

Date of Decision: 19th July 1995

SPECIAL CIVIL APPLICATION NO. 4972 of 1987

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
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? No
5. Whether it is to be circulated to the Civil Judge? No

Shri P.M. Raval, Advaocate, for the Petitioner

Shri K.C. Shah, Asst. Government Pleader, for Respondents
Nos. 1 to 4

Shri V.S. Mehta, Advocate, for Responent No. 5

CORAM: A.N. DIVECHA, J.
(19th July 1995)

ORAL JUDGMENT

The action of removal of the cabin of the petitioner near the bus stand of village Talala by and on behalf of the respondents is under challenge in this petition under Art. 226 of the Constitution of India.

2. It is not necessary to set out in detail the facts giving rise to this petition. As transpiring from the affidavit-in-reply filed on behalf of the Nagar Panchayat of Talala (respondent No.5 herein), the petitioner's cabin is placed on the junction of five roads near the bus stand. His situation is similar to that of the cabins of the petitioners in Special Civil Application No. 3589 of 1982 decided on 5th August 1994 by the Division Bench comprising of M.B. Shah and M.R. Calla, JJ. M.B. Shah, J. speaking for the Division Bench has held therein that the petitioners were not entitled to run their business in cabins or lorries at that place. Sitting as a single Judge, I am bound by the aforesaid Division Bench ruling of this court. Even otherwise I am in respectful agreement therewith.

3. Shri Raval for the petitioner has raised a grievance about a very high-handed action of removal of the petitioner's cabin on the part of the respondents. According to the petitioner, as stated in para 4 of the memo of his petition, the manner and method of removal resulted in substantial loss to him. It is not necessary to deal with the submission in that regard as it would constitute a disputed question of fact. In absence of any affidavit-in-reply, averments made in para 4 of the memo of this petition would certainly go to show that the manner and method of removal of the petitioner's cabin would smack of high-handedness on the part of the concerned authorities. However, it is not necessary to deal with this aspect of the case as respondent No.5 Panchayat has agreed to provide an alternative place in the shopping centre fixed by it. Allotment of a place in the shopping centre in lieu of the petitioner's cabin or galla on the highway would more than adequately compensate the petitioner for the alleged loss suffered by him on removal of his cabin. The petitioner will have to make representation to respondent No.5 in that regard and such representation, as and when made, would certainly be considered by respondent No.5 on merits according to law.

4. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The ad-interim relief stands vacated.

5. At the oral request of Shri Raval for the petitioner, the interim relief is ordered to continue till 31st August 1995 to enable the petitioner to tide over the monsoon crisis.

6. It would be open to the petitioner to apply for alternative place in the shopping centre referred to in the affidavit-in-reply filed by and on behalf of respondent No.

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