

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 451 of 1997

in

SPECIAL CIVIL APPLICATION No. 8476 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

MR.JUSTICE S.D.PANDIT

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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?

RG DESAI SK GD II

Versus

ASSOCIATION OF SCIENTIFIC & TECHNICAL OFFICERS (ASTO)

Appearance:

MR BR GUPTA with Shirish Joshi, for Petitioners

MR RASHEED QURESHI for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 30/06/97

ORAL JUDGEMENT

Admitted.

Mr. Rasheed Qureshi, learned advocate appears on behalf of Respondent No. 1 {original petitioner} and waives service of notice. Mr. Shirish Joshi, learned advocate waives service of notice of admission on behalf of Respondent Nos. 2,3 & 4. So far as Respondent No. 5 is concerned, it was stated at the Bar that he has already vacated the quarter.

This appeal is directed against an interim order passed by the learned Single Judge in Special Civil Application No. 8476 of 1996 on March 18, 1997. That is an interlocutory order. That petition was filed by the first respondent herein {original petitioner} for an appropriate writ, order of direction. In para-7 of the petition, following prayers were made;

"7. For the reasons mentioned herein above
the petitioner prays that :-

- (a) The respondent no. 1 to 3 be directed to
take necessary action against the
respondent nos. 4 to 17 and to have them
vacate the "B" type residential
accommodation and if necessary to
forcefully evict them so as to set an
example in future.
- (b) During the pendency of this petition the
Hon'ble Court may be pleased to grant
interim relief by way of directing the
respondent no. 1 to 3 to make alternative
arrangement for "B" type accommodation
within the colony to the eligible members
of the petitioner association.
- (c) Direct the respondent nos. 4 to 17 to
vacate forthwith the "B" type residential
accommodation and if offered to occupy
the same.
- (d) The petitioner be suitably compensated
for the financial loss suffered by them
through the years.
- (e) The petitioner earnestly and arduously
plead for this petition to be allowed
with cost.

(f) Such other and further reliefs as the Hon'ble Court deems fit and proper in the interest of justice may be allowed."

The learned Single Judge after hearing the parties was of the opinion that the matter requires consideration, and hence, Rule was issued. We are told that the matter is already on Board for final hearing. By way of interim relief, however, the learned Single Judge passed an order. Paragraph 7 of the said order reads thus :-

"7. Respondent Nos. 4 to 17 shall vacate the "B" type quarters in Phase-I ONGC Colony allotted to them in the year 1992 on their giving undertaking {copy of one of which is annexed to the petition at annexure "B"}, on or before 30th June, 1997. The Corporation shall continue allotment of "A" type quarters in Phase II ONGC Colony made to the said respondents till 30th June, 1997. The "B" type quarters in Phase I ONGC Colony falling vacant on account of the vacation of the said quarters by respondent nos. 4 to 17 shall be allotted to the officers entitled to such quarters according to their seniority in the seniority list prepared for allotment of "B" type quarters operative from 1st July, 1997 to 30th June, 1997."

A grievance was made on behalf of appellant that though the learned Single Judge has kept the petition pending, virtually, he has disposed of the same so far as relief is concerned. The relief which could have been granted at the time of final disposal of petition was granted at interim stage. Mr. Qureshi submitted that in the facts and circumstances of the case, it was not only an equitable relief but it was legal relief also inasmuch as the present appellants were not entitled to "B" type quarters.

In the facts and circumstances of the case, the learned Single Judge ought not to have granted interim relief directing the appellants to vacate quarters. It may not be proper on our part to express any opinion one way or the other on merits since the matter is pending before the learned Single Judge. Instead, it would be appropriate for the parties to approach the learned Single Judge for early hearing and final disposal of the matter. Mr. Qureshi submitted that if the matter will not be heard in near future, the members of the

petitioner-Association; whose services are transferable, may not get the benefit of "B" type quarters to which they are entitled. In our opinion, it would be open to the petitioners to request the learned Single Judge to hear the matter expeditiously and when the matter is on Board, the learned Single Judge will consider such request and pass appropriate order.

In the facts and circumstances of the case, in our view, interim order passed by the learned Single Judge cannot be sustained, and hence, it is hereby set-aside. The learned Single Judge will now hear the matter and decide the same in accordance with law, without being influenced in any manner with the observations made hereinabove. Appeal is accordingly allowed with no order as to costs.

Prakash*