

BEFORE THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO.9680 OF 1995.

Date of Decision:-29-11-1995.

For Approval and Signature

THE HON'BLE MR.JUSTICE N.N. MATHUR.

1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of 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 Judges ?

Mr. Y.N. Oza, Advocate, for the petitioner.

Mr. P.G. Desai, Advocate, for the respondent no.1.

Miss P.S. Parmar, A.G.P., for the respondent no.2.

Coram:-N.N Mathur, J.

Date:--29-11-1995.

Oral Judgment:-

This Special Civil Application has been filed seeking direction to restrain the respondent no.1 from exercising powers u/ss 230 and 231 of the Bombay Provincial Municipal Corporations Act, 1963 (hereinafter referred to as the Act) so far as the lorries of the petitioners are concerned and also the Municipal Corporation has no right to summarily evict the petitioners under Sections 230 and 231 of the Act. The

said Special Civil Application was registered as Special Civil Application No.129 of 1988. The matter came up before the Division Bench of this Court (Coram: B.C. Patel and R.M. Doshit, JJ). The learned Counsel for the petitioner withdrew the said petition with liberty to make a representation in the subject matter before the Municipal Commissioner. Accordingly, the Division Bench of this Court directed that the petitioner shall make representation to the Municipal Commissioner on 14-11-1995 and the Municipal Corporation was directed to decide the representation if so made within a period of one week therefrom i.e. on or before 21-11-1995.

2. The petitioners say that the copy of the order was made available to them on 13-11-1995 and on the next day i.e. 14-11-1995 they made the representation to the Municipal Commissioner. However, the Municipal Commissioner in flagrant violation of the order of this Court the respondents have taken away the lorries and 'gallas' of the petitioners. It is the further say of the petitioners that the petitioners' lorries are not on the public street or public footpath but they are on vacant plots and as such the provisions of Sections 230 and 231 of the Act cannot be invoked. The petitioners have annexed the copy of the judgment of this Court delivered on 23-12-1985 in Special Civil Application No.2194 of 1982. It was held in the said Special Civil Application No.2194 of 1982, as under:-

"So far as Special Civil Application No.2194 of 1982 is concerned, we hold that the Ahmedabad Municipal Corporation cannot proceed against the petitioner in the said petition under Section 231 of the B.P.M.C. Act as he has not committed any encroachment over a public street. It will be open to it to take any other action permissible under the law. Rule issued in the said petition is made absolute accordingly with no order as to costs."

3. Mr. M.F. Shah, Dy. Estate Officer, Ahmedabad Municipal Corporation, has filed the affidavit, raising preliminary objections that the petitioners have raised all the contentions raised in Special Civil Application No.129 of 1988 which was subsequently withdrawn and therefore it is now not open for the petitioners to agitate the same question in the present writ petition. It is also stated that the lorries and 'gallas' of the petitioners have already been removed after deciding their representation as per the directions of this Court. The petitioners were orally asked to remain present at the time of hearing of their representation but nobody appeared before the Municipal Commissioner. It is also

stated that there is encroachment on the public place without permission of the Commissioner and as such there is no illegality in removing the petitioners from the public place.

4. I have heard Mr. Yatin Oza, Learned Advocate, for the petitioners and Mr. P.G. Desai, Learned Advocate for the respondent Municipal Corporation. In the case of Anupam Rekadi Cabin Association Vs. Jamnagar Municipal Corporation, reported in 1995(1) G.L.H. 586, it is held that "the Commissioner has power to remove the encroachment on the public place without notice".

5. Mr. Yatin Oza, Learned Advocate for the petitioners submits that the view taken by this Court in the aforesaid case is conflict with the view taken by the Division Bench of this Court in Special Civil Application No.2194 of 1982. I have called the judgment of the said Special Civil Application as decided on 23-12-1985 and perused the same and found that there was no controversy with respect to the public place. In view of the fact that the contention with respect to conflict in the aforesaid two decisions of this Court is not sustainable.

6. It is not in dispute that alleged encroachment is on public road. Thus, keeping in view the law laid down by this Court in 1995(1) GLH 586, there is no merit in this Special Civil Application and hence the same is rejected. Notice discharged.

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