

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS NO. 7035 & 7056 OF 1985

WITH

SP CIVIL APPLN NO 7146, 7147, 7148 & 7178 OF 1985

WITH

SP CIVIL APPLN NO 96, 103, 104, 368 & 711 OF 1986

WITH

SPECIAL CIVIL APPLICATION NO.3145 OF 1987

TO

SPECIAL CIVIL APPLICATION NO.3167 OF 1987

WITH

SPECIAL CIVI APPLICATION NO.4431 OF 1987

TO

SPECIAL CIVIL APPLICATION NO.4433 OF 1987

WITH

SPECIAL CIVIL APPLICATION NO.4447 OF 1987

TO

SPECIAL CIVIL APPLICATION NO.4456 & 4625 OF 1987

WITH

SPECIAL CIVIL APPLICATION NO.7103/85, 7104/85, 7034/85

AND

SPECIAL CIVIL APPLICATION NO 4776 TO 4783 OF 1987

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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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 the 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 Judge?

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REVACHAND MADHUMAL & ORS.  
VERSUS  
CHIEF OFFICER, KALOL MUNICIPALITY & ORS.  
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Appearance:

None present for the Petitioners  
MR HL JANI for District Collector, Mehsana  
MR SATYAJIT SEN for Kalol Municipality  
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Coram: S.K. Keshote,J  
Date of decision: 09/05/1997

C.A.V.JUDGMENT

As all these writ petitions proceed on the common facts and grounds, the same can conveniently be disposed of by this common order. However, the case with which these petitioners initially approached this Court by way of filing these Special Civil Applications has taken a new shape and colour, as many subsequent developments have taken place which have changed the complete complexion of the issue raised in these Special Civil Applications and now the matter needs to be decided with reference to the subsequent developments and events taken place during the pendency of these writ petitions.

2. All the petitioners are doing their business of selling household articles, consumer goods and other items in the wooden shops situated off the footpath on the Kalol Station Road or along side the footpath near Civil Hospital, Navjeevan Road, Kalol. Many of the petitioners are refugees from Pakistan acquiring citizenship of India after partition. In the year 1946, the respondent-Municipality had constructed about 23 Stalls/Shops and were let to the refugees many of which are the petitioners before this Court. The other petitioners have also come in possession of the land and they started their business by putting wooden stall/shop thereon for last many years. The petitioners have come up with the case that they are not unauthorized occupants but they are with the permission of Municipality and they are making payment of monthly rent at different rates to the municipality. All these petitioners were sought to be evicted from the wooden stall/shops by Municipality by resorting to provisions of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 (hereinafter referred to as the Act 1972). In all these

petitions, the competent authority passed an order for eviction of the petitioners. The appeal preferred by them has also been dismissed. Hence these petitioners have come up before this Court by way of these Special Civil Applications. During the pendency of these Special Civil Applications, the Municipality, Kalol, passed a Resolution, being Resolution No.126 on 11.10.96 to regularize the possession of these persons at the existing site subject to payment of premium. The petitioners have also paid the amount of premium fixed by the Municipality, Kalol. The Kalol Municipality has sent the resolution for approval, thereof, to the Collector, Mehsana, who had stayed the operation of the said Resolution and later on as given out by the learned counsel for the petitioners and now admitted by the respondent, the said Resolution has been cancelled by the Collector, Mehsana. It is also not in dispute that the Collector, Mehsana, has not given any notice or opportunity of hearing to the petitioner before passing the order of cancellation of Resolution No.126 dated 11.10.96 of Kalol Municipality. In view of these subsequent developments under the order dated 13th January 1997, the Collector, Mehsana was ordered to be impleaded as a party in these petitions and Shri Samir Dave, learned AGP was directed to accept notice on behalf of the Collector. Thereafter, the matter was taken up from time to time and lastly, on 21st April 1997, Shri A.K. Sharma, Collector, Mehsana, was personally present in the Court alongwith the relevant records.

3. The learned counsel for the Collector, Mehsana, and Kalol Municipality were also present. It has been given out in these matters that the District authorities were desirous of dispossessing these persons from the site in question for widening the road, but on putting a particular and pertinent question to the Collector, Mehsana, who was personally present in the Court, whether any scheme has been framed for widening of the road and necessary financial sanction has been granted in respect thereof, he very fairly conceded that so far, the scheme has not been finally framed and financial sanction has also not been made. However, he has submitted that looking to the tremendous increase of vehicular traffic and population the existing width of roads are not sufficient compared with the traffic thereon and as such in the public interest roads are to be widened. However, the District Collector further submitted that the occupiers of the sites in question will be given alternate suitable available sites as and when the scheme for widening of the road and necessary finances are sanctioned for it.

4. During the pendency of these Special Civil Applications, the petitioners collectively made a representation to the Collector, Mehsana, on 29th February 1997, and requested him to consider the question of regularization of their stalls at the existing site. A copy of this representation was also endorsed to the Chief Officer and Administrator, Kalol Municipality. The petitioners have further requested the Collector, Mehsana, to visit their stalls and to take a spot view of the matter. In turn, the Collector, on 19th March, 1997, deputed Mr. Gor, Deputy Collector, Mehsana alongwith City Survey Officer, Chief Officer and administrator Kalol Municipality and D.S.P. Mehsana, and Police Inspector, Kalol, to inspect the stalls of the petitioners. The aforesaid persons have taken a round of Station Road Main Kalol Market and Navjeevan Road. The petitioners further stated in the affidavit that on inquiry made from the Town Planning Officer, they have come to know that presently there is no move for widening the road, i.e. the Station Road, and Navjeevan Road. The petitioners further stated that Kalol Municipality has also taken the opinion of the Town Planning Officer before it has passed the Resolution No.126 dated 11.10.96 regularizing the possession of the petitioners on the land in dispute. The Town Planning Officer had opined that he has no objection to regularization of the stalls in question. The petitioners have also produced a Plan of the site in which their cabins/stalls are shown in Red colour. Adjoining to these stalls/cabins, there are cabins/stalls shown in Green Colour, which were also given similarly on rent by Kalol Municipality and were regularized by Kalol Municipality in the past by following similar procedure. The petitioners have further made the statement that though those stalls/cabins are located adjoining to their cabins, no action is taken for their removal or cancellation of the regularization. These facts have been made by the petitioners on oath and same are not being controverted by the respondents. The petitioners made further statement in the affidavit that the Station Road and Navjeevan Road are about 45 ft. wide and traffic is regulated one way entry and 23 cabins (stalls) are admeasuring about 8 x 8 ft. each, which are situated abutting the compound wall of the railway staff quarters. After these 23 cabins, 35 stalls and 41 Pucca constructed shops are there. The petitioners have given out that their possession was resolved to be regularized by the Kalol Municipality on payment of Rs.15,000/- as premium and arrears of rent. The arrears of rent was also revised from Rs.8/- p.m. to Rs.75/p.m. This decision has been taken by the Municipality as stated earlier,

vide its Resolution No.126 dated 11.10.96. The petitioners have claimed that existence of these stalls is not causing any obstruction to traffic nor they are creating any traffic hazards.

5. These are the matters for consideration and decision of the District authorities and not for this Court. The petitioners have given out in the representation submitted by them before the Collector, Mehsana, that if at all road is required to be widened, and all the cabins/stalls are required to be shifted, in that eventuality, they have expressed their willingness to shift to such other alternate place, which the District Collector, or the Chief Officer may suggest. They have further prayed that their request may be considered sympathetically as any act of discrimination will not solve the problem but will aggravate it. They have further given assurance to the District Authorities of their full cooperation. In the Affidavit, the petitioners have given out the availability of site where the Cabins/stalls may be shifted. These sites were given out at the places; (1) Talao area situated near KGM Girls school, (2) near Fire Brigade station near Municipality office, and (3) near Bal Mandir. The petitioners have very fairly submitted that at any one place of these three places, all cabins cannot be accommodated, but about 10 to 15 cabins/stalls can be accommodated at one place.

6. This Court cannot go on niceties of these issues and problems as the District Authorities are the persons who have to deal with these problems at their level, however, after hearing all these petitioners.

7. The substance of the matter now is that the Kalol Municipality, who has initiated the proceedings for eviction of the petitioners under the provisions of the Act 1972 are now no more interested to evict these persons from the site in question and it has taken a decision vide Resolution No.126 dated 11.10.96 to regularize the Cabins/stalls subject to the payment of premium of Rs.15,000/- and arrears of increased rent. The amount of premium has been deposited by the petitioners. The learned counsel for Kalol Municipality has not now insisted for eviction of these persons. Otherwise also, once the Kalol Municipality has resolved to regularize the cabins/stalls of the petitioners at the site in dispute and the amount of premium as well as revised rent has also been accepted, it is now estopped from making any claim for eviction of the petitioners from the site in question, more so the petitioners were

given the site on rent by it initially.

8. So far as the Collector, Mehsana, is concerned, he, as stated earlier, made a statement that presently, the District Authority is not intending to dispossess these persons from the site in question. However, in case their dispossession is felt necessary for public purpose, i.e. widening of existing road, in future, in that eventuality the petitioners, as given out by them, shall be given alternate suitable available site. Till then, the District authority concerned will not interfere with the possession as well as carrying on the business of the petitioners at the site in question. In view of the subsequent developments and events taken place, and the statements made by the Collector, Mehsana, the orders made by the competent authority and the Civil Court in the appeal in the proceedings initiated against the petitioners under the Act 1972, cannot be now allowed to stand.

9. In the result, all these Special Civil Applications succeed and the order of the Competent Authority for eviction of the petitioners made under the provisions of the Act, 1972, and the order of the Appellate Authority confirming that order are quashed and set aside. However, the petitioners shall abide and shall be bound by the undertaking and assurance given in their representation as well as in the Affidavit filed by one of the petitioners before this Court, that in the eventuality of the District authorities requiring the lands over which they are putting their cabins/stalls for public purpose, i.e., widening of road, they will vacate the lands in dispute on allotment to them alternative suitable available site of the area not exceeding the area presently occupied by each petitioners. The petitioners shall also continue to pay the amount of rent for use and occupation of the land to Kalol Municipality regularly at the revised rate as agreed upon by them. So far as the amount of premium paid by the petitioners to Kalol Municipality is concerned, in view of the fact that the Resolution has not been confirmed by the Collector, Mehsana, it has no justification for retention of the same and that amount has to be returned back to the petitioners and it has to be returned back to the petitioners within two months from the date of receipt of copy of this order. The arrears of revised rent which has been deposited by the petitioners or any of the petitioner in pursuance of the Resolution No.126 dated 11.10.96 of Kalol Municipality, they shall not be entitled for refund thereof. If any of the petitioners has not deposited the arrears of rent, he has to make

payment thereof within a period of three months from today. Rule is made absolute in aforesaid terms in all the writ petitions, with no order as to costs.

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