

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1839 of 1984

with

SPECIAL CIVIL APPLICATION No 4884 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMESHCHANDRA MOHANLAL BHOI & ANR.

Versus

DAKORE NAGAR PANCHYAT & OTHERS

Appearance:

1. Special Civil Application No. 1839 of 1984
MR HARDIK RAVAL for Petitioners
MR SAMIR DAVE for Respondents No. 2 and 3
None present for other Respondents
2. Special Civil Application No 4884 of 1992
MR HARDIK RAVAL for Petitioners
MR HS MUNSHAW for Respondent No. 2
MR SAMIR DAVE for Respondent No. 3
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/11/96

ORAL JUDGEMENT

SPECIAL CIVIL APPLICATION No 1839 of 1984

1. The petitioners have come up with a case before this court that they are running a small business of tea and coffee in a small hand-larry at Dakore since last about 22 years. It is a statement of the petitioners that they are peacefully carrying on their business in their larries without causing any kind of obstruction to the general public. On the contrary, they are catering to the day-to-day need of the general public. Not a single complaint is received by the respondent authorities from the members of the public against the petitioners regarding any obstruction caused to them. The petitioners further urged that they are carrying on their legitimate business on a corner of the road without causing any hindrance to the vehicular traffic also. The petitioners have made a grievance that the agents or employees of the respondents no.1 and 2 are harassing them to a large extent. The petitioners though made several oral requests to the respondents not to harass them but they have not cared to consider their grievance. The petitioners earlier filed Special Civil Application No.6021 of 1983 before this court on 14th December, 1983 for redressal of the same grievance. At the time of hearing of the said petition, Mr.A.J. Patel, learned counsel for the respondent Panchayat gave an assurance to the court that the petitioners will not be disturbed without following the due process of law. On the above statement made by Shri A.J. Patel in the earlier proceeding, the petitioner withdrew the said petition. The grievance of the petitioners in this petition is that in spite of the said assurance given by the counsel for the Panchayat, the respondent Panchayat has not stopped the illegal activities of removing the larries and some time even taken and thrown away the larries and have been asking for illegal gratification from the petitioners. The petitioners in para no.5 of the Special Civil Application made a statement that now the Panchayat has given the notice to the petitioners to vacate the premises though no other larri walas in whole of Dakore town are being disturbed. The prayer has been made by the petitioners in this Special Civil Application to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus permanently restraining the respondents no.1 and 2, their servants or agents from removing or disturbing the larries of the petitioners from the existing place. The prayer has also been made for the grant of the interim relief. On 2nd April, 1984 this court was pleased to issue rule and

interim relief in terms of para no.23(c) has also been granted. Para no.23(c) reads as under:

pending hearing and final disposal of this petition, be pleased to issue an injunction restraining the respondents no.1 and 2 from removing or disturbing the larries of the petitioners or bench or other articles used by them, from the existing place;

It is not in dispute between the parties that the interim relief which has been granted by this court continues till this date.

SPECIAL CIVIL APPLICATION No 4884 of 1992

2. Briefly the facts of this case are that the petitioners have been paying the rent to the respondent-Panchayat till they filed Special Civil Application No.1839 of 1984 before this court. They have been paying the rent and licence fees at the rate of Rs.30/- p.m.. After filing of the aforesaid petition and the protection granted to them by way of interim relief by this court, the petitioners went to the authorities as they used to, for paying the amount of rent and licence fees, but the said authorities refused to accept the said amount from the petitioners. In that eventuality, the petitioners had sent the rent through M.O. to the respondent no.1 but the same was also refused. After lapse of many years, suddenly the respondent no.1 issued notices to the petitioners stating that they have decided to charge the premium at the rate of Rs.300/- p.m. from the petitioners from the date from which the petitioners have been carrying on their business. The petitioners had replied to that notice. Challenge is made by the petitioners in this Special Civil Application to the notice annexure 'D' dated 8th July, 1992. Initially the vires of sec. 319 of the Gujarat Panchayats Act had also been challenged but subsequently that challenge has been given up specifically, as it comes out from the order of this court dated 22nd July, 1992.

3. On 27th July, 1992 this court has been pleased to issue rule in this case and ad-interim relief in terms of Para no.11(d) was granted on condition that the petitioners shall pay an amount of Rs.75/- (Rupees Seventy Five only) as and by way of occupation charges to the respondent no.1-Panchayat. The amount of Rs.75/will be paid regularly on or before 10th of every month. Together with this amount, further amount of Rs.75/- will be paid towards arrears, till the arrears are wiped out. It is not in dispute between the parties that this order

made by this court has been complied with by the petitioners.

4. Heard learned counsel for the parties and perused the Special Civil Applications. In the earlier petition being Special Civil Application No.2336 of 1984 this court has made the order on 3rd February, 1984 which reads as under:

"Mr. Patel appearing for respondent no.1 makes a statement that respondent No.1 will not remove the wheel-barrow/lorry of the petitioners except in accordance with law. On the basis of this statement, Mr. Oza withdraws this petition."

The grievance of the petitioners in this petition is that though assurance has been given by the counsel for the respondent no.1 not to remove the wheel-barrow/lorry except in accordance with law, but that assurance was not complied with and the petitioners were sought to be removed without due process of law but this grievance of the petitioners is not well-founded.

5. The respondent no.1 has filed reply to the Special Civil Application No.1839 of 1984 in which a categorical statement has been made that the respondent-Panchayat issued the notice to the petitioners for the purpose of taking appropriate proceedings against them in accordance with law. It has further been stated that during the pendency of the said proceedings the petitioners became apprehensive about the ultimate action which may be taken by the respondent-Panchayat against them and therefore they filed the present petition making imaginary and reckless allegations against the respondent-Panchayat and respondent no.4 and thereby got a Rule issued in the present petition. The respondent no.1 has further stated in the reply that the respondent-Panchayat had also offered an alternative site to the petitioners, but they had refused to accept the said alternative site.

6. The petitioners have not produced the notice which has been given to them by the respondent-Panchayat in this Special Civil Application. That was the material and relevant document and it should have been produced on the record so that this court should have been in a better position to appreciate the contents thereof. Be that as it may. It is a case where only notice has been given to the petitioners and they will have all the right to submit and produce and take all the defences which are available to them in the reply to the notice. Instead of approaching to this court in hot haste against the

notice, after receipt of the notice the petitioners should have filed a reply to the notice and should have taken a decision in the matter from the respondent-Panchayat. The Panchayat has made it clear that the notice has been given to take appropriate proceedings against the petitioners. It is an action which has been taken by the respondent-Panchayat in accordance with the assurance which has been given by its counsel in the earlier proceeding taken by the petitioners before this court. The writ petition filed by the petitioners at the stage when notice was given to them by the respondent-Panchayat to take appropriate action against them was in fact premature. The petitioners have not disputed that the Panchayat has no jurisdiction or authority to give such a notice to them. The Apex court in the case of Executive Engineer B.S.H.B vs. Ramesh Kumar Singh reported in 1996(1) SCC 327 held that the writ petition against the show-cause notice is not maintainable. The petitioners have come up before this court in the present case at the stage when only show-cause notice was given to them by the respondent-Panchayat.

7. In view of this fact, this petition filed by the petitioners is not maintainable and the same is dismissed. However, it is made clear that the petitioners shall be at liberty to file reply to the show-cause notice which has been given to them by the respondent Panchayat, and Gram Panchayat shall decide the matter after giving full opportunity of hearing to the petitioners in accordance with law. It is further made clear that in case any adverse order is passed by the Gram Panchayat against the petitioners the same may not be given effect to for 15 days from the date of sending of the said order to the petitioners by registered post. Rule is discharged subject to aforesaid direction.

8. In the Special Civil Application No.4884 of 1992 again the petitioners have challenged the notice which has been given to them by the respondent-Panchayat. It is a matter where instead of approaching to this court, the petitioners should have approached to the Gram Panchayat against the said notice. The writ petition against the show-cause notice is not maintainable. Reference in this respect may have to the decision of Supreme Court in the case of Executive Engineer B.S.H.B. vs. Ramesh Kumar Singh reported in 1996(1) SCC 327. Be that as it may. The petitioners have been protected by this court in this case by grant of interim relief and that order has been complied with by the petitioners and none of the parties have raised any issue on this

question.

9. In view of this fact, the Special Civil Application No. 4884 of 1992 is disposed of with the direction to the Gram Panchayat to decide this matter also along with the notice which has been given to the petitioners for the removal of their larries which was the subject matter of challenge in the Special Civil Application No.1839 of 1984. Till the matter is decided finally, the interim order which has been passed by this court in this Special Civil Application shall continue. Rule stands disposed of in the aforesaid terms with no order as to costs.

zgs/-