28.03.2022 requesting for extending of the interim relief. However, such extension was not granted and the hearing was fixed on 05.04.2022. Apprehending demolition on account of non-extension of the interim order, the petitioner filed Civil Revision Application No.213 of 2022, which, today stands disposed of as withdrawn.

2.6 It is submitted that on 07.04.2022, the petitioner had

requested the Waqf Tribunal to extend the order of status quo. However, considering the fact that the status quo order was granted (25.01.2022) till filing of the reply by the respondents and that the respondents had filed their reply before the Waqf Tribunal, status quo could not be granted. It is submitted that as the petitioner could not get interim order in Civil Revision Application nor before the Waqf Tribunal, the petitioner was constrained to file the present petition to protect its construction, especially where educational activity for the surrounding area is going on.

2.7 Learned Advocate for the petitioner drawn attention of the Court to several photographs placed on record today to indicate that the construction was existing since long and certain portion of the old construction is existing before 1980s. It is submitted that as the construction shown in these photographs placed on record today was in dilapidated condition, the petitioner had renovated the existing construction of the school (Madrassa) and therefore, there was no need for the Corporation to prevent renovation of the premises by treating the same to be the new construction without permission and cause demolition of the same.

2.8 Learned Advocate for the petitioner submitted that the land on which the school (Madrassa) exists was originally having hutments, which is already demolished and qua the occupants, under the policy of the Corporation, they have been rehabilitated somewhere else and the open plot, even as per the town planning

scheme is kept open for the purpose of public parking. Therefore, no construction is going to come up and that the existing structure will not come in way and therefore, it will protect interest of the children, who are being educated.

2.9 Learned Advocate for the petitioner submitted that in the entire plot of land, only two structures are existing, one is a temple and another is the present structure utilized for the purpose of education /school (Madrassa) and there is no action taken for removal of another structure, i.e. temple which is located also on the same plot.

2.10 Learned Advocate for the petitioner also drew attention of this Court to the latest photographs which are placed at page No.122 as a part of rejoinder.

3. Learned Advocate for the respondent-Corporation submitted that the action of the respondent-Corporation is perfectly justified as land in question on which the petitioner claims to have educational institution (Madrassa) has been acquired way back in the year 1967 and the original owners have already received compensation in that regard. It is submitted that in the revenue record, after the compensation was paid, the land is running in the name of the State authorities and therefore, there is no legal right for the petitioner to continue in occupation on a feeble ground of oral gift by the erstwhile owners of the land.

It is submitted that the acquisition proceedings had long concluded and the acquisition was for the specific purpose of public interest and now the petitioner is coming in way of development and in public interest.

3.1 It is submitted that the open plot as per the town planning scheme was required to be utilized. However, in and around the present structure, which the petitioner claims to be using for educational activity, was surrounded by thickly populated hutments, with no legitimate right to continue to occupy the land and with great difficulty, local authorities were able to remove the hutments from the valuable plot of the State /Corporation for the purpose of public interest. It is submitted that neither the petitioner has any legal right regarding his right, title or interest to occupy the structure nor the petitioner is having any building permission to put up the construction. It is submitted that on site visit, it was found that the construction claimed by the petitioner was recent one and in fact, it is incorrect to say that the said construction was utilized for the purpose of imparting education.

It is submitted that for the purpose of running educational institution, including 'Madrassa', permission is required for specific nature of construction considering safety of children, which is not obtained by the petitioner. Moreover, site visit also indicated that structure was being put to commercial use under the garb of running educational institution and there were several commercial

activities going on such as garage, shops, etc. In view of the aforesaid, action on the part of the respondent-Corporation is justified.

3.2 It is submitted that the respondent-Corporation had also filed detailed reply before the Waqf Tribunal and as the Waqf Tribunal was updated about state of affairs prevailing, had refused to extend interim relief granted ex parte. It is submitted that Civil Revision Application before this Court filed by the petitioner also now stands dismissed as withdrawn.

3.3 Learned Advocate for the respondent-Corporation submitted that the petitioner is trying to take advantage of the fact that the property in question was reflected in the revenue record later in point of time, also the petitioner has failed to establish that educational institution is being run for past 60 years whereas in the petition itself, it is stated that Waqf has been registered only on 11.11.2021 and therefore, demand of the petitioner is to encroach upon the Government land under the garb of running educational institution (Madrassa).

4. In rejoinder, learned Advocate for the petitioner submitted that even if it is the case of the petitioner being in unauthorized occupation, still the petitioner has a scope of regularizing the portion as well as the construction and accordingly, the petitioner was directed by the Waqf Tribunal to do

so and the petitioner had already made application before the Corporation to take into consideration the same sympathetically.

5. Having considered the rival submissions of learned Advocates for the parties and having considered documents on record, it appears that the dispute pertains to two floor structure existing on plot of land identified as "Nondh No.4936, 4937 of Ward No.2, Sangrampura, Gopi Talav, Surat, over which the petitioner claims to run educational institution (Madrassa), but nothing is brought on record of this Court with regard running of educational institution on the very premises. The photographs which are placed on record by both the sides also do not indicate running of school (Madrassa), but it only indicate two floor structure and on the ground floor, there are shutters apparently being used for commercial purpose (garage). These photographs are placed on record by the respondent-Corporation. The photographs are also placed by the learned Advocate for the petitioner in two sets, which appear to be the photographs of existing structure of one floor, where also such structure does not appear to be in dilapidated condition, but there appears to be commercial activity going on. There is nothing to indicate of any ongoing educational activity. The photographs shown which are annexed with the affidavit in rejoinder (page No.122, 123) would go on to indicate to be a newly constructed structure with two floors. Therefore, in absence of any evidence with regard to running of

educational institution (Madrassa), the Court is not inclined to accept the argument of learned Advocate for the petitioner that the petitioner is running an educational institution there. In the opinion of the Court, wherever the issue of running educational institution is concerned, the same is governed by separate set of laws where necessary formalities are required to be undertaken and the construction which is meant for the purpose of school is regulated by GDCR and with the permission of the authorities, such construction is permissible. In the instant case, there is nothing on record to indicate that the construction has been carried out pursuant to any development permission granted by the authorities.

6. Though learned Advocate for the petitioner claims that 350 students are studying there, no evidence has been placed on record in this regard nor the Court is able to accept such contention looking to the structure constructed, which can hardly house 350 students.

7. Insofar as land, as identified in the preceding paragraphs is concerned and where structure exists, award under Section 11 of the acquisition proceedings being No.LAQ.IV.CR 490/67 would go on to indicate that the land in question was originally of joint ownership of Ashikhussain Abdulhussain, Safakathussain, Jamunhussain, Saffuddin, Ahesanhussain and Jakirhussain, who were having equal shares and had participated in

the acquisition proceedings and had received compensation under award dated 31.08.1967. The name of the original owner is reflected in the award placed on record. Pursuant to the award, "Kabja Rasid" dated 19.12.1967 was executed, which is signed by the original owners and their family members and which is placed on record at page No.89. The purpose for acquiring such plot of land was clearly mentioned in the award itself and therefore, pursuant to the acquisition award, the land has to be reflected in the revenue record to be the ownership of the respondent authorities. It seems not only the petitioner but also other occupants of the same final plot reserved under town planning scheme have taken advantage of the fact that in the revenue records nothing was shown regarding the acquisition proceedings. Whether such omission is bonafide or mischief is a matter of inquiry. However such lapse has resulted in occupation of Government Land by unauthorised occupants. The State needs to look in such situation closely to the state of affairs and take corrective measures including holding concerned Govt. servant or public servant as personally responsible.

8. From the record, it appears that the land bearing Nondh No.4936 & 4937 alongwith land of other nondh nos. has been 4 acquired on behalf of Barough Municipality , Surat for "Garden and Gopitalao Development Scheme purpose" in the year 1967. It is submitted that the notification u/s 4 of the Land

Acquisition act 1894 had been published on 22.01.1965 , notification u/ s. 6 had been published on 18.10.1965 and the award u/s.11 declared by the acquisition officer on 31.08.1967 not only that the owners/occupiers had also handed over the possession to acquisition officer on 19.12.1967 and possession receipt also issued by the owners/occupiers of respective land. The petitioner has made incorrect statement on oath in para 3.2 of the petition that Shri Asiqhussain Abdulhusen and his five brothers executed oral gift and transferred all rights ,interest and share of said lands in favour of the petitioner-Waqf, in fact, said land after acquisition proceedings, on 19.12.1967 handed over to acquisition officer and possession receipt has been issued to that effect by Shri Asiqhussain Abdulhusen and others.

9. Around November 2021 respondent came to know about construction activity upon acquired land therefore, officers of the SMC had visited the site and asked the petitioner to produce development permission for ongoing construction and documents regarding ownership of land however, petitioner failed to produce it and therefore, petitioner was informed to stop further construction. That despite the instruction of respondent, the petitioner had continued construction and therefore, notice dated 29.12.2021 under Section 260(1)(a) of the Act has been issued to show cause as to why the construction should not be removed as it is made without development permission. That, in response to

show-cause notice, the petitioner had submitted “construction completion” Certificate and not produced any evidence of ownership or development permission regarding construction made upon acquired land. It is pertinent to point out that after completing the construction, the petitioner has started use of property without getting building use permission as required under Section 263 of the BPMC Act, 1949.

10. In the opinion of the Court, in absence of any evidence on record regarding actual running of educational institution and there is nothing on record to indicate any permission to running educational institution or building permission to put up construction of educational institution and the factual assertion not being controverted that the premises were being used for commercial purpose, the Court is not inclined to interfere with the ongoing process, which according to the Court is in accordance with the provisions of GDCR.

11. There is one more reason why the petitioner could not get necessary development permission as the petitioner has not placed any document regarding the lawful occupation of the part of the final plot. had the petitioner at anypoint of time applied for any developement permission the scrutiny of the revenue record would have led the officers of the concern authority be it revenue, city survey, town planning or the municipal corporation to realize the fact of the acquisition of the very land by the state which has

successfully avoided the attention of the authorities for such a long time considering the same to be of private ownership. in any case the petitioner who even if wants to regularise the existing structure will first have to establish his legal ownership or legal occupation on the part of the final plot in absence of the very basic requirement the court is unable to support the claim of the petitioner for Regularisation of the Construction.

12. With regards to the submission of the Id. Advocate about the temple standing on the final plot the court is not inclined to examine the same in absence of any material particular about the same and that too in absence of the necessary party against which such contention is sought to be raised. in any case such contention would not take the case of the petitioner any further as the court is satisfied that in the structure in question there is a commercial activity which is definitely going on and on the other hand nothing is produced on record about the alleged on going religious education activity on the very premises.

13. The Court has taken into consideration order dated 28.03.2022, which was passed pursuant to the application made as per the direction of the Waqf Tribunal under order dated 03.03.2022, wherein the petitioner was called upon to give supporting documents. It appears that even after the directions of the Tribunal, the application made by the petitioner was for the purpose of rearing of the existing construction, which application

was contrary to the facts which were found by the respondent-Corporation during visit. After finding that the application thus made by the petitioner was not as per the direction of the Tribunal, the authorities proceeded to find that the petitioner has failed to comply with almost 15 points which were raised by the authorities as per the requirement of law and therefore, in absence of such material particulars supporting the application of the petitioner, order dated 28.03.2022 came to be passed. The Court sees no reason to interfere with the order.

14. In view of the aforesaid facts, the petition deserves to be and is hereby dismissed. Notice is discharged. No order as to costs.

SHITOLE

(A.Y. KOGJE, J)